A

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85 PRETORIA

1988-08-19

DIE STAAT teen : PATRICK MABUYA BALEKA EN 21 ANDER

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

NAMENS DIE STAAT: ADV. P.B. JACOBS
ADV. P. FICK
ADV. H. SMITH

NAMENS DIE VERDEDIGING: ADV. A. CHASKALSON
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACOOB
ADV. G.J. MARCUS

TOLK: MNR. B.S.N. SKOSANA

KLAGTE: (SIEN AKTE VAN BESKULDIGING)

PLEIT: AL DIE BESKULDIGDES: ONSKULDIG

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KONTRAKTEURS : LUBBE OPNAMES

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VOLUME 442

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THE COURT RESUMES ON 19 AUGUST 1988

MR BIZOS: All the accused are before your lordship. The investigating officer has kindly consented to the amendment of the conditions of bail of Mr Nkopane, accused no.8.

COURT: Yes, I will read it into the record.

MR BIZOS: As your lordship pleases.

COURT: In accordance with paragraph 2 of the conditions of bail accused no.8, Naphtali Mbuti Nkopane is granted permission to visit the Vaal for the period 19 August 1988 to 21 August 1988 subject to the following conditions. He departs to the Vaal -

1. He departs to the Vaal on 19 August 1988 after the court sitting and reports to the Sebokeng police station on the same day and thereafter between 06h00 and 09h00 on 20 August 1988 and between 18h00 and 20h00 on the same day and between 06h00 and 09h00 on 21 August 1988 at the same police station and thereafter between the times and at the police station set out in the bail conditions.
2. During his visit to the Vaal he limits his movements to house 564027 zone 2 Sebokeng; 177 zone 6 Sebokeng; 982 Miller Road, Evaton, the graveyard in Evaton, the N G Kerk, Residensia and his visits to the Sebokeng police station.
3. All other conditions of bail stand and are strictly to be adhered to.

MR BIZOS: As your lordship pleases. There is another in relation to Mr Nkoli, accused no.13. If your lordship could please relax his conditions of bail. This time not for a sad occasion but he is the marathon man of the team and

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he is taking part in a race.

COURT: I will read these conditions into the record. In accordance with paragraph 2 of the conditions of bail, accused no.13, Simon Nkoli, is granted permission to participate in the running of the Northern Transvaal 10 km champions' race which is to be held on 20 August 1988 at the Clapham High School, Queenswood, Pretoria, subject to the following conditions:

1. He reports to the Silverton police station on the morning of 20 August 1988.
2. He immediately leaves after completing the race and reports to the police station between the hours set out in the bail condition.
3. During his participation he limits his movements to the premises of the Clapham High School, Queenswood, Pretoria, and the course set out for the race.
4. All other conditions of bail stand and are to be strictly adhered to.

And we wish him the best of luck.

MR BIZOS: Thank you, m'lord. I promised to give your lordship the reference to Mahlango's case, that is in relation to the meeting.

COURT: Yes.

MR BIZOS: That is to be found in 1986 1 SA 117. As your lordship pleases, I continue with the submissions that we make in relation to the credibility of Masenya. As already indicated what it is that he says was said by him, is to be found in volume 12, page 600 line 25 to page 601 line 15. And he is clear as to what he says he said:

"My vraag was wat van 'n persoon van 'n gesin, dit wil

sê / ..

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sê 'n man met vrou en kinders, indien die besluit om nie huurgeld te betaal nie en hy word gearresteer wat sal word van sy kinders. Ja, en toe, wat was die antwoord? -- Die antwoord was die Vaal civic association sal voorbereidings maak aangaande sulke kinders wat alleen agtergebly het. Verder was dit gesê in antwoord met betrekking tot die ouers wat gearresteer is, dit wil sê die moeder of die vader van die kinders die Vaal civic association sal voorbereidings maak of reëlings tref vir die verdediging. Dit was toe verder gesê dat(10 diegene wat 'n kans gaan vat om te betaal sal in die moeilikheid beland van om doodgemaak te word.

Wat gaan betaal? -- Huurgeld.

Goed, gaan aan. Wat gebeur vervolgens? -- Terwyl ek nog so gestaan het was daar gesê van 'n sekere vroumens dat ek moet sit want ek is een van die raadslede, ek sal doodgemaak word. Ek het toe gesit. Nie lank na ek gesit het nie, het ek gesien dat dieselfde vroumens wat gesê het ek moet sit, uitgaan.."

and then he followed her. Well, what I want to underline (20 here is that he says that the reason why was told to sit down was the occasion on which he said what would happen to people who would be arrested for non-payment of rent. Now he does not speak in his evidence-in-chief of having spoken or having tried to speak on more than one occasion. The only thing that he says further in relation to this is to be found in volume 13 page 610 line 3 to 10, that people shouted that he must sit down. Sorry, unless I missed the page - no, it is in 13 yes, 610:

"Kan jy vir ons sê op daardie tydstip toe jy gesê is (30

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toe jy 'n vraag gevra het in die vergadering, jy is 'n raadslid en jy moet doodgemaak word, wat was die reaksie van die gehoor op daardie stadium? - Hulle het baie hardop geskreeu en gesê ek moet sit."

Those are the only matters that he says in his evidence-in-chief. I am taking your lordship's time in this regard in order to read the passage because we are accused in the "betoog" of changing our defence. I will show that if there was any change of pattern it was the other way and not us. Your lordship will take into consideration the two other (10 state witnesses contradict the witness in this regard. Mahlatsi says that no woman threatened him with death but the crowd around him threatened him with death. Your lordship will find that in volume 41 page 1 949..

COURT: Well, it is not necessary to read all the evidence. We have listened to the evidence, I have summarised the evidence so you can make your point and I will write it down.

MR BIZOS: As your lordship pleases. Mahlatsi says that she did not do it. Your lordship will find that in 1 949 line 20 to 1 950 line 2 in chief and in volume 43 page 2 065 (20 line 30 to page 2 066 line 16 in cross-examination. Rina Mokoena says that he was not threatened with death by the woman who spoke but by a small "klompie" of people at the end of the - at the back of the hall. Your lordship will find that in volume 37 page 1 708 line 1 to 2. He himself says that the crowd did not threaten him but only shouted at him that he must sit down. Specifically the reference that I have given your lordship at 610 line 3 to 10. For the first time in cross-examination he says that he got up twice. Your lordship will find that in volume 13 page 630 line 9 to 19.(30

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COURT: Now what is the defence case, that he did or did not get up twice?

MR BIZOS: No, we said that he did get up twice.

COURT: Well, then you cannot complain about this?

MR BIZOS: No, I am not complaining. What I am saying is that I am going to use it to demonstrate that he is not telling the truth and that the state adopted for the purposes of the cross-examination of the accused the version of the accused because it apparently suited the state's case on another point to adopt it and the accused were not cross- (10 examined that it was in connection with the rent. This is why this is of some importance, because it was directly put to him that he did not say people would be arrested for not paying the rent, it was put to him that he said that people would be arrested if they took part in the march, and not in connection with the rent and that your lordship will find in volume 13 page 632 line 15 to 25. Now let me make it quite clear. The state with respect will refer your lord- ship to the "betoog", does not analyse the matters in issue nor does it with the greatest respect meet the difficul- (20 ties. The defence case is that he spoke or attempted to speak and he was asked to dissociate himself from the council. He then sat down. What was put to him is that thereafter he got up and raised the question what would happen to the people if they took part in the march and they were arrested. Now if that happened as it was put on the defence version then there is an overwhelming improbability that he was threatened when he first got up and sat down, because he would have wanted to keep absolutely quiet and quietly slip away and we are going to submit to your lordship that he has actually (30

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contrived his evidence knowing that he spoke twice. He said that he was told to keep quiet the second time which on the probabilities does not make sense and we will show your lordship why on the record. Firstly he was most unsatisfactory when he was cross-examined as to why he, being a court interpreter, should think that people would be arrested if they did not pay their rent. He conceded that that did not happen. He has then tried to explain that what he really meant was that summonses would be issued for non-payment of rent. He could not be believed when he thinks that people were going to be put in prison for non-payment of rent and that their children would require maintenance from the VCA. Your lordship was not dealing with an unsophisticated person, your lordship was dealing with a person who has been an interpreter in the district and the regional courts for over ten years. If your lordship looks at the evidence in volume 13, page 630 line 29 to page 632 line 19 your lordship will see that he fares very badly as to what it was in connection with that people were going to be arrested. He is contradicted by all the accused who have given evidence on the meeting of the 26th and all the witnesses that have given evidence on behalf of the defence as to the order of things. All the defence witnesses agree that he was stopped on the first occasion and that he spoke freely and his question was answered on the second occasion. There are contradictions in the defence case as to whether or not he uttered any words or not or whether he was stopped before he uttered any words on the first occasion, or whether he was asked to repudiate the councillors or not to repudiate the councillors but they all agree that he was stopped by the "lawaai" that took place / ..

