

AREA NO 13 - DAVEYTON (Betoog pages 871 to §14)

1. It is alleged at page 78 of the Further Particulars that from September 1984 until February 1985, ERAPO organised and intimidation, violence, and rioting took place. It was therefore incumbent upon the State to prove that the violence was caused by ERAPO and that the UDF was responsible for ERAPO's actions.
  
2. As far as the targets of attack are concerned, it is clear from the admissions made by the defence in connection with the damage at Daveyton that the property damaged included houses and a cinema. This is not property which belonged to councillors or to policemen or to any government institution.
  
3. Only one witness gave evidence in regard to Daveyton, i.e. the witness Fourie:
  - 3.1. Fourie said that the viewpoint of ERAPO was to attack the community council system by objecting to increase the rent tariffs and to further school boycotts.  
Vol 121 p6067 lines 20 - 23
  
  - 3.2. As a result of an objection to this, the judge asked certain questions, the answers to which suggested that the evidence was either

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speculation or hearsay.

Vol 121 p6067 lines 24 - p6068 line 8

- 3.3. Subsequently Fourie said that he had seen some publication of ERAPO which showed that this organisation was opposed to increases in tariff charges and had asked councillors to resign. The publications were not produced in evidence. The allegation is therefore not substantiated.

Vol 121 p6068 lines 9 - 16

This hearsay evidence and the inadmissible opinion of the witness to the effect that ERAPO attacked community councillors and furthered the school boycott is now relied upon by the State.

Betoog: p872 paras 1.1.5, 1.1.6 and 1.1.7

4. Fourie's evidence was that unrest followed after two funerals, namely:
- 4.1. A funeral of unrest victims which occurred on 8 September 1984.
- 4.2. Amongst others, Bishop Tutu spoke and certain members of ERAPO were speakers and/or present.
- Vol 121 p6068 line 28

4.3. There were posters and banners of COSAS, UDF, ERAPO and a number of T-shirts of trade unions. The youth at the funeral wore black, green and gold lapel badges.

Vol 121 p6069 lines 8 - 14

4.4. After the funeral, the youth marched, put up road obstructions, threw stones at houses and police motor vehicles, plundered and burnt bottle stores belonging to the council and damaged other council property.

Vol 121 p6069 lines 20 - 26

4.5. The second funeral was of unrest victims concerned in the stayaway, the funeral having been held on 17 November 1984.

Vol 121 p6070

4.6. Again after the funeral there was unrest consisting of road obstructions, damage to motor vehicles, etc.

Vol 121 p6070

5. Fourie also gave evidence in general terms that during the period September 1984 to February 1985, there was unrest involving petrol bombs and stone attacks on the homes of community councillors and policemen, attacks

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on policemen themselves, and on police vehicles, road obstructions and participation in school boycotts.

Vol 121 p6068 lines 21 - 27

5.1. There was no direct evidence to link these events to anything done or said by ERAPO or any other organisation.

6. There was no indication of any organisation by the UDF itself in the area save for a UDF banner at one of the funerals deposed to by the witness, and of the UDF being mentioned in the funeral programme CA29, from which it appears that it was planned that the UDF would be represented.

7. The State seems to place much reliance on the evidence of Fourie. It is submitted that the witness is shown to be unreliable on issues where his evidence is in dispute. The following criticisms of his evidence are advanced:

7.1. A fair reading of his cross-examination indicates that the witness knows hardly anything about the activities of ERAPO in Daveyton. A few examples are mentioned below.

7.2. The witness cannot say whether ERAPO worked

with the councillors during 1984 or not.

Fourie: Vol 121 p6085 lines 12 - 14

- 7.3. It appeared in cross-examination that his identification of persons as being members of particular organisations was based on 'general knowledge' that such people were members of such organisations.

Fourie: Vol 121 p6085 lines 23 - 31

- 7.4. He does not know the president of ERAPO. He says very surprisingly that he was not interested in who the president was. He then latched onto the Court's suggestion that the post might well have been vacant.

Fourie: Vol 121 p6086 lines 6 - 31

- 7.5. He did not know whether or not speeches were made at any meeting which made it apparent that ERAPO was trying to restore peace.

