

Verid

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

K 22-1 Vol. 438. Pg 25 684 - 25 768.

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-15

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. YACCOB
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 438

(Bladsve 25 684 tot 25 768)

COURT RESUMES ON 15 AUGUST 1988.

MR BIZOS : We were dealing with the Vaal Civic Association and the Black Local Authorities and at the time of the adjournment I was about to deal with the anti-election rally of 27 November 1983. This rally was not part of the indictment against the accused. It was not pleaded. Nevertheless, evidence has been led and it is submitted that the evidence that has been led, does not really advance the state's case any further.

The only reference that was made to this meeting in (10) the "betoog" was that Mr Kabi was there and that, according to the state, shows that there was co-operation between the ERPA and the Vaal Civic Association. We submit that the mere attendance of an office bearer of one organisation of a meeting of another organisation, does not show any co-operation, nor does it show if there was any co-operation, that it is evidence of any conspiratorial activity.

It was no secret that the VCA was opposed to the elections in terms of the black local authorities act. In fact, a resolution to this effect was adopted at the launch, which (20) is EXHIBIT AN 13. Planning for the anti-election rally was done pursuant to this resolution at the launch, at committee meetings of the VCA particularly on 19 October 1983. The evidence of accused no. 10 is to be found in volume 163 page 8 135 line 19 to page 8 136 line 6.

We submit that there is no evidence whatsoever for the suggestion that this was done under the guidance or influence of the UDF or in pursuance of any conspiracy with it. Accused no. 10 who participated at these meetings as a member of the VCA executive committee, was not aware of this rally (30)

having/...

having been organised in accordance with any plan of the UDF. He did not consider that he would necessarily have been an unwitting part of a plan of the UDF if that had been the case, but it is just not so. Your lordship will find that in volume 167 page 8 493 line 25 to page 8 494 line 18.

ASSESSOR (MR KRUGEL) : Still no. 10's evidence?

MR FIZOS : Still no. 10's evidence, yes. The rally was advertised by means of the pamphlet, EXHIBIT AN15(a). The paper for doing this was provided by the members of the VCA. Your lordship will find that in the evidence of accused (10) no. 10 in volume 162 page 8 014 line 22 to page 8 015 line 18.

May I pause here for a moment. That insofar as it has been suggested that financial assistance was rendered by the UDF, we submit with respect that your lordship must have been impressed by the evidence that is given over and over again by people not earning very much, dipping in to their own pockets to in order to provide paper and transport costs in furtherance of their organisation's work rather than the other way around of an umbrella organisation provide the money to bankroll their activities seem to be suggested (20) in the indictment and further particulars.

Speakers were to be obtained who were experienced in community work. There is no suggestion that this necessarily meant that they should be from the UDF or affiliates of the UDF. The evidence of accused no. 10 volume 162 page 8 016 lines 3 to 6.

At the rally the Reverend Lord McCamel was the chairman, Thabiso Ratsomo, accused no. 22, was one of the speakers. No one advocated violence of any sort. There were no UDF posters in the hall, although there was a UDF banner (30)

on/...

on the fence outside. Accused no. 10, volume 161 page 7 963 line 23 to page 7 964 line 16.

Nkondo never spoke about deploying whites to kill other whites. This is in the evidence of accused no. 10 again, volume 159 page 7 831 lines 10 to 14.

The witness IC.8 was there and recited the poem "Africa my beginning" which is to be found in EXHIBIT AAQ1. Accused no. 10, volume 159 page 7789 line 11 to page 7 790 line 17.

Accused no. 10 says that he did not see accused no. 3 present at that meeting. He did see accused no. 5 at the(10) door of the hall attempting to get space for more people. Accused no. 5 was not inside the hall itself. Accused no. 10, volume 161 page 7 964 lines 17 to 28.

The role played by accused no. 5 in relation to this rally is identified in his own testimony. He had been requested by Raditsela to remain outside the hall as a marshall and to supervise the people who were forming groups outside the hall. He and others held posters outside. Raditsela had felt that the police who were there, would be displeased to see people milling around outside and that is why they(20) were directed inside the hall. Accused no. 5 did not go into the meeting itself at all. Accused no. 5, volume 205 page 10 777 line 30 to page 10 779 line 31.

The general tenor of the posters held outside was that people should not vote in the forthcoming elections. Accused no. 5 has given an account of his reasoning for this. Among the reasons is that he considered the councillors to be oppressors. This is because they took part in a structure which was intended to prolong the oppressive treatment of accused no. 5 and others. This is coupled with the policy(30)

of/...

of repatriation to homelands and this was participants in the structure were - his view was that participants in the structure were busy selling his rights. In the course of an extended series of questions from the court, accused no. 5 made clear that he would accept the local authority which had full powers. At the same time he could analyse the position in relation to the obtaining of rights at a central government level. Accused no. 5, volume 209 page 10 969 line 2 to page 10 974 line 13.