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place - I know of no better English word to use in the circumstances - and that accused no.8 had to be assisted by accused no.10 in order to give him an opportunity to speak. Having regard to the confused situation that of necessity must come - that comes about in such a situation, it is only to be expected that when witnesses for the defence, whether accused or not, are put through this sort of cross-examination that the defence witnesses were put through that there would be that sort of contradiction but on the main structure of their evidence there is no disagreement, that he was (10 stopped the first time and he was allowed to speak on the second occasion. I am able to give your lordship the references to the defence evidence in this regard and I will not give them all but your lordship will find the evidence of accused no.5 in this regard in volume 206 page 10 081 lines 20 to 21 and page 10 802 to 10 801 line 10. I hear whispering on my right I wonder I gave your lordship the reference correctly - 10 800 line 1.

COURT: Well, your first reference was 10 801. Must I make that 10 801? (20

MR BIZOS: No, I will give it again. 10 801, 20 to 21. That is correct. The other one that I hear whisperings about is 10 800 line 2 to 10 801 line 10. Accused no.9, volume 180 page 9 262 line 19 to page 9 263 line 21. And again at page 9 265 line 3 to line 10. Now we would submit with respect that these three accused gave non-contradictory and satisfactory evidence on this point as did the witness Myembe in volume 327 page 18 681 line 1 to 10, as well as accused no.7 in volume 201 page 10 502 line 28 to 10 503 line 18. Also at page 10 506 line 11 to 21. The submission that (30

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we make in this regard is this. That where a battery of defence witnesses have been called in order to deny the main allegation which they did deny, that there was no violence advocated at this meeting, one can only reasonably expect contradictions such as those complained of by the state during the course of the cross-examination as to that sort of detail but there is no reason why your lordship should not find on the weight of evidence that it happened substantially in the manner that has been deposed to by the accused.

Of course the suggestion that it was, that people would be arrested as a result of taking part in the march was taken up by the state and by your lordship and questions were asked of the defence witnesses. Well, in view of what Mahlatsi - I beg your pardon, Masenya said, you knew that at least in his mind the gathering was unlawful. If my memory serves me correctly that was asked of accused no.10, the first defence witness. Thereafter the record shows that the state accepted that fact and cross-examined the accused on that basis. And by implication accepted that version rather than the version that it was right at the beginning and that he spoke in relation to rent. It cannot be that he mentioned this question of the children being left along after the march because on his version on the second occasion he was not allowed to say anything at all, on page 639 lines 10 to 20. He claims that accused no.5 mentioned that those people who paid rent would be killed before he asked his first question. Now that appears in volume 14, page 682 lines 18 to 31. He is unable to explain the improbability in this and that is this, surely his question could not have made practical

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sense if he asked the question in relation to arrests for failure of rent. Surely it must have been as a result of the troubles that arose as a result of the children being orphaned. His evidence in this regard is bizarre. He actually says that accused no.5's thesis was that they are going to kill the people who pay the rent and then look after the children of the people who have been killed. Your lordship will find that sort of evidence from him on page 683 line 1 to 14 and 683 line 24 to 684 line 2. He later contradicts his earlier answers in cross-examination and he says that he did not (10 mention the children who are orphaned but only those arrested when he asked the question in relation to rent which is a clear contradiction, in order to try and avoid the improbability. Your lordship will find that in volume 14 page 686 lines 3 to 15. His evidence that the VCA would pay for this is highly improbable. He was unable to satisfactorily deal with questions such as who was the person that made this offer and why should anybody believe it and he finished up when dealing with accused no.5, having said that it was accused no.5 he then then when the improbability was put (20 to him he said he did not remember who it was that said this. Your lordship will find that in volume 13 page 635 line 10 to 11. Having said in volume 14 page 685 line 8 to 16 and page 684 lines 20 to line 23 that it was accused no.5 affirmatively, in the earlier references he says he does not know anymore who it was that made this. He was not consistent with himelf. When asked why a person like himself being a leader of the community did not question this outrageous talk of killing his answer perhaps taken alone may be excused on the grounds of obscurity. He said there are certain things (30

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that can slip my mind and just leave them without questioning them. Your lordship will find that on page 686 line 20 to 29. But m'lord..

COURT: But didn't he say he reported this?

MR BIZOS: No.

COURT: To his magistrate?

MR BIZOS: I will refer your lordship, I have the references to that. Your lordship will remember that he said that only when he received threats privately made to him and his family did he go to the magistrate and mention it, but not this. (10

COURT: Now how long after this meeting was it?

MR BIZOS: It was, if my memory serves me correctly, that these private threats were made a number of days after this meeting but I will refer your lordship to the evidence and also that he certainly did not make any complaint about it to the police or go to the police until Easter after that. And I will refer your lordship to the questions asked by the learned assessor and your lordship about the conclusions that he came to after he attended the meeting. His answers are consistent with him not having heard these threats made (20 certainly not thinking that it was something that he had to take up but I will refer your lordship to that in due course.

COURT: Yes we have listened to the evidence, Mr Bizos. There is a point to made that he was of the opinion that he should join the march or something of the sort. It could not have been so serious therefore.

MR BIZOS: Well, I am glad your lordship noticed that m'lord because we are going to submit that if a person's life is threatened at a meeting of..

COURT: If you are going to submit do it just now and not (30

twice / ..

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twice.

MR BIZOS: Oh, as your lordship pleases. To deal with the further improbabilities in his evidence, if his evidence in chief is to be believed as amplified after the adjournment and early cross-examination not only he but many other people were threatened with violence. Not only the councillors but ordinary people and Masenya himself and however, despite all this and his fears for his life he expresses his support for the meeting on several occasions. He feels a sense of unity with the people who supposedly want to kill him. Volume 14(10 page 705 lines 2 to 5. He says that he was taken up like the community there which had to be united because of their feelings. Volume 14, page 700 lines 2 to 16. He concedes that he left the meeting in a spirit of unity - those are his words - he was united with other residents as a result of those speeches which he had heard and which had united all the people. Volume 14, page 700 line 17 to 30. He felt justified in attending meetings of that nature because if residents are not happy they should come together and discuss their problems. Page 701 lines 19 to 30. He felt that if(20 people were unhappy that they should come together at a meeting such as that which he had attended in order to make their complaints known to the authorities. Volume 13 page 634 line 9 to line 19. It would be passing strange if a meeting at which murder was advocated could be described by a person in his position in that manner.

His words in relation to the march which your lordship alluded to a short while ago are of some importance on the probabilities. He agreed with the idea of the march because "being alone you cannot do anything effective all by (30

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yourself. Volume 13 page 633 lines 3 to 10. When questioned as to why he remained in the hall even after his own life had been threatened Masenya makes some fundamental concessions which are inconsistent with the general thesis that violence was advocated at this meeting. He says that after he sat down and after being shouted down there was nothing out of the way about the meeting, right up to the time that he left and that was the feeling that he had about the meeting both during and after he left the meeting. Volume 14, page 699 lines 15 to page 701 line 30. Asked about how he could feel a sense of unity with people who wanted to kill him says: I will describe the five, six minutes that I was still at the meeting there my life was safe, whatever that might mean. Volume 14 page 705 lines 2 to 5. He says that he was in favour of the march and contemplated participating in the march subject to the agreement of his wife. He claims that he did not anticipate any trouble arising out of the march. Page 734 line 16 to 18. That is our respectful submission is a particularly important concession from a witness who put the words into the mouth of accused no.17 that they were going to ask the councillors what they were going to do about the rent and later changed his evidence that accused no.17 says that they would kill the councillors. The two passages in answer to your lordship's assessor and your lordship make nonsense - his answers with respect make nonsense of his evidence. He agreed with your lordship's assessor and with your lordship that he did not expect any trouble on the 3rd as result of what he heard at the meeting and that he did not take seriously any of the talk of violence at that meeting. Now your lordship will find those two references

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in volume 14 page 713 line 25 to page 715 line 2 and at page 714 line 27 to 31.