Fourie: Vol 121 p6088 lines 11 - 14

- 7.6. Although he says that ERAPO encouraged school boycotts, he concedes that he did not attend any meetings where this was so and cannot back this evidence on any reasonable basis.

Fourie: Vol 121 p6088 lines 15 - 22

7.7. He gives the evidence that, so far as he is concerned, UDF was started in the 70's.

Fourie: Vol 121 p6094 lines 13 - 15

7.8. He says that he could have become aware of UDF only in 1982.

Fourie: Vol 121 p6075 lines 2 - 8

7.9. He did not know whether ERAPO was a federation of organisations, although he previously stated that it consisted of individuals who apply for membership.

Fourie: Vol 121 p6075 line 13 - p6076 line 2

7.10. The State seems to rely on the evidence of this witness to the effect that 'ERAPO het die mense opgestook' and that it (ERAPO) also encouraged members at their meetings not to pay the rent or water and electricity charges.

Betoog: p877 para 1.1.22

This evidence is at best for the State hearsay. In the first place, Fourie's own evidence was that he got to know this by observation.

Fourie: Vol 121 p6067 lines 27 - 29

Secondly, it is clear that he attended none of these meetings, and could not have heard such matters being discussed.

8. The evidence led by the defence has shown

8.1. That it was the Daveyton Action Committee, in conjunction with the Senaba Party, and not ERAPO, which was principally responsible for all organising in connection with the rent increases during 1984 and that the position of ERAPO was not that rent should not be paid at all;

8.2. That ERAPO did not further the schools boycotts, its members having expressed themselves in favour of children returning to school;

8.3. That COSAS was also not responsible for the schools boycotts which were spontaneous;

8.4. No violence was propagated at the funeral of September 1984 and November 1984;

8.5. No violence occurred after the funeral of September 1984;

8.6. The violence that occurred in the area was not the result of organisation but the spontaneous result of a series of developments in Daveyton during the second half of 1984.

9. The Work of the Daveyton Action Committee

Mr James Ngubo gave evidence of the work of the Daveyton Action Committee.

9.1. Mr Ngubo is an assistant to a personnel manager and a respected member of many welfare agencies and community development bodies.

Ngubo: Vol 374 p21594 - p21596

He says that he became concerned about the threatened substantial rent increases during 1984 because of the plight of unemployed people, pension, short-time workers and so on.

It is not disputed that he spoke to some community orientated people all of whom (including the witness) constituted themselves into the Daveyton Action Committee to look into the problem of increased rent. The witness became the chairperson. The committee agreed, inter alia to find out what the reasons for the increase were from the



councillors.

Ngubo: Vol 374 p21596 - p21598 and p21598 -  
21601

Mr Boya of the Daveyton Town Council said that there was nothing he could do and refused to provide the witness with any information concerning rent. This is not in dispute. The witness accordingly asked him to call a meeting to explain his position to the people. The Daveyton Action Committee also decided to call a meeting but before this could be done, Councillor Senaba called a meeting on 10 June 1984. This meeting was held on an open field and was attended by representatives of the Daveyton Action Committee including the witness. It was decided at this meeting that there should be negotiations with the councillors. To this end, Senaba and the witness were asked to appoint a delegation and a petition was to be drawn. It is clear from the evidence that Star Motswege, one Klaas and one Sonti of ERAPO were also there and did not oppose this decision.

Ngubo: Vol 374 p21601 - p21606

It is significant that ERAPO members raised no

objection to negotiating with higher authorities.

ERAPO representatives agreed to accompany their delegation but were not available on the day fixed by the town clerk for the meeting. However, members of the Daveyton Action Committee and the Senaba Party met with officials in Pretoria and it was virtually settled there that the rent would not be increased.

Ngubo: Vol 374 p21607 - p21609

A report back meeting<sup>1</sup> was held at which ERAPO expressed no dissatisfaction.

Ngubo: Vol 374 p21611

ERAPO made no suggestions concerning the rent boycott at any of these meetings and it was not suggested by the State in the cross-examination of Mr Ngubo that ERAPO encouraged a boycott.