The state's thesis in relation to this rally and (10) similar evidence is that we allege that there was a conspiracy. We prove that there was a conspiracy because you took part in this rally and the court is being asked to draw an inference that those who took part in it, such as accused no. 10, accused no. 5, the VCA itself, are guilty of the conspiracy. We submit that people were entitled to do what the VCA and accused no. 10, accused no. 5 and others did. They were forthright in this regard to your lordship. They did not apologise for what they did. We submit that it is not evidence of conspiracy at all and we want to urge (20) your lordship to accept that that was the view of the accused and political organisations both within and outside parliament at the time. That the politics of non-co-optation, the politics of boycott, the politics of non-participation were in vogue at the time and if on the evidence as a whole to which your lordship will be referred to more fully in another part of the argument, if it was in order for the leader of the then official opposition or should I say the then leader of the then official opposition, the editor of the Star, the Black Sash, the editor of Style magazine and others, (30)

to/...

to say boycott these elections because dispensation is no good. Accused no. 10, accused no. 5 and others did not have any lesser right to boycott these elections.

We also are presently living in a period where that sort of activity has for all practical purposes been made unlawful by the emergency regulations. Your lordship will recall that we handed in copies of these regulations of February 1988 where much of the activity in which the accused took part in this now declared an unlawful act. If anything, that that really shows that there was nothing wrong with (10) the activity and the performance of an act which a person has a right to perform if he believes that he can advance his political development can lead to his getting political rights, if it is not unlawful, it commits no offence and it certainly no evidence of any conspiracy.

The fact that it may have been better in the view of one or other of us, if they did co-operate, is hardly relevant on a charge of conspiracy.

Then we want to deal with the question of the attitude of the VCA to the town council. It is not part of the (20) defence case that the authorities were acceptable bodies. In fact the contrary is the case. A theme which was used throughout the cross-examination of state witnesses and a presentation of the defence evidence, is that the town councils as well as their predecessors were bodies with inadequate powers and which formed an integral part of the unacceptable structure of the administration, based upon the institution of apartheid. The defence case contains as a general component the forthright acknowledgement that the black local authorities system was rejected and despised and a (30)

presentation/...

presentation of the reasons for that attitude. It is submitted that each of the accused was entitled to hold such an attitude and to give expression to it. We submit that the state has not discharged their onus upon it. That the declarations of opposition and activities organised in consonance with such opposition form part of a conspiratorial design or had any object of achieving the violent ends alleged against the accused in the indictment.

Thus the low percentage pole of 14,7% in the 1983 town council elections was considered to have been the result (10) of a successful campaign by the VCA. Accused no. 10, volume 159 page 7 824 lines 6 to 17.

It is the state case that the accused sought to infuse a political dimension into local issues in order to achieve political ends. We submit that this view represents an inversion of the correct position. After all, the essential process of politics is concerned with the allocation of power, authority and resources and I consider what I am about to say fundamental, that political dissatisfaction results from and is not the cause of serious imbalance in (20) the allocations made. May I pause here for a moment.

I will be dealing with the evidence of Sergeant Koago and his companion in due course, that it is perhaps a lack of understanding of this that led to a garbled version of what accused no. 16, Mr Manthata, said at the meeting of 19 August at Sharpeville.

Where as in the present case there exists a very grave imbalance in the access granted to different groups, to decision making and control over their own affairs, then it is inevitable that an institution like the black local (30) authorities/...

authorities should carry with them an overt political dimension, which equally inevitably extends to the core of the country's constitutional fabric.

In consequence it is not possible for opposition to the Lekoa Town Council to be divorced from the opposition to the constitution. This is precisely what Mr Vilakazi, accused no. 10, told your lordship in volume 165 page 8 351 line 30 to page 8 352 line 2.

This is where we submit that the state starts off on a false premise. It has alleged what is bona fide (10) political activity throughout a civilised world as evidence of the existence of a conspiracy. It does not follow that vociferous opposition to the election of councillors under the black local authorities act, that it was the intention of the VCA either alone or in conjunction with the UDF or the intention of any of the accused, whether alone or in conjunction with the VCA or the UDF to dismantle the black local authority as a part of what the state wants to call a violent national liberation struggle. The proposition is squarely denied by accused no. 10 in volume 169 page (20) 8 702 line 23 to page 8 703 line 3.

The VCA received a mandate from the residents at the launch on 9 October 1983 to oppose the BLA in the Vaal. The object was that the projection of this opposition was that the government would recognise the weight of the opposition and would then intervene and through a process of discussion, a structure of local authority acceptable to the residents would emerge. Accused no. 10, volume 165 page 8 318 line 7 to line 20.

It was accused no. 10's view that if the town council(30) were/...

were to stop operating in the Vaal in their place the development board would resume the administrative responsibilities whilst the negotiations were entered into. Your lordship, after this evidence was given, questioned accused no. 10 as to whether or not that was not an afterthought, presumably after your lordship looked at the black local authorities. The evidence of accused no. 10 was that it was not an afterthought. Accused no. 10, volume 169 page 8 703 line 23 to page 8 704 line 23. That he was correct in this view is (10) supported, in our submission, by the submissions made by our learned friend, Mr Chaskalson when he addressed your lordship on the provisions of the act as to whether or not chaos would result. Of course, that knowledge cannot be attributed to accused no. 10 at the time, but your lordship will recall that your lordship was referred to evidence that a booklet had been produced about this, that there was much newspaper publicity about the general effect of what were generally known as the Koornhof bills and that accused no. 10 is the sort of person who would have had gathered this knowledge (20) from the general debate that was going on at the time. The belief that the board would resume its administrative control cannot therefore be considered as fanciful on his part.