COURT: If one goes from page 713 to page 715 you normally pass 714.

MR BIZOS: Did I say 715?

COURT: Yes.

MR BIZOS: I have 714 here. I cannot explain why I said that, but it is the question by your lordship's assessor and then the question by your lordship in order to even further clarify what the learned assessor wanted clarified. Now how can anyone believe that there was talk of violence at the meeting in view of that concession? There are other unsatisfactory aspects of his evidence. In his evidence-in-chief he obligingly says to the person leading him that the meeting was "oproerig". Volume 12 page 608 lines 9 to 17. In cross-examination he says that he described the meeting as "oproerig" because "this meeting made people to be united and to be one and understand one thing and get the message the way it was being put across to them". Volume 14 page 699 lines 22 to 25. He carries on further to explain that the meeting was "oproerig" because it put people together and made them feel, and sort of pushed their feelings and made them realise and sort of make it clear what their feelings are. Volume 14 page 699 line 15 to 21. When faced with these difficulties he says no there is a language difficulty and the interpreter and he do not get on, they do not understand each other well. Your lordship will find that on page 699 line 26 to page 700 line 2. I have already submitted that the witness as well as everyone else here was served by a particularly good interpreter and sort of explanation cannot be accepted in

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our respectful submission. Now in relation to his evidence on 3 September we are going to deal with, when we deal with 3 September - your lordship will recall that he went right across the township and we will submit in due course for improbable reasons. We will refer your lordship to the map and the evidence in relation to that. But what I do want to deal with now, because I will submit that the evidence in relation to the placard that he gave evidence about was contrived and I think that it does fit into this picture.

COURT: You mean the placard on the corpse? (10

MR BIZOS: On the corpse of Matuane.

COURT: Yes at some stage there was a placard on a corpse. We have got a photograph of it.

MR BIZOS: As your lordship pleases but we also have a witness Mr Tselo.

COURT: Yes.

MR BIZOS: Who told your lordship when the placard was there and that it did not say the words that Masenye says it said. And we are going to submit to your lordship that this was an attempt by the state to find a nexus between the organisa- (20 tions in the Vaal that took part in the - or rather in the organised march and the killing of Matuane and in our respectful submission, we have established in our respectful submission beyond any doubt whatsoever that that piece of evidence was completely contrived. Leaving aside as to why he should have gone completely out of his way to be at Matuane's place. We will refer your lordship to that in..

COURT: Does he give us a time when he was at Matuane's place?

MR BIZOS: He says 09h30 if my memory serves me correctly.

COURT: Well, we will come to that when we get to 3 (30

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September I take it?

MR BIZOS: Yes, m'lord.

COURT: Are you going to deal with it now?

MR BIZOS: I am merely going to deal on the probabilities - the probabilities or improbabilities of these words having been on the photograph. I am in your lordship's hands as to where your lordship wants to deal with it. I think that it is more - I think with respect that it is more appropriate because it was obviously led as an incitement to violence by people carrying placards and this is why I thought that it (10 was more germane to deal with it in connection with the meeting of the 26th; that this witness falsely tried to connect the people that organised the meeting of the 26th and were responsible for the march on the morning of the 3rd had incitement to violence on their placards.

COURT: I think we must deal with this placard when we get to the 3rd because the attempt is made by means of the evidence on the placard to connect the march with the death of Matuane so that is where the proper place for it is I think.

MR BIZOS: I will be happy to incorporate this part of the (20 argument at that stage. I just want to see whether - oh, yes, the other matter is the circumstances under which he made his statement. Again I submit with respect that the manner in which he came to give evidence is one of those where it is again a matter for comment and it is not consistent with he having heard what he said he heard and saw, to have seen what he said he saw. This is again a person who is associated on the Lekotla which is not quite rightly spelled on the record but I think the meaning is clear enough, with the police officer, Warrant Officer Moagi. Your lordship will (30

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find that in volume 13 page 611 line 26 to page 612 line 26. He agrees that Warrant Officer Moagi has a high profile of being a member of the security police and that he is often seen in his company. The first time that he made his statement - he made a statement was after Easter 1985. That is in volume 13 page 619 lines 11 to 26. He only made this one statement. He claims m'lord that right up to the time that he gave evidence he had not mentioned a thing to Warrant Officer Moagi about what had happened on 26 August 1984. Your lordship will find that in volume 13 page 620 line 8 to 11. This is a strange echo of the evidence of IC.9 who was similarly connected with Mr Moagi, also by coincidence never mentioned this to his friend Mr Moagi. He himself did not take any initiative whatsoever in going to the police to tell them what had happened. Volume 13 page 620 lines 12 to 14. In fact he says that even after the events of the 3rd had taken place he did not go to a police station to suggest that the meeting of the 26th may be reason for some of the things that happened. Volume 13 page 640 line 26 to 641 line 4. He says that he actually did not go to the police station himself but that he was fetched, whatever that may mean, in page 639 lines 30 to 31. Now why he should have been fetched on his version at Easter in 1985 I haven't got the date on which Eastern was but it must have been April/May and what knowledge anyone had about him so late in the day has certainly not been explained on the evidence.

I submit that I did m'lord on page 696 line 8 to 24 of the note that I have despite being terribly frightened by having substantial parts of the audience calling for his death he did not report the incidents of the 26th.

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COURT: Yes, did you ask him?

MR BIZOS: Yes, m'lord.

COURT: Did you ask him, how did anyone know in April 1985 that he had knowledge which might be relevant and therefore picking him up and taking him to the police, because he is criticised on that basis.

MR BIZOS: Yes, m'lord, the only thing that he says about that is the next note that I have and that is that the reason that Masenya gives for not going to the police immediately was that because it did not affect him alone as a person, but was pertaining to the community. If there was any danger it was going to be a danger for the whole community including myself, that is why I did not go to the police.

COURT: That is not the question but it does not matter, Mr Bizos.

MR BIZOS: Well, perhaps I..

COURT: You criticise the witness on the basis how could anybody know and pick him up in April 1985 and thereby take him to the police. You cannot criticise him on that basis because you did not ask him: didn't you perhaps tell a friend of yours so that he told the police, so that the police came to fetch you? When you have got a good point make a good point, but don't throw in a lot of bad points as well. It muddles the issue.

MR BIZOS: I will try and bear that in mind, m'lord. The reason Masenya gives for not going to the police immediately was that because it did not affect him alone as a person but pertaining to the community - I think I have given your lordship that reference on volume 13, page 620 line 15 to 25. He later adds that nothing that happened on 26 August

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induced him to have any fear except the incidents that mentioned at work when he went to the magistrate. This is the passage that your lordship had in mind and that can be found in volume 13 page 620 line 26 to 29. He goes on to explain that these incidents he reported at work were threats made after the 26th but nowhere near the hall and he has no idea whether they were related to the meeting of the 26th or not. Your lordship will find that on page 620 line 30 to page 631 line 30. He agrees that his brother Setsubi Masenya was also present at the meeting but he did not get his brother to go to the police station to make a statement in corroboration of his own statement. Your lordship will find that on page 639 - in volume 13, page 639 lines 21 to 25 and page 639 line 26 to page 641 line 25. I submit that a person with ten years' experience as an interpreter he could not have been serious with your lordship when he answered that he did not mention the fact that his brother was at the meeting on the 26th who would support Masenya's story, and he said you know when you are not telling the truth it is then when you want a witness. Those are his very words. Your lordship will find that on volume 13 page 640 lines 17 to 18.

Now I want to address argument to your lordship in relation to what the state says in the "betoog" between pages 170 to 180. Reliance is placed almost exclusively on the supposed contradictions as to whether the man was prevented from speaking or not, what was put in generalised form such as repudiating councillors and other minutia in our respectful submission without any attempt to analyse the witness' evidence as to whether he is a reliable witness or not, without any reference to the other state witnesses who have given / ..