- 9.2. Under cross-examination, the pamphlet CA32 and an article ERAPO News (CA31) was put to the witness. He was unable to identify the documents and they have not been properly

proved in evidence. In any event, the witness said he had no knowledge of a meeting of 28 June called by ERAPO at which the rent matter was discussed. This does not mean that the witness is not telling the truth even if CA31 and CA32 had been properly proved. One would not know how large the meeting really was, or to what extent it was advertised. In any event, there is nothing in CA31 or CA32 which suggests that in the course of that meeting ERAPO encouraged violence or boycotts

Ngubo: Vol 374 p21628 - p21631

Also under cross-examination, the witness said that the action committee was not part of ERAPO.

Ngubo: Vol 374 p21631 lines 7 - 9

This deals with the argument advanced by the State in the Betoog Vol 7 p888 para 1.5.13

9.3. Certain criticism made by the State of the evidence of Mr Ngubo are dealt with below.

The State intends to place some reliance on the fact that Mr Ngubo made no contact with the members of ERAPO between 25 June 1984

(which was the date upon which the negotiations were held with the authorities in connection with the increased rent), and 8 July 1984 (which was the date upon which the meeting was held at which the fact of the successful negotiations was communicated to the people). The argument is that such communication would have been made, bearing in mind that ERAPO was to have been part of the delegation.

The reason given for not contacting ERAPO was that the members of the delegation wanted first to see whether the rent was going to be increased or not. The State says this is unacceptable, but does not suggest why the witness should misrepresent the truth.

Betoog: p890 para 1.5.18

He is further criticised on the basis that he did not see the ERAPO pamphlet put up by the State. Apart from the fact that the pamphlet has not been properly proved, this argument assumes that the fact that the pamphlet exists, implies that there was widespread distribution. Even if there was distribution (and there was no evidence to that effect),

one does not know how many pamphlets were distributed. In the circumstances, this criticism is without substance.

Betoog: p889 para 1.5.15

Another criticism is that he does not know of the meeting which was held on 9 July 1984 (as put by the defence). There is no reason why the witness should know about all meetings held in Daveyton which had been put by the defence. Again there is the assumption that these meetings were so well publicised that everyone including Mr Ngubo ought to know about them. In any event, there is possibly a confusion of dates. No evidence has been given of a meeting on 9 July, and the printing may have been incorrect, or possibly a mistake in regard to the date of the report back meeting deposed to by the witness which was held on 8 July 1984.

Ngubo: Vol 373 p21610 lines 21 - 22

Betoog: p889 para 1.5.16

Finally, the witness is criticised for his denial that he wrote an open letter to one Boya on the basis that a newspaper reported him as saying that he had written such a

letter.

Again there is the assumption that a document must be believed as against a witness. The reporter could very well have got his facts confused.

Betoog: p890 para 1.5.17

- 9.4. These are the only criticisms advanced of this witness. None of the material aspects of his evidence was specifically challenged. In the circumstances, it must be accepted.

If this is so, it places grave doubt on the evidence of the witness Fourie. Fourie seems to know nothing at all about the activities of the Daveyton Action Committee in connection with the rent issue. Yet, a great deal seemed to have been the result of the work of that committee. Fourie also knew nothing about the activities of the Sinaba Party which was actively involved in the rent issue.

- 9.5. It is also clear from this evidence that ERAPO had little to do with the rent increase. At most and if CA31 is admissible and to be believed, they are shown to have called only

one meeting.

It is also perfectly clear (and not disputed by the State) that members of ERAPO were present at meetings called by the Sinaba Party and raised no objections against the course of conduct suggested. It seems also common cause that the members of ERAPO did not criticise Sinaba because he was a councillor. Sinaba was not called a sell-out, or a puppet, nor was he asked to resign. ERAPO was quite happy about the fact that Sinaba formed part of a delegation concerning the rent increase.

10. The Situation at the Schools

10.1. Mr Mabena gave evidence to the effect that trouble started at the H B Nyati High School at Daveyton on 9 August 1984 when, after having completed cleaning the outside of the school premises at the request of the principal during school hours, some scholars had a discussion in the toilet about their difficulty. The discussion arose because they were dissatisfied about having to clean the school premises. They decided that they should make certain homemade placards in relation to corporal punishment and age

limit. These were two problems experienced by them.