The fact that there is a political dimension to the opposition to the black local authorities, does not mean that there can be no genuine concern with local problems. In reply to the court's proposition that representation in parliament was a pre-requisite for a negotiation concerning the local authority, accused no. 10 stated that whilst it (30) was/...

was true that all blacks aspired to the presentation in parliament, local problems could not be ignored. Accused no. 10, volume 169 page 8 706 line 8 to page 8 708 line 23.

Your lordship will recall the personality of accused no. 9, Mr Ramakgula, a person who has hardly had any form of education at all and who was an assistant electrician. He was also a member of the zone 7 area committee and how he came to be involved, because his children were not taken to school. His evidence is that his understanding was that the VCA would address issues such as inadequate housing, (10) by getting into contact with the administration board. That is the whites in charge of the townships. Part of this view was the understanding that people wanted to do nothing or have nothing to do with the councillors. Accused no. 9, volume 181 page 9 379 line 3 to page 9 380 line 7.

The non-co-operation or rather the non-participation in and non-co-operation with the council and its members, was not something novel. The evidence has been given by a number of witnesses that the destruction of the coloured people's representative council and other unrepresented (20) bodies in the history of black people striving for meaningful political rights, was in the forefront of the minds of many and it was no different to what had happened before which was not considered either unlawful or providing evidence of a conspiracy.

I want to deal with the education workshops. In paragraph 68.5 to be found on page 296 of the annexure to the indictment it is alleged that amongst other persons Malindi, accused no. 5, attended a training course presented by the UDF at Daleside during November 1983. It is said that (30)
this/...

this was for further instruction in connection with the task of organising, mobilising, politically inciting and intimidating the black masses against the lawful structures of authority and councillors. Further allegations concern the listening to recordings of ANC broadcasts and the nature of the material offered at the course. It would appear that some confusion arose in the presentation by the state of this allegation. In the further particulars in paragraph 29.5.3, which your lordship will find on page 91 in the further particulars, it is said that the persons present (20) are those on the list contained in EXHIBIT U4 which relates to attendances at this seminar held at Daleside in April 1984. The mistake was probably made because of the assumption that dealing with the black local authorities, it must have been done in opposition to the elections and it had therefore had to be before the end of November 1983, whereas in truth and in fact it was in April 1984.

The evidence of Mr Chikane, accused no. 21, establishes that a workshop concerning black local authorities was in fact run in the course of November 1983, but this was (20) held in Krugersdorp as a result of a call by the Krugersdorp residents organisation. Mr Chikane, accused no. 21, was present at that workshop and details the material that was presented. Analysis was presented of the defects of the black local authorities structure, particularly concerning its lack of a financial base and that members of the Krugersdorp residents organisation indicated that they would call for a boycott of the elections. Accused no. 21, volume 300 page 16 980 line 11 to page 16 982 line 4.

There is no suggestion that this workshop was held (30)

for/...

for the purpose of furthering the conspiracy or bringing about violence. The allegation made in paragraph 68.5 on page 296. Even if they were in some way be capable of transposition in order to relate to the workshop testified to by accused no. 21, are in no sense borne out and there is no evidence that accused no. 5 attended this or any other workshop.

The Daleside workshop was conducted during the weekend of 27 to 29 April 1984 and the indictment in paragraph 70 on page 305 and subsequent pages alleges that in furtherance(10) of a conspiracy or conspiracies that had been pleaded, it was to provide intensive and advanced instructions in skills and methods to organise, mobilise, politically incite and indoctrinate the masses to become actively involved in revolt, riots or violence which was of course to lead to a violent revolution in the country. Of the accused, accused no. 7 and no. 17 are alleged to have been present.

There is no evidence from the state concerning the events of the seminar. Accused no. 7 has testified that he went to the seminar together with accused no. 17, believing(20) that it was only for the one day being Friday, 27 April 1984. Accused no. 7, volume 200 page 10 465 lines 3 to 19.

When he, accused no. 7, discovered that it was for the entire weekend, he arranged to leave in the course of the following morning and did so together with accused no. 17. Accused no. 7, volume 200 page 10 466 line 14 to page 10 467 line 28.

Not having any evidence to the contrary, both in the "betoog" and orally, our learned friend, Mr Jacobs, proclaimed that it is passing strange that we should have so many (30) people/...

people coming late or going early and asking your lordship to reject the evidence on that ground. I cannot recall any other ground being advanced why this uncontradicted evidence should be rejected.

It is correct that there are a couple of instances of late coming and/or early going to meetings, but not any more than IC.8 mentioned in relation to his comings and goings and unlike the short meetings that some of us may be accustomed to, these meetings appeared to be lengthy affairs and people do come and go at random, but the state(10) has another difficulty. Let us assume that one or other of the accused should tell your lordship falsely that they went late to a particular meeting or that they left early from a particular meeting and that your lordship may consider it as passing strange that there should be these coincidences and I do not know whether they are too many over a period of approximately two years that people should have been late at one or other meeting, but your lordship will have the difficulty on that argument - let us assume that someone has been untruthful about it because of the (20) lack - because the coincidence sounds too good to believe. Which ones did not tell your lordship the truth and in respect of which meeting. So, that sort of argument does not carry the state case any further. Your lordship will find the "betoog" on pages 103 to 105 in relation to this.