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given evidence in relation to the same meeting who contradict this witness in respects much more serious than the complaints made about the contradictions in the accused's evidence without any attempt to draw to your lordship's attention what the real issues in relation to the meeting were between the accused and the defence and rather concentrating on the details of the stoppage. There is an overwhelming improbability that if he was allowed to speak without interruption in the manner in which he says on the first occasion he would have been stopped at the second. Certainly no argument has been advanced to deal with any of the unsatisfactory features in his evidence and above all except for those minutia no reasons had been advanced why the weighty evidence of the accused and the defence witnesses should be rejected that no violence was advocated at this meeting, subject to the placard those are the only submissions that we want to make in relation to the credibility of this witness.

My learned friend Mr Tip is going to address your lordship on certain other aspects of the case and if I could ask him to come forward. I do not know whether your lordship wants to give him a short opportunity to get his papers and his volumes out. He tells me that it is not necessary, m'lord.

COURT: Yes, Mr Tip.

MR TIP: May it please your lordship. I am going to address your lordship on the events relating to Evaton and then Bophelong and thereafter Boipatong, and perhaps I should indicate very broadly the approach that I am going to take in respect of Evaton firstly..

COURT: Before you continue what is the correct spelling of Bophelong. Has it got an "h" or hasn't it got an "h"?

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MR TIP: I believe it has an "h".

COURT: Where is the "h"?

MR TIP: After the "p" and Boipatong has no "h".

COURT: Yes, thank you.

MR TIP: In respect of Evaton I propose to deal first of all some general matters concerning Evaton by way of background which we will do as briefly as possible, then some general matters concerning Evaton, its activities and its relationship with other organisations and then thirdly the meeting of Evanton Rate Payers' Association on the morning of 26 (10 August 1984. Now all the submissions really will be directed towards that meeting because that in our view and evidently in the state's view is the fulcrum around which the masses in Evaton and the liability of accused no.6 principally are to be determined.

Now if we may begin by reminding the court that there is in fact no allegation concerning the meeting of ERPA held on the morning of 26 August in the indictment, and we say that that is a matter of some moment. It is also of some moment that the state's submissions concerning this meeting (20 occupy one and a half pages, page 273 and 274 of the state's argument.

COURT: Page?

MR TIP: 273 and 274, m'lord, and your lordship will have noticed that the submissions made there are in our respectful submission of a very cursory nature indeed. Your lordship will have noticed also that there is no mention in those submissions of the evidence of Rina Mokoena who was the only state witness to deal with this meeting and so we submit that is really the - the meeting has come into the picture not (30

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because of the argument but because of the evidence of Rina Mokoena who has then dropped again out of the picture and it is a curious state of affairs. My learned leader Mr Bizos has directed argument concerning Rina Mokoena, I am not going to repeat any of it but what we are going to attempt to do is to set out certain factors, aspects in the evidence which disprove positively in our submission that this meeting of ERPA had any connection with the conspiracy alleged by the state. And we will submit generally and this is the scene that I will seek to develop before the court, is that the reason why this meeting never featured in the indictment is that properly understood it is concern with the exclusive problems of Evaton relating to the replanning question. And that that subject matter was one that was entirely independent of the concerns on the same day of the VCA in the afternoon meeting which was concerned with the rent issue, which affected the other areas in the Vaal triangle.

COURT: Could you just refresh my memory. At this meeting that morning was there anything said about the rent increase?

MR TIP: Through the evidence of Rina Mokoena, yes.

COURT: Apart from Rina as far as anybody else, any other witness is concerned. Not about a rent increase in Sebokeng but a rent increase in Evaton.

MR TIP: No, on my recollection nothing was said.

COURT: So that was not on the cards?

MR TIP: It was not on the cards at all, m'lord. What was on the cards was the fact that the council had been placing pipes in various areas.

COURT: Yes, that I remember, that is the replanning aspect. So if your submission that the inhabitants of Evaton had

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nothing to do, were not much concerned about the rent increase in Sebokeng?

MR TIP: That is my submission, yes. Your lordship will recall that a small portion of zone 7 apparently paid its rents to the Evaton town council but that aspect seems not to have surfaced in any material way at the ERPA meeting. The relevance in general terms of the fact that the ERPA meeting was concerned with the replanning problems peculiar to Evaton, we submit generally is destructive of the conspiracy allegations concerning ERPA and accused no.6 in particular. (10

COURT: Could I ask you one more question? The administrative offices in Evaton were they situated at Houtkop or were they situated at Evaton?

MR TIP: I understand that they were in Evaton.

COURT: In Evaton itself.

MR TIP: In Evaton itself.

COURT: So this section was entirely separate from the Sebokeng area?

MR TIP: It was entirely separate and your lordship will recall that there was a separate town council of Evaton (20 which was independent from the Lekoa town council.

COURT: Does this mean then that one not expect residents of Evaton to be concerned with the march, because the march was going to Houtkop? Should they go anywhere they would go to their own administrative offices in Evaton?

MR TIP: That is so, that is what one would expect but of course there is no suggestion of a march having been discussed at the ERPA meeting at all.

COURT: At the ERPA meeting. Yes, thank you.

MR TIP: And we will detail the evidence when we come to (30

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the ERPA meeting but on that point I might remark at this stage that had there been an intention for, on the part of the organisers of the afternoon meeting to involve the people of Evaton and if it were the case that accused no.5 had a mission which he had to discharge at the morning meeting then one would have expected him to have made an appeal to the people of Evaton for some display of solidarity. One would have expected accused no.5 to make mention of the stay-away or the proposed march, but the evidence shows that those matters did not surface at all at the ERPA meeting. If I might turn briefly to a review of some aspects of the history of Evaton, we will see to make this as concise as possible particularly in view of the cursory submissions made by the state, but in our submission they are useful to your lordship to recall, to show precisely the context of that ERPA meeting, that it flows from the questions in Evaton and not from any sort of conspiracy or co-operative endeavour with the UDF or the VCA.

Your lordship will recall that the history of Evaton really, and why it is unique is that it was proclaimed in 1904 as a free-hold area for black ownership and that is the departure point for all the issues that subsequently arise. Your lordship will find the stages of administration detailed in the evidence of accused no.6 at volume 185 page 9 618 line 27 to page 9 626 line 22. What your lordship will find in that evidence is that as changes were made in the administration of Evaton so changes were made in the levies charged against the residents and the levies from time to time were increased. When the management board came into the picture it started acquiring property from stand owners in Evaton

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and that was a matter of grave worry to the majority of the people living there. Volume 185, page 9 626 line 22 to page 9 627 line 8. And the position shortly before the community council was introduced to Evaton was that some 600 stands had been acquired by the board in that way. Your lordship will recall the evidence that housing was being demolished and it was said that this was the end of Evaton. Volume 186 page 9 631 line 21 to page 9 632 line 19. Now accused no.6 himself was a man who was very concerned about this. He saw an application to court being launched in an effort to challenge the introduction of the management board. It was unsuccessful and he himself then elected to stand for election to the community council in Evaton when that council was introduced and the platform that he and others stood on was that they were going to do everything they could to stop the board from acquiring further land and also to try to secure the return to the Evaton residents of land which had already been acquired by it. And on that platform he and others were elected. That is in the evidence of accused no.6, volume 186 page 9 632 line 20 to page 9 634 line 29.

I am going onto the steps that were taken on the council. I see it is 11h15.

THE COURT ADJOURNS FOR TEA / THE COURT RESUMES

MR TIP: As the court pleases. Once accused no.6 had been elected onto the community council they initiated certain steps on the question of the land ownership in Evaton and a petition was prepared for submission to the minister, Dr Koornhof. That petition your lordship will remember was somehow misdirected and it ended up in the hands of Mr

Knoetze / ..

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Knoetze who was then the chief director of the board and that resulted in turn in the production of a memorandum from the desk of Mr Knoetze which stated inter alia that it was the wish of the Evaton people that Evaton should be replanned. Your lordship will find that in volume 186 page 9 636 lines 4 to 21. Although the petition did not get to Dr Koornhof then a meeting was in fact held with him at which accused no.6 was present and this is in December 1979. The efforts go back some way, m'lord and what is of importance arising from that discussion is that it was said by Dr Koornhof (10 that replanning of Evaton involved sub-division and that the sub-divided portions would be lease-hold instead of free-hold. This is in volume 186 page 9637 line 24 to page 9 639 line 1 and in EXHIBIT DA.4 your lordship will find confirmation of the position expressed by the minister on that occasion and that is referred to in volume 186 page 9 640 line 13 to page 9 642 line 22. I am not going to, with the court's leave, take out these documents and to examine them in depth. It is really just history that..