Mr Mabena had unjustifiably received corporal punishment in circumstances where he could not avoid being late at school.

Mabena: Vol 377 p21851 - 21855

While they marched around the premises, someone suggested that they should go to the Daveyton High School where some 200 - 300 scholars joined the 200 pupils from the H B Nyati School. When they were almost at the Mabuya School, they were stopped by police who used teargas and sjamboks to disperse the crowd without any warning. The witness ran home.

Mabena: Vol 377 p21855 - p21857

When he went to school to assess the situation on the next day, he found that there were 200 pupils present in the schoolyard singing. He was told that the pupils from the Davey High School had made a request that they should accompany them on a march to Mabuya. The children from the Davey High School arrived with placards one of which referred to the



fact that SRC's were wanted. On the way to the Mabuya High School, the police interrupted the march, and dispersed it without warning despite the fact that the pace of the march was reduced considerably.

Mabena: Vol 377 p21857 - p21860

On 13 August 1984, he went back to school to see what was happening. He got into the yard. Davey children arrived followed by policemen in a motor car. Both these policemen got off, the one carrying a gun, and the other a sjambok. The one with the sjambok hit scholars who were jumping over the fence. The witness ran home.

Mabena: Vol 377 p21860 - p21862

He went to school on 17 August 1984 (Friday) because he was told that on this day, some decision would be taken about a return to school. About 200 children were present. While the meeting proceeded police vehicles arrived and the police surrounded the school. The principal agreed to intervene and, while he was walking towards the police, teargas was fired at the principal and the scholars, the latter having raised their hands

in peace. Rubber bullets and sjamboks were used on this occasion. It was not disputed that the witness was hurt and that he went home.

Mabena: Vol 377 p21862 - p21865

He did not return to school until the next year.

- 10.2. Mr Mabena also said that he expected no violence and that there was no COSAS branch at his school.

Mabena: Vol 377 21867 lines 14 0 16

- 10.3. It is important to note that trouble started at the H B Nyati School and not at all schools together. This shows the absence of organisation. It is also emphasised that on 9 August 1984, the scholars at the Nyati School did not demand SRC's. However, according to Mabena (and this is not disputed), there were discussions about the prefect system but no discussion about what would replace this system. Placards were first seen about the demand for SRC's on 10 August 1984 in the possession of the scholars from the Davey High School.

Mabena: Vol 377 p21873 - p21877

Many of the possible criticisms against this witness and against the probability of the scholars having acted in the way in which Mabena says they did, ignores the fact that the evidence concerned what happened to young, reasonably unsophisticated children at a school. So for example, the question of why they did not approach the teachers instead of marching, or how they could have thought that they would return to the classrooms if this was not discussed, or how it was that the idea of going beyond the Davey High School crystallised only while they were on their way to Daveyton, or how it was that nothing was clearly decided beforehand are questions which do not take the matter much further.

It is clear that the situation developed spontaneously and step by step. Nothing was clearly and carefully discussed and/or decided. The fact that things happened in this fashion also shows the absence of organisation.

Mabena: Vol 378 p21878 - p21887

It is also quite clear from his evidence that nothing had been arranged with the children at Mabuya. He first said that he knew nothing about the Holwazi School but later said that they would have asked the Holwazi children to join them as well. Here the witness was simply speculating about what was likely to happen. The witness himself was quite frank and said that he mentioned to the Davey children that they would go to Mabuya.

Mabena: Vol 378 p21888 - p21892

The witness's response to a series of questions about why he did not stop at the stage when he was confronted by the police is a clear demonstration of the attitude of mind of scholars at schools in South African townships. It is clear that this attitude of mind is not borne in mind by the South African Police when determining a response to scholar action. When asked why he did not stop, the witness gave the following answer, namely 'U vraag is, "hoekom het ons nie gestop nie"; 'hoekom moes ons gestop het'.

Mabena: Vol 378 p21894 line 8 onwards

However, the march moved more slowly when they saw the police.

Mabena: Vol 378 p21894 line 18

The witness emphasised that they changed their direction but continued to walk.

Mabena: Vol 378 p21894

Even if the scholars had intended to confront the police, it is submitted that a more careful, sensitive handling of the situation would not have resulted in the escalation of violence.