They also advance the reason that in EXHIBIT U4(b) it makes reference to thirty-five participants and another ten persons who came and went. The state's reason is evidently that since accused no. 7 and no. 17 are recorded in the list of names, EXHIBIT U4(c), that they are therefore(30) participants/...

participants and hence they did not come and go. It may be pointed out firstly that the list of names does not total thirty-five, is therefore open ended and no firm conclusion can be drawn from it.

A second point is that whilst there is no dispute that accused nos. 7 and 17 signed on as participants, this does not necessarily mean that they remained until the end. There is no improbability whatsoever in the organisers of the seminar when they drew up the report afterwards, simply referring to the list of names of participants who had (10) signed as such. The reference to the ten people who came and went is entirely explicable as a reference to people who at no time signed on as participants.

The state also says that it is evident that the attendance of the course was well planned and discussed in VCA circles. This proposition is not supported by the evidence of accused no. 10. This is all contained in the previous reference that I gave your lordship in the "betoog". This proposition is not supported by the evidence. Accused no. 10, a member of the VCA executive, was unable to con-(20) firm that this was discussed at any meeting, because he could not recall that there had been a formal invitation to that effect or that he had heard about it from the chairman personally. It is clear from his evidence that this workshop was not a matter for extensive discussion. Accused no. 10, volume 167 page 8 498 line 6 to page 8 500 line 5.

When he did agree to attend it, there was no suggestion from Raditsela who invited him that this was to be a meeting in order to further the aims of the ANC, the SACP and the (30)

UDF to overthrow the state by violence. Accused no. 7, volume 200 page 10 464 line 17 to 10 465 line 2.

It has been suggested by the state that this Daleside workshop in 1984 was the springboard for the violent events which erupted in the Vaal Triangle on 3 September 1984, the date according to the state. The evidence does not support this proposition. In any event the state has pleaded this workshop as it having been planned and executed as part of a conspiracy which took form long before the workshop was held. It is clear too that the workshop took place at a (10) time when the level of activity of the VCA was in serious decline and did not revive thereafter as a result of the workshop. On the contrary, accused no. 7 has testified that the workshop did not even discuss thereafter at a zone 7 committee meeting, because it was replaced as an item for discussion by the planning of the protest against the Rabotape celebrations in Evaton and events which the evidence shows to have proceeded entirely peacefully. Accused no. 7, volume 200 page 10 470 lines 8 to 23.

Similarly, accused no. 10 recalls that a report (20) having been made by Edith Lethlake at a VCA committee meeting, but it was not even clear as to whether or not it relates to this particular workshop. In any event, the report was entirely neutral and described the workshop as having been concerned how democratic control in the organisations can be achieved. Accused no. 10 volume 167 page 8 503 lines 2 to 21.

The limited impact of this workshop is reflected and in the limited range of persons to whom the report, EXHIBIT U4(b) were circulated. A copy was to go to the (30) regional/...

regional executive committee and other copies were to go to the participants of the workshop on demand. Your lordship will find that at the tail end of EXHIBIT U4(b). The evidence is that of accused no. 21, Mr Chikane in volume 300 page 16 983 lines 11 to 14.

And although accused no. 10 had not participated in this workshop, he was cross-examined on the contents of the report, EXHIBIT U4(b). He was asked in particular in relation to the phrase to destroy the black local authorities.

It appears on page 3 of the report. Reacting to the (10) in complete isolation, accused no. 10 expressed some unease about it. Whilst observing that the report does not say the destruction of the black local authority will be through force, but will be violent, reiterating the adherence of a peaceful approach by the VCA in opposing the black local authorities act, accused no. 10 stated that he would have used the phrase without qualifying it in order to show that peaceful means were intended. An interpretation put by the court was that one of the senses in which the phrase could be read was violent destruction, although accused no. 10 (20) himself, knowing the nature of the UDF, knowing the nature of the VCA, would not have read it as such. Accused no. 10, volume 167 page 8 507 line 9 to page 8 510 line 14.

I may say that the state's tendency to cross-examine people on the contents of documents which people knew nothing about, put persons in the witness-box and more particularly some of the accused, at great disadvantage, to seek out an isolated phrase from a document which the witness has not seen before and to ask them to interpret it and to express a view on it, is hardly fair questioning of an (30)

accused/...

accused person. Although your lordship from time to time stopped the state on cross-examining people on documents that they have not seen before, the state nevertheless persisted on a number of occasions. They have led to this sort of disadvantage. It was also done with defence witnesses but we will deal with them in due course.

In fact it is submitted that the qualification contemplated by accused no. 10 as being desirable, appears from the context of the report read in its totality, something which the witness did not have the benefit of at the (10) time that he was required to address himself to the questions put. The report is considered more fully elsewhere in the argument when the documents are analysed and submissions are made to your lordship, but let us at this stage point out particularly that under the heading where do we go from here, in EXHIBIT U4(b), beginning at page 8 item 13 on page 9 records :

"Exposed powerlessness of local government, using day to day issues."

It is submitted that in the context the phrase destroy is (20) to be understood as referring to a process of destruction of credibility and that the component of violence upon which the state depends is not established ex facie the report. I merely want to foreshadow that your lordship will be referred to evidence of both Mr Molefe, accused no. 19 and Mr Chikane, accused no. 20, that workshops do not take policy for the organisation and that nobody took this as a policy of the UDF.