COURT: I remember the story. (20

MR TIP: As the court pleases. Accused no.6 in response to these development then called a meeting with his fellow councillors in order to try to mobilise them against the steps that were being taken but because of their reluctance their lack of enthusiasm he then made contact with Evaton Ratepayers' Association, ERPA. Volume 186 page 9 636 line 22 to page 9 637 line 6. We submit that from this already it is clear that the interest of accused no.6 was really his deep concern with the evident threats that were mounting against the continuation of free-hold rights in Evaton and (30

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we respectfully submit that your lordship will have no hesitation in accepting his bona fides concerning this. Your lordship will recall the feeling with which he testified about how he had become the owner of a cafè in Evaton and of his pride to have now his own property. Your lordship will find that in volume 185 page 9 614 line 26 to page 9 615 line 32. The next phase of what happened there was the relationship between ERPA and the community council and in 1980 after a public meeting called by ERPA that association wrote to the community council and the administration board informing them, those two official bodies, that ERPA did not accept the contents of the memorandum DA.4. They received what was considered to be an unsatisfactory reply from the council and EXHIBIT DA.5, a memorandum, a very politely worded memorandum in our submission was then submitted by ERPA to the council requesting a meeting to discuss the anxieties that people had about the land issue. That is a summary of what appears at volume 186 page 9 643 lines 5 to 30 and page 9 645 lines 1 to 24. What then followed was a bit of to-ing and fro-ing. The response of the council was to ask for the names of the execytive members of ERPA as well as the constitution of it. At that time of course accused no.6 was still a member of the community council and he has told your lordship that in fact all the people on the executive of ERPA were known to the community councillors, but nevertheless he at a community council meeting gave them the names of the chairman and of the secretary and the constitution was posted to the council. ERPA felt that the response by the council to its memorandum had been of a contemptuous nature and that they felt there was no good reason for recording the names

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of the executive further. That is in volume 186 page 9 645 line 25 to page 9 647 line 14, and also page 9 648 line 30 to page 9 649 line 8. Now in addition and it is reflective of the approach of ERPA a copy of all the correspondence and of EXHIBIT DA.5, the memorandum to the council was forwarded to Dr Koornhof with the request that ERPA would like a meeting with him, but the reply was that ERPA must co-operate with the community council, so unfortunately that initiative came to nothing and that is at volume 186 page 9 647 lines 15 to 26. Accused no.6 and Nzimba who was then the secretary of ERPA had a meeting with Mr Gantz who was then by then the chief director of the board and they requested him to intercede and to try and arrange an ERPA/community council meeting. Mr Gantz himself was invited to a public meeting so that he could hear for himself what the residents of Evaton were feeling about this question but he declined that invitation and the reference is volume 186 page 9 647 line 27 to page 9 648 line 26. A further attempt to raise a meeting with Dr Koornhof was attempted through the medium of Helen Suzman MP and that is referred to in volume 186, page 9 649 line 16 to 26.

It is of some interest to note that during this period whilst these efforts were being made by ERPA the community council itself held no public meetings in Evaton to explain what the position was to the residents there, and that is testified to by accused no.6 at volume 186 still, page 9 655 lines 8 to 12. Now ERPA was not the only organisation in Evaton that was concerned with these matters. Other organisations also held meetings on the same problem and those included Inkatha and the Evaton standowners. And your

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lordship might recall that those organisations were holding meetings at schools and what happened is that the council then took a decision to write school heads to put a stop to these meetings being held. Stil in volume 186, that appears at page 9 655 line 13 to 24. Now in 1982 which is after some years of these efforts another petition was prepared by ERPA and that is in the court exhibits as DA.6, which amongst others record the position of ERPA in the following terms:

> "The sincerety in our belief in private property and an earnest desire to foster peace and sound race relations."

That petition was intended to reach the minister but it did not and reasons for that your lordship will recall is that some of the office bearers of ERPA were expelled including the person Thomas Nhlapo. The completed petition forms were in his possession at that time and those forms were unable to be recovered. Your lordship will find that in volume 186 page 9 655 line 3 through to page 9 660 line 14. And in view of what has been said Thomas Nhlapo it is relevant to remind the court of the evidence that after the expulsion of these people there was no further relationship at all between them and ERPA. Volume 186 page 9 663 lines 2 to 5.

Now after the various efforts which I have summarised very briefly for your lordship's benefit, that mention came to be made for the first time of the UDF and not surprisingly when the members of the ERPA committee heard about the emergence of the UDF they had some interest in it and they hoped perhaps that it might present another avenue which they could pursue in relation to their problems. I would like just to

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recall to your lordship's memory how the UDF was placed on the agenda of ERPA and that is that at committee meeting of ERPA Mr Khabe who was the chairman reported on the discussion that he had heard about the UDF at the VCA launch on 9 October 1983 which he had attended. The committee members were interested and in consequence accused no.6 was requested by his committee to take steps to get some speakers from the UDF who could come and tell them more about it. He has testified that at that stage he personally had never met any people from the UDF but he took steps and a public meeting (10 was then organised by ERPA. It was held on 6 November 1983 and speakers from the UDF were present. That is in volume 186 at page 9 669 line 1 to page 9 670 line 15. Nkhondo spoke there and he explained what the UDF was about. One of the things that he told the people present was that affiliation to the UDF did not involve the organisation which affiliated having to stop what it was doing but that the organisation would work independently of the UDF. He also explained that the UDF was against the new constitution and against the Koornhof bills. Your lordship will find that (20 in volume 186 page 9 672. After hearing this, this public meeting then resolved that ERPA should affiliate to the UDF. That is volume 186 page 9 672 line 20 to page 9 673 line 10. But in fact and it is of some moment to bear this in mind despite this resolution in November 1983 to affiliate it was only on 30 June 1984, nearly eight months later that accused no.6 as an ERPA delegate attended the UDF general council meeting of the Transvaal region. And that was the first meeting of the UDF attended by anybody from ERPA. The only person known to accused no.6 at that meeting was (30

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Raditsela of the VCA.

Accused no.6 has told your lordship a little about that meeting and I should recall two aspects. The one is that accused no.6 sitting there and listening to the proceedings formed a view that it was not then opportune to raise with
K 1501 this UDF assembly the question of the replanning problems being experienced in Evaton. At that stage the UDF was concerned at that meeting with the Million Signature Campaign and the question of the forthcoming elections to the houses of delegates and representatives. And he came to the view (10 that if he were to put forward Evaton's problems it would probably not receive adequate response. The second aspect that bears remarking and it is very pertinent is that accused no.6 squarely denies that this meeting formed part of the implementation of a conspiracy, that it was geared towards promoting violence or revolution in the country. Volume 186 page 9 686 line 21 to page 9 688 line 13. Just to complete the UDF meetings he attended again, accused no.6 on 14 July 1984 and once again he squarely denies that that meeting formed part of any conspiratorial endeavour or (20 was directed towards violent revolution. Your lordship will find that denial at page - volume 186, I beg your pardon, page 9 688 line 16 to page 9 689 line 9.