10.4. The State advanced certain criticisms of this witness.

It is suggested that the witness contradicted himself, having originally said that the decision was first taken to march around the school premises and that it was later decided to go further. It is suggested by the State that the witness says that the decision to get other scholars to join them was made initially. There is no basis for this criticism. The passage relied upon by the State makes it quite clear (more particularly from the last sentence thereof) that the witness was talking about what happened later.

Betoog: p895 para 1.7.21

It is said that his explanation for why he joined the march on 10 August is unacceptable, viewed in the light of the fact that he was afraid of the police. His explanation was that he thought that the police would not attack on the second occasion. This criticism fails to bear in mind the fact that it is impossible to explain after nearly four years and on hindsight what reasons existed for one's actions. It is quite possible that this scholar did not wish to be seen to be a coward, was tempted by the excitement of the moment, and thought that it was a proper thing to do. It might well be that he also thought that the police would not attack on a second occasion.

Betoog: p896 para 1.7.22

He is further criticised for saying that his impression was that he thought the police wanted to see what they were going to do on 10 August 1984. This was the second day on which this scholar was involved in a 'march'. There is no reason why this should not have been thought.

Betoog: p896 paras 1.7.23

It is further said that, according to this scholar, the scholars continued to sing songs and scream slogans at the stage when the police fired teargas at them. A reference to the passage referred to by the State makes it quite plain that the scholars were far away from the police at that stage. All the passage means is that the scholars had not stopped singing or shouting slogans by the time the police acted because they (the police) were still far away and had just been noticed by the scholars at that stage.

Betoog: p896 para 1.7.25

It is further said that Mabena's evidence was unreliable on the issues as to why the scholars did not return to school. It is said that the truth was that they did not return because their demands were not met.

Betoog: p897 para 1.7.28

It is suggested that if the passage cited by the State is referred to in context, and by beginning at page 21916 line 4, it becomes clear that there were a complex set of factors

which prevented the scholar from returning to school. There were demands which had been made by the scholars, the police action, and the fact that the witness himself did not wish to be seen to be a coward. In any event, this does not indicate any planned action.

The State seeks to infer planned action from the fact that this witness said that it did not come to his mind to approach the principal concerning his grievances, from the evidence about the way in which placards came to be made on 9 August 1984, and the fact that the decision was taken to march outside the school premises. The fact that there were not approaches to the principal, that placards were painted on the spot at the school (which is not disputed), and that the scholars protested within the school premises in the first instance before going to any neighbouring school supports spontaneity, rather than planning

Betoog: p894 paras 1.7.14, 1.7.15 and 1.7.16

- 10.5. It is clear from the account that ERAPO was certainly not responsible for any of the



developments at the school. Nor was it put to anyone that ERAPO was in fact responsible.

- 10.6. The reference to the evidence of Mrs Monyokoseli and Mr Ngubo confirms this.

She said that during the period September to October 1984, she attended a meeting called by a Mr Nkomo and Mr Maroleng aimed at getting the children back to school. At this meeting, a scholar complained about the age limit, corporal punishment, and the prefect system. A delegation including the witness was elected to look into the problems of the scholars.

Monyokoseli: Vol 371 p21423 - p21426

During November 1984, the committee summoned another meeting of parents and scholars. Here, Mr Nkomo, the chairperson, referred to the fact that the children were being blamed for the violence. This was denied by the scholars. The parents encouraged the children to go back to school. One of these was Mr Star Motswege who also spoke. The demands of the scholars were repeated. She makes it quite plain that there was no violence advocated at this meeting.

Monyokoseli: Vol 371 p21430 line 15 - p21432  
line 27

The witness goes further and says that during January 1985, another meeting was held at the Senaba Stadium. It was reported that there will no longer be corporal punishment and that the age limit was about to be lifted. Accordingly, the children decided to return to school.

Monyokoseli: Vol 317 p21432 - p21433

It is important to point out that it was never put to this witness that the members of ERAPO present at these meetings encouraged the children not to go back to school. Indeed, the witness said that they wore ERAPO T-shirts at the January meeting referred to above, and that Mr Klaas of ERAPO specifically referred to the De Lange Commission report and said that if the children did not go back to school until their problems were solved, they would never go back to school.