In an attempt to give substance to its contention that the Daleside workshop was a springboard for the violence (30) which/...

which later occurred, the state submits at page 107 of the "betoog" that the lessons learnt at this course were in fact applied in the Vaal. It gives as its examples the allegation that the so-called powerlessness of the council system was coupled to daily issues and that the co-operation with other organisations was pursued. It may be observed in relation to this argument that the state can not have it in all ways. Allegations of this sort have been made in respect of among other events, the launch of the VCA in October 1983 more than six months before the holding of the Daleside work- (10) shop. It is submitted that it is abundantly clear on any account that the perspectives of a council's powerlessness and co-operation with other organisations were ideas that had not arise at or after Daleside. On the contrary, it has been set out above the events of the Daleside workshop were not even discussed in VCA circles.

The Reverend McCamel was informed of this workshop. There is no suggestion in his evidence that this workshop resulted in any new direction of the VCA or that it propelled the Vaal towards the violence of September 1984. McCamel, (20) volume 35 page 1 569 lines 1 to 25.

We submit that the allegation is based merely on speculation and is not supported by the evidence at all.

Accused no. 10 and Hlehluku attended a media seminar held on 10 December 1983. It is denied that this seminar was in any sense pursuant to the purpose of overthrowing the state by violence. The only thing on it is really the evidence of accused no. 10 which is to be found in volume 159 page 7 831 line 26 to page 7 834 line 21.

The state does our argument an injustice in "betoog" (30)

or/...

or the defence case an injustice. What it says is that the defence was on a theme of unjustifiably alleging that the police were responsible for the violence that broke out. That is not in fact the defence case. What the defence case is, is that there was a socio-economic climate in the Vaal which on the evidence would tend to show a very deep sense of grievance against the authorities, against the council. I do not wish to be disrespectful to my colleague, Mr Fick, but his remark that the Vaal had the highest rent in the country and there had been four hundred and sixty per cent (10) increase in the rental between 1977 and 1984 was so what. We will try to show to your lordship that there were too many people in the Vaal and elsewhere saying so what when they should not have been saying so what, but they should be doing something about it.

We submit that the unfortunate violence that broke out on the 2nd escalated on the 3rd and further escalated thereafter in the Vaal, was the ultimate result of years of latent frustration in the Lekoa community. In addition to the widespread impression that the local government (20) authorities were puppets of the white authorities, town residents were subjected to blatant displays of nepotism, corruption, arrogance and unaccountability on the part of the councillors and the council as a whole.

A series of specific council actions in 1984 centred around rental increases and the allocation of liquor stores. We submit on the evidence outraged members of the Lekoa community and when compared with the economic climate of the time, the political frustrations generated by the new constitutional proposals and finally the way in which the (30) security/...

security forces set about their business produced the eruption of violence.

We are going to refer your lordship to the evidence. We are in the main not going to rely on what the accused told your lordship or what defence witnesses told your lordship, but in the main what councillors and officials have told your lordship about this background which we submit led to the violence.

I am sure that portions of this summary are wellknown to your lordship, but your lordship may find it convenient (10) if we give your lordship our brief summary in relation to it with the references.

From 1977 to 1983 Lekoa was administered by a community council, the Vaal community council, acting under the supervision of the Orange Vaal Development Board. Since this period the council was in many respects subservient to the Orange Vaal Development Board, it was viewed as a powerless puppet of the white authorities. It also came to be viewed as corrupt and we will give your lordship specific instances of it arising out of the evidence. (20)

After a public statement by George Thabe, the first chairman of the Lekoa community council, that "the community council system has never worked, does not work and will never work out", the view that the council body was only a puppet body became very popular. The evidence is that of Mokoena, volume 45 page 2 230 line 31 to page 2 231 lines 1 to 28.

I recall that your lordship remarked to councillor Mokoena who gave this evidence that it was all very well for him to say that after he lost the election. This may well be and it looks as if little local quarrels and (30) petty/...

petty jealousies do play an important role like remain in the stadium, depending on who comes to power next, but that only increased the perception of the public, that what Mr Thabe said merely confirms what the people thought all the time. It all may be very well for Mr Thabe thereafter, we will give your lordship the reference later, to be the recipient of the favours handed out of a bottlestore because obviously he thought that the body that granted him that right was alright at that time, but that is how perceptions are formed. If the erstwhile chief officer or body says that the (10) council system has never worked, does not work and will never work out, why should any of the accused or the VCA be held to be parties to a criminal conspiracy to overthrow the state by violence for saying much of the same thing?

Declared Mr Thabe "I am not prepared to be anybody's puppet" and those words were given the widest possibly publicity according to the evidence of councillor Mokoena in volume 45 page 2 204 line 26 to line 30.

According to Mr Mokoena I think he adopted the word that I used that the allegation stuck. Your lordship will (20) find that at page 2 205 lines 4 to 6. My attention has been drawn to the fact that I referred to the development board and that is wrong. It was the administration board. I am sorry about that, but I am glad to see that I am being checked.

The community council was regarded as being a substitute for meaningful political rights for black persons and that this created dissatisfaction is again in the evidence of the state witness ... (Court intervenes)

COURT : The town councils or the community councils? (30)

MR BIZOS/...

MR BIZOS : The community council.