Now during the period from 6 November 1983 when it was decided that ERPA should affiliate until June, the end of June 1984 when accused no.6 for the first time attended a UDF meeting there had been no communication at all between those two bodies, ERPA and the UDF. To be found at volume 186 page 9 675 lines 5 to 10. It might be appropriate to remark that there has been no submission at all from the (30

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state that the evidence given by accused no.6 in respect of anything but particularly the denial about the nature of those UDF meetings that he attended, there is no submission that his evidence is not to be accepted. And with respect there is no evidence to the contrary either. Perhaps it is also appropriate to remark that it is something of a practical insight into how the UDF and these organisations in the Vaal interacted, that although senior UDF persons were present in November 1983 when ERPA takes a public decision to affiliate, there are no steps at all to follow it up in the next eight months. Nobody from the UDF comes to Evaton to say now you have affiliated, when are you going to do your.. discharge your obligations, when are you going to come to meetings, when are you going to take up our campaigns. Still on the theme of the consistent track of ERPA concerns being the replanning issue, during this period after the decision to affiliate on 8 April 1984 a public meeting was held at Evaton called by ERPA. Your lordship will see from EXHIBIT DA.7, the pamphlet issued to advertise that meeting that once again its principal concern was the replanning issue. And accused no.6 deals with it in evidence in volume 186 page 9 674 line 4 to page 9 675 line 4. Accused no.6 was asked about a reference in the UDF document to the proposal that an area committee of the UDF be established in the Vaal and he has told your lordship that nobody from ERPA attended a meeting called to discuss that and to his knowledge no such area committee was in fact ever established in the Vaal. Volume 186 page 9 689 line 10 to page 9 690 line 11. Now in the brief submissions made by the state your lordship will see at page 273 that it is said that co-operation between

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ERPA and the VCA is demonstrated by the fact that a joint committee was formed and that that committee carried out plans for the protest against the Rabutaki festical, the feast and secondly for the joint implementation and furthering of the UDF's million signature campaign in the Vaal. Incidentally your lordship will see that the state says: "onder andere" the commmittee did those things. There is no evidence of anything else at all. Those are the only two activities in which those bodies came together. I am excluding now meetings after 3 September, m'lord, that we will deal with later.

Now we have addressed argument to your lordship already on the question of the protest against the Rabutaki feast or 80th anniversay or Evaton, whatever it may be. I am not going to traverse any of that ground again but it does bear remarking that the message that would have been conveyed to the people of Evaton and of Sebokeng who were involved was that a peaceful protest could be held in which one could quite firmly convey protest and opposition to what the councillors were doing but that people would see that these organisations, the VCA and ERPA together believed that protests could be done in this way and carried out entirely peacefully. The second matter concerns the co-operation of those two bodies and the question of the million signature campaign. Now the evidence of accused no.6 is clear about how it was that ERPA, that he and ERPA became involved in this and your lordship will find that at volume 186 page 9 692 line 15 to page 9 696 line 11. And it is very briefly to this effect that after the general council meeting of 30 June 1984 accused no.6 was journeying back to the Vaal with / ..

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with among others Raditsela and there was then some discussion about the million signature campaign in this car. As a result of this accused no.6 raised the matter with his committee and it was decided that they should participate in this campaign. Your lordship will recall that a meeting with members of the zone 7 committee of the VCA was then held at the home of accused no.6 and what was decided in essence was that they would have a one day blitz to collect signatures and if I recollect accurately it was at two bus station and one rail-way station. Although it is alleged in paragraph 74(3) of (10 the indictment no decision was made to hold a mass meeting in connection with this million signature campaign and nor did the decision to take part in it have anything at all to do with a rent protest. It simply did not come into the picture.

In the reference I have cited to your lordship, your lordship will also see that the motivation behind ERPA members in agreeing to take part in this campaign was that the difficulties experienced with the land issue was seen as being connected with apartheid laws and insofar as the million signature campaign was a protest against those (20 apartheid laws it was considered appropriate to ask people to append their signatures. Because at the same meeting, we remark this again only because of the allegation in paragraph 74(3)(iv) of the indictment it is alleged that Raditsela made an announcement at the meeting at the home of accused no.6 that similar meetings were to be held by residents else-where, in this case Sharpeville and Boipalong, and that is denied and I need hardly mention that there has been absolutely no evidence of anything of the sort either.

I am going to turn now to the planning of the ERPA (30

meeting / ..

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meeting of 26 August 1984 but just to sum up very briefly of what has been submitted to your lordship up to this point, it shows with respect that ERPA was at all times concerned with its own affairs, that its relationship with the UDF was incidental and that it reflects nothing but an entirely innocent situation and similarly that the two instances of pratical co-operation between ERPA and VCA are also entirely innocent and indeed positive in what they were about and the manner in which they were carried out.

Now your lordship has already remarked remembering the pipes and that that was the immediate cause for calling a meeting of 26 August 1984 and accused no.6 goes on to testify that the purpose of calling this meeting was to make residents aware of what was happening so that they should not allow the process of replanning and division to take place without their consent. That appears in volume 187 page 9 697 lines 9 to 20. Before this meeting there was an ERPA committee meeting on about 14 or 15 August which was held to plan the public meeting and at that committee meeting it was decided to invite a speaker from the Vaal organisation of women, VOW, and also a youth speaker. The motivation for that is simply that it was hoped that such speakers would bring about an increase in the participation of women and youth in the affairs of ERPA since at that time the participation of those groups was comparatively dormant, and that is set out in volume 187 page 9 698 lines 3 to 23. Raditsela was then requested to find speakers to fulfil those functions. He was requested to find a woman speaker and a youth speaker. VOW at that time had no branch in Evaton and accused no.6 also was unaware at that time of any youths in Evaton who might be suitable as speakers / ..

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speakers for the public meeting of 26 August. That is in volume 187 page 9 700 lines 2 to 26. Now other than this request to Raditsela no notification of this meeting which was to be held on 26 August was given to any other organisations or persons outside Evaton and in particular your lordship might wish to note that no invitation was extended to the UDF. Volume 187 page 9 701 lines 14 to 21. Now perhaps I might just advert to the arguments of the state again briefly, m'lord. Your lordship will see at page 273 that the way it is set out is that "beskuldigde 6 het met Esau Raditsela reëlings getref om te sorg vir geskikte sprekers op die ERPA vergadering van 26 Augustus 1984 and het Esau to gereël dat Rina Mokoena en beskuldigde nr.5 en beskuldigde nr.17 sou optree wat hulle toe ook gedoen het." Now there are two matters that call for comment there. The one is that accused no.17 does not feature as an arranged speaker at all and the second is that the approach by accused no.6 to Esau Raditsela was not in these open-ended terms. Raditsela was not asked just to find some suitable speakers. He was given a specific request to find someone from VOW and a speaker on behalf of the youth. It is coupled with the following submission the state makes, also still on page 273, and that is that "Esau het ook hierdie vergadering gekoördineer" and we submit that there is no foundation at all for that and it is clear from the planning stages that all that happened is that Raditsela was asked to give assistance of a particular sort and there is no question of him playing any grander role than that in relation to ERPA's business.

Your lordship will find in the evidence that the meeting of ERPA was advertised through means of a loudhailer and

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through means of pamphlets and that these pamphlets were paid for through contributions by the individual members of the ERPA committee. Volume 187 page 9 701 line 22 to page 9 702 line 2. And also of some considerable relevance and in view of the state's allegations and submissions that meetings were co-ordinated in the Vaal, accused no.6 has told your lordship crisply that the ERPA meeting had no connection at all with any other meetings held in the Vaal triangle during that period and other than the meeting held in the afternoon of 26 August which accused no.6 learned about only on the morning of that day, he had no knowledge of any other meetings held on that day anywhere else in the Vaal triangle. Volume 187 page 9 703 line 6 to 24.

Now the meeting itself. Again in view of the fact that the state has made no serious submissions at all about it I am going to try to recap as briefly as possible what took place there. In essence accused no.6 spoke about replanning with reference to the master plan and details your lordship will find in volume 187, page 9 706 line 18 to page 9 707 line 17. He has given an account of what Rina Mokoena who was the speaker from VOW said on that day and in essence again that was to encourage the people of Evaton not to allow themselves to lose their stands and of course she also encouraged women present to join the organisation that she was representing, VOW. Volume 187 page 9 707 line 30 to page 9 708 line 18. She did not call for the killing of councillors, volume 187, page 9 708, lines 20 to 27. Accused no.5 has testified before your lordship and he has explained how he came to be at that meeting which was that Raditsela had conveyed the request from accused no.6 and accused no.5 has told your