The fact that this was not put is particularly significant in the light of there having been

more than seven pages of cross-examination about the January meeting alone during which many matters were put to this witness about what was said and what was not said at this meeting.

Monykoseli: Vol 371 p21443 line 22 - p21450  
line 5

- 10.7. The same can be said of the evidence given by Mr Ngubo concerning two of these meetings.

He says that, towards the end of October 1984, he attended a meeting at the Senaba Stadium chaired by Mr Nkomo at which the children's complaints such as the age limit, excessive corporal punishment, the absence of SRC's and the molestation of females by teachers was discussed. He said that the general effect of what parents said was that a committee consisting of scholars and parents should find a solution to the complaints.

Ngubo: Vol 374 p21611 - p21615

He attended a second meeting around January 1985 at which it was decided that the children would return to school and parents would continue to attend to grievances. He points

that ERAPO representatives were present at the school and that one Klaas from this organisation also motivated the return of the children to school.

Ngubo: Vol 374 p21625 - p21616

Apart from the fact that there are differences between what was put to Monyokoseli and what was put to Ngubo in connection with this meeting, the cross-examination is consistent in that, Mr Ngubo too was extensively cross-examined about both the meetings referred to above, yet it was never put to him that the ERAPO members played a different role.

Ngubo: Vol 374 p21647 - p21654

10.8. It is accordingly submitted that it has been established that ERAPO did not further school boycotts.

11. The Involvement of COSAS

There is no allegation that COSAS was active in Daveyton, or responsible for any of the violence or unrest that occurred there.

There was also direct evidence that COSAS was not involved in the school boycotts as a body.

Mr Ngubo has given evidence (and this has not been disputed) that he did not know that COSAS existed in Daveyton and that speakers at the meeting during October/November 1984 concerned with the school problem did not speak on behalf of COSAS but rather on behalf of schools.

Ngubo: Vol 374 p21647 - p21648

There was no mention of COSAS in the cross-examination concerned with the second meeting.

Ngubo: Vol 374 p21651 - p21654

Mrs Monyokoseli says that the parents committee did not try to get co-operation from other scholars. She said that no effort was made to contact COSAS because all the children did not belong to this body nor was it understood that COSAS had something to do with the boycott. She also said that she knew nothing of a UDF area committee and did not contact it.

Monyokoseli: Vol 371 p21437 - p21439

## 12. Funerals

The purpose of leading evidence in connection with the funerals was to rebut the evidence already mentioned in connection with violence having followed thereafter. In relation to the funeral of 8 September 1984, the

purpose was to show that no violence was propagated at this funeral and that no violence occurred thereafter to the knowledge of the parties involved. Admittedly, there are minor contradictions in relation to the version of the different witnesses, which are to be expected in the circumstances.

12.1. It is submitted however that it has been established that no violence was propagated at the mass funeral. What is of particular importance is that the State, despite the cross-examination of Fourie, chose not to lead any evidence on the funerals and the subsequent events.

Fourie: Vol 121 p6084 lines 14 - 30

Mrs Mbonani gave evidence to the effect that there were a number of speakers at the stadium. That three priests spoke, and that no violence was called for. She also gave evidence about the fact that Bishop Tutu and others spoke at the graveyard and repeated that no violence was called for.

Mbonani: Vol 367 p21183 - p21186

She concedes under cross-examination that certain slogans were chanted and certain songs

were sung. She also admits that COSAS T-shirts were seen. She says that all the coffins were carried together. She knows of no restrictions. She gave a detailed account of Tutu having read from the bible. However, it was never put to her during the entire and rather lengthy cross-examination that any violence was incited at this funeral.

Mbonani: Vol 368 p21197 - p212011

- 12.2. This is an appropriate stage to deal with the video recording in respect of the funeral.

It is a section which lasts a few minutes and is clearly not complete on the face of it. In addition, it is quite clear that there are numerous interruptions on the video itself. It cannot be said that the sequence of events are correctly reflected thereon

No violence is suggested at the meeting.