COURT : You are now still in the period 1977 to 1983?

MR BIZOS : Yes. I will refer your lordship later that the perception continued even after that. IC.8, volume 19 page 830 lines 10 to 18; page 831 lines 5 to 9.

During the community council period there were regular increases in rent which were never explained by the community council. Mofokeng - councillor Mofokeng, volume 50 page 2 490 lines 1 to 5; line 30 to 31 and page 2 491 lines 1 to 2.

During the community council period there was a common(10) phenomenon of illegal evictions due to the bribery of superintendents and that inspite of complaints to the community councils, these evictions persisted. Mogayane, volume 58 page 3 046 lines 26 to 31.

The town councillor Mokoena had himself publicly criticised the community council for spending council money on a trip to Europe. Mokoena, volume 45 page 2 217 lines 1 to 4.

COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : These allegations were not confined to mere talk in the township, because although we concede that what(20) is said by newspaper does not prove the truth of what is said in it, nevertheless they form a very important part of what perceptions in the community are. Your lordship will recall that in the Sowetan of February 1982 in AAQ14 had reported that Mokoena, the then public relations officer of the opposition Bafutsana Party, had publicly accused the council of increasing rentals, so that their monthly allowances could be hiked and so that they could take unnecessary trips overseas to portray a good picture of the South African situation. Your lordship will find that in the (30) exhibit/...

exhibit and in volume 45 page 2 217 lines 20 to 25.

Mr Mokoena was constraint to deny that he had said this to the newspaper person that had published it, but it did come to his notice and he told your lordship that he did nothing to correct it. Of course, having been elected to the council and now giving evidence as a councillor, this is the other Mokoena, not Pete, the man who rose from the position of clerk to bottlestore owner in a very short period of time. He had to concede that this was published and that is what created the perception. I do not know whether I (10) gave your lordship the reference to that. It is also volume 45 page 2 218 lines 20 to 31.

Majila, the chairman of the community council prior to 1983 was convicted of bribery along with his deputy for actions committed between 1979 and 1983. Your lordship will recall that during his trial he claimed that corruption was endemic during that period. That was in fact his plea in mitigation that was proved again. It does not matter whether it was true or not, but the person convicted of bribery says that corruption was endemic is sufficient (20) for our purposes, volume 45 page 2 208 line 25 to page 2 209 line 9.

Mayor Mahlatsi agreed that under the white administration board reign people were frustrated and oppressed. Volume 60 page 3 168 lines 23 to 25.

The accused were taken to task as to why should they say that they were oppressed and as to why should they call councillors puppets and why should they make such complaints and an attempt was made in cross-examination to say that they were making unjustified complaints for which there (30)

were/...

were no reasons. Well, the state witnesses themselves have furnished sufficient reasons for the correctness of their allegations. According to accused no. 5 the Vaal Action Committee undertook to do a survey for the residents in the Vaal Triangle. If the one thousand three hundred people that returned their form indicated that people felt that the rents were too high and that they were dissatisfied with the lack of electricity in many areas of the township. They also indicated that people did not trust the community council system, that they were in favour of the formation (10) of the residents committees. Volume 205 - accused no. 5 - page 10 753 line 23 to page 10 755 line 30.

Accused no. 10. Mr Vilakazi, was offered the opportunity to run for a community council position by Mayor Majila. He refused to become involved indicating to Majila that he believe the position to hold no real power. Majila suggested to him that if he joined the council, he would become a man of status. The interpretation of accused no. 10 of this was that if he were on the community council, he would be in a position of numerous favours, with regard to allocation (20) of businesses, allocations of stands either for residential purposes or for business purposes and also the receipt for bribes of people who were desperate for homes in the area. He also believed that this was the general perception of the community at the time. Volume 158 page 7 748 line 23 to 7 750 line 23.

The state in its argument wrongly tried to persuade your lordship along the lines that look, they were objecting to an increase of rentals long before the actual increase was announced. What I am about to read to your lordship (30) will/...

will indicate clearly that this question of habitual increases of rental led the Vaal Triangle to top the lid of rent to be paid, were something that was ever present in the minds of the people of the Vaal. The evidence is that in August 1980 rents in the Vaal Triangle were increased by R10,00. At this time accused no. 10 and some of his neighbours got together and wrote a memorandum to the mayor of the community council. To the chairman of the community council, Mr Majila, asking for an explanation of the rent increase as well as mentioning that many of the residents were unable to pay (10) the increase. There was never any response to this memorandum, but the rents were increased nevertheless. Accused no. 10, volume 159 page 7 753 line 20 to page 7 755 line 25.

Criticism was levelled against the accused during their cross-examination that they were not prepared to have any dealings with the councillors, because this was - it was their view that they must be got rid of and because they were really carrying out the wishes of the UDF and the ANC in making the country ungovernable by violence.

If there is a public perception that Mr Majila is a (20) regular receiver of bribes, if I remember correctly there were dozens of counts against him, and the evidence is overwhelming that during this period the top man on this council was receiving bribes left, right and centre, what honest man would have any dealings with him?

At an election meeting in 1983 held by Mokwane and attended by many candidates, it was said by some of those candidates that the problem in which the community was swimming were because of the present councillors who were serving on the council. For example, whenever you had to ask a (30) councillor/...

councillor to solve a problem, you had to pay a bribe first and that if you wanted to obtain a house in the community, a bribe of at least R500,00 to a councillor needed to be paid. That is the evidence of Zulu, volume 319 page 18 290 lines 2 to 27.