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lordship that in keeping with his interest at that time in youth organisations and in view of the fact that there was no Evaton youth organisation, he then prepared a speech with the main purpose of trying to promote the formation of such an organisation in Evaton. That is in the evidence of accused no.5, volume 106, page 10 791, line 10 to page 10 792, line 24. As it happens that prepared speech had to be changed because of the absence of any youth component at that ERPA meeting. Your lordship will remember the evidence that there were only some 100 people at this meeting. That evidence is at volume 206, page 10 794 line 23 to page 10 795 line 29. And accused no.5 has denied that that speech was in furtherance of any conspiracy or to overthrow the state or to cause violent revolution. Volume 206 page 10 796 lines 2 to 13. And what is significant in relation to the general conspiracy allegation is that accused no.5 at that morning meeting made no mention at all of the resolutions which had been taken at the meeting on the day before, 25 August. Volume 206 page 10 796 lines 14 to 16. There again that is evidence, there is no submission at all that that evidence is not acceptable and we submit that it points very strongly to the absence of the conspiracy alleged by the state and equally to the entirely independent nature of the VCA - of the ERPA meeting on that morning. Your lordship will find the evidence concerning the arrival of Raditsela, Edith Letlhake and accused no.17 at the end of the meeting in volume 187, page 9 709 line 25 to page 9 711 line 30. That is the evidence of accused no.6 and one of the points that is made there is that the arrival of these persons was unexpected, and that fact we submit

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makes clear that there is no substance at all in the submission by the state that Raditsela was co-ordinating this meeting. There is evidence again directly to counter that of Rina Mokoena that accused no.17 did not call for the killing of councillors. That appears in the reference I have just given your lordship and it is confirmed also in the evidence of accused no.5 in volume 206 page 10 793 lines 1 to 9. 10 794 lines 1 to 22 and page 10 796 lines 17 to 10 797 line 8. At the conclusion of the proceedings accused no.6 was approached by Raditsela with the request that he should chair the meeting which was to be held that afternoon. Accused no.6 explained that he was unable to do so. Volume 187 page 9 710 line 26 to page 9 711 line 12. Also relevant to the general absence of this conspiracy alleged is the fact that the ERPA committee after this meeting on the morning of 26 August did not meet again until and including the morning of 3 September 1984. Volume 187 page 9 712 line 20 to 24.

We submit in conclusion after this abbreviated review that the evidence as I have mentioned already is not in any way submitted by the state to be unacceptable, positively establishes that ERPA which is an affiliate of the UDF organised and held a meeting concerned with the replanning problems of Evaton on the morning of 26 August 1984. It established in our submission positively that this meeting had no connection at all with meetings elsewhere in the Vaal triangle. It establishes that the question of a stay-away and a march to be held on 3 September was not in any way raised at this meeting. It establishes that the evidence of Rina Mokoena that there was talk of killing of councillors

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is not true and that nothing of the sort happened; and it establishes finally in our respectful view another hole in the conspiracy alleged by the state.

Those are our submissions in relation to Evaton and the meeting of ERPA on that morning and with the court's leave I should like to go on now to the question of Bophelong. Perhaps I might again begin with a very brief indication of the outline. I will be addressing some evidence to your lordship in connection with the grievances in Bophelong, and those that arose then at the meeting on 26 August in Bophelong; the proposed meeting with councillors on 28 August, the events of the meeting called by the councillors on 29 August and then some summary of the events in Bophelong thereafter. Up until the evening of 2 September.

ASSESSOR: When was the meeting with the councillors?

MR TIP: On 29 August 1984.

ASSESSOR: On the 29th.

MR TIP: Some argument has already been addressed in relation to Bophelong concerning the VCA area committee. Some argument has been put before your lordship concerning the formation of that area committee and principally through the evidence of accused no.10, how the lifespan of that area committee was comparatively short and that by the time of the period we are now going to refer your lordship to it was to all intents and purposes no longer in existence at all.

Now the theme if I may put it like that again, of our submissions in relation to Bophelong is that there was a set of grievances in Bophelong which to some extent were peculiar again to Bophelong; that the people living there were aggrieved by certain increases; that the councillors in Bophelong

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failed to explain those grievances, to meet with the community there; that the councillors failed in effect to respond positively to an invitation from the community to the meeting of 28 August, that the decision to invite them to that meeting taken on the 26th was again something that concerned only the people of Bophelong and that in all the events that we will briefly trace for your lordship now, the VCA and the accused before your lordship had no role to play.

Now as with the other areas in the Vaal triangle the R5,90 rent increase was to come into effect also in Bophelong but there were additional complaints. The one was the uncertainty of the charges that people were expected to pay from month to month; they would only discover this when going to pay at the office, what they had to pay for that month. There was the electricity deposit of R50 which was suddenly required of people without notice to them and your lordship will recall without notice even to the council. And thirdly, there was the certain imposition of a R10 lodger's permit charge which was now to include children living in the house of 21 years and over.

Two witnesses in particular detail this in their evidence. The one is Phale to be found in volume 344 page 19 675 lines 6 to 27 and Mrs Mahotsi to be found in volume 350 page 19 998 line 14 to page 20 000 line 12. Now with that very brief statement of the grievances I want to move directly on to the meeting of 26 August 1984, and with the opening submission that is really difficult to establish what the state's view is concerning this meeting at this stage. At page 146 of the argument it says that this was one of three meetings held under the leadership of the VCA; the other two having

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been at Small Farms and Boipatong. At that page, page 146 there is no mention of Sharpeville in relation to these meetings said to be under the leadership of the VCA and at the same page it is submitted that Esau Raditsela visited all three of those meetings including therefore the one at Bophelong. To ensure that resolutions would include the decision to stay away and march on 3 September and at page 146 the state submits as a fact that these resolutions were taken at Bophelong on that day. Now in support of those statements it refers your lordship to the evidence of accused no.10, volume 167, page 8 550 and if your lordship looks at that page your lordship will find only that accused no.10 mentions Raditsela having taken Edith Letlhake to Boipatong. There is no mention of Bophelong at all. It refers your lordship also in support of this statement to EXHIBIT AT.12 That is a pamphlet found with accused no.11 in Boipatong and he has testified to your lordship, we will refer your lordship to the references when we come to Boipatong; but that was a pamphlet to advertise - it related to a meeting in Boipatong and also it makes no mention whatsoever of Bophelong. By that stage, 146 of the argument of the state, in the section dealing particularly with Bophelong which your lordship will find at the beginning of page 343, that is in volume 3 of the "betoog", there is no submission at all of this meeting. It is not mentioned. The state begins with the meeting of 29 August 1984. And also somewhat curiously it was put to one of the defence witnesses in the course of cross-examination that it was at the meeting of 29 August that it was said that there was to be a stay-away and a march on 3 September. That was denied, m'lord, it is in the

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evidence of Mcetya, volume 335 page 19 133 line 30 to page 19 134 line 4. Now it is a somewhat confused picture that is being presented by the state and we submit really that it is the function of the state not having presented the evidence dealing with the meeting of the 26th which is to be found in the evidence of Mcetya. Again there is no submission at all that the evidence given concerning this meeting is unacceptable and we submit therefore that your lordship will adopt the account as proved. What it shows and I am again going to go through this very summarily, it is all from the evidence of Mcetya. The first point that is worth remarking is that the chairman is someone called Ngwenyana, described as an old person and he spoke about the rent increase and the lodgers' permits. Volume 335 page 19 094 line 7 to page 19 095 line 11. Now that chairman Mr Ngwenyana is not a name mentioned as far as I am aware at any other time in the trial before this person Mcetya testified. He is not mentioned amongst the list of alleged co-conspirators and there is no suggestion that he is a VCA or a UDF activist. And we submit really that the only reasonable inference is that he is simply a resident of Bophelong concerned with the problems in Bophelong. Some of the familiar names were canvassed with this witness Bonani Martha, the VCA area representative there, Esau Raditsela, Johnny Motete and in respect of each one of them the witness testifies that he did not see them at this meeting; the possibility cannot be excluded that they were present but clearly none of them played any role at that meeting and of course there is absolutely no evidence from the state concerning this meeting and no evidence that any of these people were there or that they did anything in connection

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with it. If I may give your lordship the references to each of those names. In volume 335, page 19 115 line 30 to page 19 116 line 1; page 19 117 lines 3 to 10 and page 19 121 lines 19 to 20. It is worth remarking also if your lordship looks at those passages that although the cross-examiner raised the question of Esau Raditsela being present it was not coupled with any suggestion that he had performed any function there and there was also no suggestion that any of the resolutions taken there included a decision to stay away on 3 September or to march on that day. (10

We submit that the overall picture clearly is that this was not a VCA meeting and the witness who deals with it testified that he had never attended a VCA meeting. Your lordship will find that in volume 335 page 19 089 lines 2 to 7. That view, that submission in our respectful view is reinforced by the fact that at this meeting of 26 August in Bophelong it was decided to elect ten people to go to the councillors and to inform the councillors of a meeting to be called by the residents which was to be held on 28 August and again there is no suggestion that this group of 10 was in any way (20 identified as or connected with a VCA area committee. The VCA again is simply not referred to at all. Volume 335 page 19 095 lines 12 to 22. Of course it is..