The evidence of the witness Fourie might be tested against this video. As was placed on record during the trial, it is clear that there was no ERAPO or UDF poster or banner. No youth is seen wearing a lapel badge coloured

black, green and gold. In addition, only young people are involved in the singing or chanting of the songs referring to 'Mkonto we Sizwe' or of the slogan in which 'Tambo' is referred.

Mbobani: Vol 368 p21219 line 17 - 21221 line 20

- 12.3. The only criticism made of Mrs Mbonani is that she was not able to give clear evidence of many of the occurrences at the funeral nor did she have a particularly detailed recollection of what happened there. In evaluating this criticism, it must be borne in mind that Mrs Mbonani was the mother of one of the deceased persons who was being buried on that day and could therefore not be expected to have a very clear recollection of such details.

Betoog: 7 p996 para 2.2.7

- 12.4. Mr Palla was a grandfather of one of the deceased at the mass funeral. He gave a detailed account of the funeral during the course of which Mr Motswege spoke saying that the residents of Daveyton must be united and talk, not fight. He makes it quite plain that nobody propagated violence. He says that



there was singing but he did not hear well.

Palla: Vol 368 p21228 - p21232

He also goes further and says that there were no UDF T-shirts at the funeral. Nor was there any disorder during the funeral. He knows of no violence on that day.

Palla: Vol 368 p21232 - p21234

Whilst it was never put to this witness that there was violence incited at this funeral, he was forced to concede that he cannot say that there was no violence propagated if he did not understand the proceedings. However, it is sufficient for purposes of the defence case that he did not understand any violence to have been propagated there. It can be assumed that if all the witnesses who were called did not understand there to have been any violence incited, this did not happen.

Palla: Vol 369 p21260

Only two criticisms of Mr Palla's evidence are offered. Neither of them is of any substance. Firstly, reference is made to a conflict about when precisely he saw the funeral programme CA29. Secondly, Mr Palla is

alleged to have contradicted himself about precisely who came up with the proposal that the funerals should be held together. As far as the second contradiction is concerned, it is clear that he mentioned two people on one occasion and did not mention the second person on another occasion. Nothing was said about the fact that the second person did not raise this matter. In the circumstances, the criticisms are of no moment.

Betoog: p904 paras 2.3.5, 2.3.6 and 2.3.7

- 12.5. Mrs Monyokoseli said that she arrived late at this funeral at a time when Bishop Tutu was speaking at the Senaba Stadium. The gist of his speech was that apartheid and oppression had been happening for many years and that it was the people's protests which gave rise to shooting by the police. She says that she saw children wearing COSAS T-shirts, she saw no other T-shirts nor did she any black, green and gold banners or lapels. She saw a COSAS banner, she says that certain songs were sung but makes it quite plain that no one encouraged violence.

Monyokoseli: Vol 371 p21417 line 25 - p21422

line 27

It was not put to this witness, during a long cross-examination, that anyone suggested violence at the funeral. During the course of this cross-examination, she conceded that songs referring to Tambo may have been sung. She said however that she knew of no restrictions except for an announcement by the priest that people should stick to the time. She also said that Bishop Tutu did not say that he was bringing a message from the UDF. Monyokoseli: Vol 371 p21451 - p21453 and continuing into Vol 372 p21454 - p21460

- 12.6. As far as the funeral of November 1984 is concerned, the defence relies on the undisputed evidence of a single witness.

Mrs Monyokoseli says that Mr Star Motswege was the master of ceremonies at this funeral. She says that she herself spoke on behalf of the Committee of Concern which existed at that stage trying to resolve the education issue. She focussed her speech on the fact that the deceased had suffered a violent and untimely death. She makes it quite plain that nobody

advocated violence at this funeral.

Monyokoseli: Vol 371 p21427 line 30 - p21429  
line 25

- 12.7. The only criticisms made of the evidence of Mrs Monoyokoseli is that her evidence that she did not hear the 'Tambo' slogan being chanted is false. This criticism is without substance for it ignores the fact that, according to Mrs Monyokoseli's undisputed evidence, she came late to this funeral.

Betoog: p905 para 2.4.2

It may also be pointed out that Mrs Monyokoseli's evidence is not correctly stated by the State, who contend that, according to her evidence, she and other members of her committee spoke at the funeral on 17 November 1984. Her evidence is that she spoke on behalf of the committee onto which she had been elected.