Then of course the climate that the country was plunged in by the - in 1983 the country was plunged into a new political situation by the promulgation of the new dispensation. It gave parliamentary representation of thoughts to Indians and Coloureds, but limited the African to franchise(10) to the newly constituted town councils.

I am urging your lordship and the learned assessor to try and put themselves in the position of, never mind Dr Motlana, never mind Dr Mokoena - Nkomo, I beg your pardon, Dr Nkomo in Pretoria, never mind the trade unionist, accused no. 10, never mind the bright student at Rhodes University like accused no. 22, but any person who works for an honest living and wants something better for his family, that there should be this funfair of reform and that the only thing that he has offered is to vote for a councillor in the Lekoa(20) town council.

These councils which were the successors to the prior community councils were widely perceived in Lekoa as being equivalent to the former community councils. The lack of parliamentary representation along with what seemed to be the mere renaming of the community councils, engendered great resentment among the African population and again we do not rely on the evidence of the accused in the main for this resentment that was there in 1983 and 1984.

To the resident of Lekoa, the party that had controlled(30)

the/...

the corrupt community council, also controlled the town council. Mofokeng, volume 50 page 2 496 lines 25 to 27.

Many people in the community perceived the council system to be an excuse for not giving meaningful political bribes to black persons in parliament. Mokoena, volume 45 page 2 238 lines 2 to 12; McCamel, volume 35 page 1 610 lines 5 to 14; page 1 613 lines 4 to 6.

According to Mokoena most of the people in Lekoa thought that the town council was still the community council and that there was no difference between the two. Mokoena, (10) volume 50 page 2 231 lines 23 to 26.

He also agreed with the general proposition that the people's perception of the council was that it was a continuous one and did not distinguish between the two. Volume 50 page 2 204 lines 13 to 14.

Masenyane is not an ignorant person. He is a court interpreter. Your lordship knows of the skills required of such a person and an interpreter of many years standing. He told your lordship that he understood that the position was that the councillors were in fact still acting under (20) the directions of the officials at Houtkop. Volume 14 page 709 line 17 to page 710 line 1.

The witness IC.8 testified that the perception of his community is that councillors were still the puppets of the white man. Volume 19 page 831 line 20 to page 832 line 15.

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The next point is of course fundamental and let us deal with the evidence of Mokoena, who agreed that because the black towns like Lekoa did not have freehold ratable property on which houses, factories and shops could be built and taxed, the local authorities would not get off the ground.(30)

Mokoena/...

Mokoena, volume 45 page 2 237 lines 10 to 14. The educated according to Mokoena, articulate portion of the community who expresses generally speaking the feelings of the majority had recognised this problem and complained about it a long time ago. Mokoena, volume 45 page 2 237 lines 15 to 20.

Many of the accused were taken to task for purporting to speak on behalf of the community. Of course, the one thousand people at a particular meeting cannot be said that they had the expressed authority of the whole community to do or say something. But not one of the councillors (10) had gathered more than four hundred votes. I think the highest we ever had in anyone of them was a total pole of six hundred for all the councillors together. How representative were they? But that of course does not assist the court in deciding as to whether or not there was a justifiable perception at the time that the councillors were not really acting for the interest of the majority of the people.

Councillor Mgcina had heard that the town councillors had been called puppets by a substantial portion of the community. Volume 47 page 2 356 line 31 to page 2 357 (20) line 2.

Of what use the lengthy cross-examination of many of the accused and the defence witnesses, some of them denying it and some of them admitting that at a particular meeting this was said, that the councillors were called puppets. It was almost like the Homeric adjective that almost accompanied the word councillor whenever people spoke.

An article in Sowetan of 30 May 1985 to be found in AAQ18 reported a statement of a town councillor from Atteridgeville. "We are real puppets. We do nothing except (30) evict/...

evict residents who do not qualify to stay or work in urban areas. Volume 45 page 2 236 lines 9 to 14.

Accused no. 7 said that under the community council system people often had to pay bribes in order to obtain sites for houses or businesses and also that this would increase many times, sometimes even twice in one year. Volume 200 page 10 442 lines 11 to 25.

Accused no. 10 felt very much insulted, to use his own words, by the new dispensation in 1983 because it offered him a structure which gave him no control over his own (10) life and his own country and that everybody that he met was really concerned about that position. Volume 159 page 7 758 line 9 to 7 759 line 7.

I am going to refer your lordship to Professor Van der Walt's report and I am not unmindful that portions of it may - or let me say that it is not tendered for the purposes of disapproving the truth of the statements therein contained, but ... (Court intervenes)

COURT : What does it prove then?

MR BIZOS : Substantial portions of it have been confirmed (20) by evidence and they prove perception.

COURT : It would not prove perception, because Professor Van der Walt's perception is irrelevant.

MR BIZOS : No, but he - this ... (Court intervenes)

COURT : You can refer to the evidence which then quotes Professor Van der Walt.

MR BIZOS : In the main I am going to do that.