COURT: Sorry 19 09..?

MR TIP: 095 lines 12 to 22. Of course the fact that it is necessary that the people of Bophelong who come together at this meeting on 26 August and that they find it necessary to elect this committee of ten people speaks volumes as to the absence of any other community organisation of any viable sort in Bophelong at that time. If they were a VCA area (30

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committee and if it were active, if it had organised this meeting then one would surely have heard about that VCA area committee performing functions on behalf of the residents. Something new had to be done at this meeting.

What had been agreed at that meeting was that the rent increase and the lodgers' permit fee for children should not be paid until there had been an explanation from the councillors. There was also agreement that councillors should resign because of their having failed to fulfil their promises. Your lordship will find that in volume 335 page 19 096 line 10 2 to 16. Now certain matters arose in the course of cross-examination and some of the points are worth remarking on. The one is that there was no discussion at that meeting of what would happen if the councillors were to resign. There was no discussion about who would administer Bophelong if that were to happen. Your lordship will find that in volume 335 page 19 117 line 26 to page 19 118 line 21. And also in the course of cross-examination the following question was asked of the witness:

"Was julle net tevrede om die raadstelsel te vernietig" 20

and the reply was simply: "Dit is so". Volume 335 page 19 118 lines 22 to 23 and that was clarified later in the course of re-examination and the understand of that was at follows and I quote the evidence. Your lordship will find it at page 19 143 lines 11 to 26:

> "Nobody was fighting at this meeting when this was discussed and nobody was of the opinion that had to be done in a fighting way, therefore my answer is that there was just going to be and end of this."

In other words in the view of the witness and of the 30

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people at that meeting there would simply be an end to the council system but without any fighting. Now I have drawn your lordship's attention to these various matters which were given expression at that meeting to indicate that they really formed part of the common political currency in the Vaal triangle at that time, and that these are elements or ingredients which the state has sought to list in a recipe of conspiracy but here one finds them raised at a meeting of the people of Bophelong which is clearly entirely independent of the VCA, entirely independent of any of the accused before your lordship and when one hears of similar ideas at other meetings where the VCA was present we say that those were clearly not the exclusive property of the VCA or any of its members.

In similar vein the witness testified that at this meeting of 26 August in Bophelong councillors were referred to as puppets which this witness explained as meaning that it was because they do things without asking questions and without really knowing what they are doing. Still in volume 335 page 19 119 line 24 to page 19 120 line 4. And we say that that also again illustrates how common such usage was. The witness testifies further that the people present were very angry because the councillors had increased the rent. Page 19 120 lines 5 to 9. Now we submit that anger expressed by the people is not in any way the result of incitement or in any way connected with the view that it shows that they are being mobilised to take violent action. I am not going to embroider it but we say in essence that that anger is the result of the conditions there and the manner in which the administration of Bophelong had been conducted. And so we

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submit that the mere fact that an expression of anger takes place at a meeting cannot simply be construed as meaning that there was now a programme of violence being launched and the fact that what is decided is that community councillors are to be invited to a meeting reinforces that submission with respect.

Just to complete the picture, m'lord, this meeting of 26 August was in fact attended by a matter of some 100 persons. Your lordship will find that on page 19 094 lines 10 to 11.

I want to turn now to the meeting of 28 August 1984 (10 which as I have already indicated also is simply ignored by the state in its submissions to your lordship. There is evidence that the invitation to the councillors pursuant to the resolution taken at the meeting of the 26th August was handed personally to councillor Ramahula and..

ASSESSOR: When, Mr Tip?

MR TIP: On 27 August, on the intervening day. Your lordship will find that in the evidence of Mcetya, volume 335 page 19 098 line 18 to page 19 099 line 2 and page 19 122 line 30 to page 19 124 line 1 and in the evidence of Phale at (20 volume 345 page 19 702 lines 13 to 17. Now I should point out that none of those witnesses was present when the invitation was handed over.

COURT: Yes, this was the report at the meeting that it had been done.

MR TIP: This was a report at the meeting but throughout this what is important is what the people there would have understood the position to be. Some confirmation is to be found in the evidence of one of the Bophelong councillors Ngcina. He had heard about a meeting on a Tuesday and he and others (30

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went to the hall he says but the people were no longer there. He himself, however, had never heard about a letter to Ramakhula. Your lordship will find that in volume 48, page 2 365 line 24 to page 2 366 line 2 and page 2 367 line 11 to page 2 368 line 1.

Now councillor Ngcina is one of the Bophelong councillors. We submit that it is relevant to take note of a small portion of his evidence as an insight into the way in which this councillor related to the people in his community and it is to this effect that although he had heard of the meeting of 26 August he did not come to know what was discussed or why it had been held. He was asked by my learned leader Mr Bizos in cross-examination:

> "Did you not consider it your business in order that you know what is worrying your community, to try and find out?"

and his answer was:

> "I was interested to know but nobody explained to me."

Volume 48 page 2 366 line 29 to page 2 367 line 10. We submit that that reply indicates the degree of indifference and the degree of absence of a sense of public responsibility on the part of a councillor. We submit that that sort of attitude was germane to the events in Bophelong. Other councillors also have testified in relation to events there. They have testified that the reason for holding a meeting in Bophelong on 29 August was because the Bophelong councillors had not held any meetings on 5 August. Your lordship will recall 5 August was the day on which councillors were to have held meetings all over the Vaal triangle to justify the rent increases. We submit that that evidence reinforces

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also the submission that people of Bophelong in particular were left entirely uninformed by their council of what was happening in the community and what was happening with the range of increases which people suddenly confronted. Your lordship will find that in the evidence of councillor Mokoena volume 44 page 2 147 line 3 to 11 and Jogosela volume 49 page 2 426 line 19 to page 2 428 line 19. And in that excerpt from the evidence of councillor Jogosela it will be seen that the Bophelong councillors who were present when these things were said, that there have been no meetings on that day (10 5th August, raised no objection. Similar evidence is given by councillor Mofokeng. Volume 50, page 2 527 line 24 to page 2 528 line 26.

The mayor Mahlatsi testifies also. He mentions, he puts the date on 27 August; he also says that he went to a meeting. He had heard that the people of Bophelong were waiting and he went there but evidently he did not even get to the hall because on the outskirts of Bophelong he was told that the people had already dispersed. And he says that that is the reason for calling the meeting of 29 August, (20 volume 60 page 3 114 line 26 to page 3 115 line 11. There is a difference in the councillors. The one says it is because there was no meeting on 5 August, others say it is because we did not meet with the people on 27 or 28 August; this is no great moment, m'lord, because in any event the mayor Mahlatsi confirms that the initiative for calling the meeting with the councillors had come from the people of Bophelong. Volume 63 page 3 317 line 7 to 11. And whatever the reasons for the breakdown might have been, what is common cause is that the people of Bophelong who assembled in (30

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the community hall in order to receive an explanation from their councillors waited there in vain. There are two defence witness who give some particulars. Mcetya has told your lordship that there was some 300 to 400 people who waited there. She thinks it was about an hour and people left and at that stage she describes it in this way: they were not happy because they looked like people who were fooled. Volume 335 page 19 097 line 20, page 19 099 line 6. In Phale's recollection the quite many people as he puts it waited there for some two hours. Volume 344, page 19 676 line 16 to page 19 677 line 29.

Obviously if people by the meeting of 26 August were already very angry about the increases it requires no persuasion by us to convey the feelings of the 300 to 400 people who then wait to meet with their councillors to get an explanation and who go away clearly feeling that they have been deliberately rebuffed. Again these considerations are not dealt with at all in the state's submissions and we submit that that background is really necessary for the proper consideration of the ensuing events in Bophelong.

I propose then to go on to the meeting of the following evening.

COURT: Yes, having laid the table we will have the dinner on Monday.

THE COURT ADJOURNS UNTIL 22 AUGUST 1988

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