Betoog p906 para 3.3.1

Monyokoseli: Vol 371 p21428 line 10 et seq

- 12.8. It is accordingly submitted that it has been proved that no violence was propagated at

either of these funerals. It has also been established that no violence occurred after the funeral of 8 September 1984.

13. It is also clear from the evidence that the violence was not the result of any organisation but rather, the result of the fact that a number of unfortunate circumstances followed each other. It is not necessary, for purposes of this enquiry, to determine precisely who was responsible for these unfortunate circumstances or the way in which they developed.

It is common cause that Patrick Palla was shot on 14 August 1984 and that he died on 29 August 1984. It is also common cause that this little boy had been shot at the back of the head.

Palla: Vol 368 p21222

It is also common cause that he received compensation from the police in respect of funeral expenses.

Palla: p21222

This shooting occurred five days after the trouble started at H B Nyati school, but is not shown to have been related to such trouble.

It is clear that three children died in the unrest which broke out a day after it became known that

Patrick had died on 29 August 1984.

Phala: Vol 368 p21235

14. There was apparently some trouble during the stayaway on 5 and 6 November. There is, however, nothing to suggest that ERAPO had anything whatever to do with the stayaway or the trouble.
  
15. Mrs Peter's evidence was to the effect that Sibongile Kubeka was killed by police without good reason at a time when everything was peaceful.

Peter: Vol 378 p21928 - p21933

Her evidence was extensively criticised on the basis that she initially said that the incident occurred in December but that it later transpired that she was talking about what happened during the stayaway. It was suggested to her that she had deliberately misled the Court in connection with the stayaway although she had told counsel about it.

Peter: Vol 379 p21940 line 21 - p21942 line 29

This criticism is not justified. It has always been common cause that Sibongile was killed during the stayaway. Indeed it was part of the defence case and was referred to by the witness Monyokoseli in her evidence-in-chief.

Monyokoseli: Vol 371 p21427 line 30 et seq

It was perfectly proper to have left her estimation of the date as being December 1984 unprobed during the examination-in-chief. Another criticism arising out of the same point was that she said that nothing unusual occurred on the date of the occurrence of this incident. However, this must be seen in context, and in the light of the previous question which related to whether it had been peaceful in her area before the incident occurred. It seems that all she was saying was that, before the incident occurred nothing unusual had happened. Her evidence in relation to the stayaway emerges quite naturally and in a manner beyond suspicion during the cross-examining a short while later.

Peter: Vol 370 p21937 - p21938

The next criticism revolves around the fact that the bullet would not have hit the deceased on the right hand side of the head if she were standing in the way in which the witness said she was standing. However, she could quite easily have turned her head. There is no expert evidence concerning the exact direction in which the gun would have been pointing.

Peter: Vol 378 p21932 - p21936

The case made by the defence is that the violence during the stayaway began as a result of this unprovoked conduct. Even if Mrs Peter's evidence were to be rejected (and we submit that there is no good reason for that to happen), the perception that the shooting had been without cause was a factor which had a bearing on the subsequent events.

16. Police Violence after Funeral

in addition, there was evidence of the police going to the funeral during November 1984 and running over the bathtubs which had been placed alongside the road for the funeral goers to fulfil custom and tradition by washing their hands. Two witness gave evidence of this.

Mrs Monyokoseli said that while they were busy washing hands after the funeral at the home of the deceased, the police ran over the baths which were laid in front of three houses.

Monyokoseli: Vol 371 p21429 - p21430

Mrs Peter gave unchallenged evidence to the effect that, she lived opposite the home of the deceased Sibongile Kubeka, that she lent a bathtub to the deceased's family, that the police vehicle ran over the bathtubs on the day of the funeral and while people



were washing their hands, and that Sibongile's mother bought her a new bathtub.

Peter: Vol 378 p21931 - p21932

17. In all the circumstances, the cause of the violence in Daveyton and the factors which contributed to the unrest are at best for State, uncertain. One issue is, however, clear, and that is that the violence which occurred in Daveyton cannot be put at the door of ERAPO.