COURT : You can do it the other way round, but ... (Mr Bizos intervenes)

MR BIZOS : In the main we are going to do that, but what (30)

I am saying is this, that perceptions are very often created by the expression of opinions. Of course we have the difficulty that Professor Van der Walt's opinion was expressed ex post facto. I am not unmindful of this, but what I am saying to your lordship is this, that it is not as if the accused have come here to tell your lordship of particular incidents which would - which were calculated to damage the reputation of their political opponents, namely the councillors. There is considerable body of evidence that this perception was widely held. (10)

Your lordship will find that in volume 159 page - this is the evidence of accused no. 10 - 7 759 line 10 to page 7 760 line 6 - that a portion of Professor Van der Walt's report is confirmed by the witness and expresses in these words "The Coloured and Indian can now take decisions with the white man. The black man in the homelands at least has some rights but what about me who was born here, whose father was born here, whose grandfather lies buried here?" That portion as a perception was confirmed by accused no. 10 at the pages that I have given to your lordship. (20)

COURT : What is the reference to Professor Van der Walt's report?

MR BIZOS : AAQ34 and the portion that is confirmed appears in the evidence of accused no. 10 at the page numbers that I have given to your lordship. I am sorry that I have not got the precise passage from the quote, but I think we can get it.

COURT : It does not matter, because it will be marked in mine and in the assessor's. We will have marked it.

MR BIZOS : Despite the town council being elected, the (30)
influence/...

influence of the Orange Vaal Development Board was ever present and we will refer your lordship to the evidence which confirmed the suspicions of the people in the Vaal that the town council was still a front for the Orange Vaal Development Board. The instances of evidence relating to this include - and some of this is so brazen, with respect, with the officials, that, the town clerk, the officials of the board not caring as to what perception this would create. The first example in Bophelong during August 1984. People had been required to pay a deposit of R50,00 electricity (10) account, which had been done without notice either to the council or to the public and this is the evidence of the state witness Mgcina, volume 47 page 2 354 line 23 to page 2 355 line 11.

COURT : Was that from the Orange Vaal Development Board or was that from the superintendent?

MR BIZOS : From the superintendent.

COURT : Who is not under the Vaal Development Board, is he?

MR BIZOS : Well, he was seconded.

COURT : So, he is under the town council? (20)

MR BIZOS : This is really where your lordship's analysis of the situation is obviously correct, for anyone who would sit back and say that this is the de jure position. To the man in the street, you have a superintendent who was there before the town council was elected, without wishing any disrespect to the name, Mr Van der Merwe was there before and Mr Van der Merwe is there now. Now, he says you must pay R50,00 deposit, the council knows nothing about it, he was known as an employee of the board. What is the public perception going to be, once the council does not know (30) about/...

about it? If there was anyone there to tell them you know, this is really your employee and you must discipline your employee, but that is not the way in which perceptions are created, because Mgcina himself says that this reinforced the view that councillors were persons without any real power and that is a quotation from his evidence in volume 47 page 2 357 lines 3 to 7.

The councillors who were elected to black local authorities were seen as being powerless to do anything about the grievances of the black community. McCamel, volume 35 page (10) 1 611 lines 17 to 28.

We reiterate under this heading the evidence of Masenya who understood the position to be that councillors were in fact still under the officials at Houtkop. I have given your lordship the reference. We might as well have it again. Volume 14 page 709 line 17 to page 710 line 1.

Again to remind your lordship of the evidence of IC.8 and your lordship has a look at EXHIBIT AAQ20. A summons of thoughts which demanded the presence of certain Lekoa residents at a secret disciplinary meeting on 16 August (20) 1984, because they allegedly misbehaved at a prior council meeting, was written on the letterhead of the Orange Vaal Development Board and it was signed for the chief director of Orange Vaal Administration Board.

Again excuses can be made with respect that what were they supposed to do with the letterhead? That it was part of the economy drive, but at least the slightest bit of care, if they were serious about their position, a minor amendment even when they sign that it was not on behalf of the Orange Vaal or the chief director of the Orange Vaal Administration(30) Board/...

Board.

15% of the income of the Lekoa town council was paid to the Orange Vaal Development Board. Mahlatsi, volume 60 page 3 148 lines 25 to 30.

This was inspite of the fact that about one thousand five hundred employees had already been taken over by the Orange - from the Orange Vaal Development Board and the council was to pay them. Your lordship will find that at page 3 151 lines 28 to 31.

Let us take the evidence of some of the officials, (10) the evidence of Mokoena. The council made its decision to increase house rents without even looking at the prior records of the Orange Vaal Development Board which had previously administered them. Mokoena, volume 44 page 2 166 lines 1 to 14.

There was no discussion at all how the rent money was previously allocated or what it was used for. Volume 44 page 2 166 line 15 to page 2 167 line 4.

Neither was there any enquiry into whether the Orange Vaal Development Board operated a profit or a loss or (20) at what rate of interest the money that was received was invested. Volume 44 page 2 167 lines 8 to 31.

In fact the 1984 budget was actually prepared by officials who had previously worked for the Orange Vaal Development Board. Volume 44 page 2 168 lines 21 to 23.

This - we will be dealing with the meetings of August, the 5th, because we will submit that your lordship will make a finding on the balance of probabilities on the weight of evidence that the tremendous opposition to this increase was actually voiced at those meetings, but what was said (30)

at/...

at the meeting of the 5th of August 1984 which was held belatedly to announce the rental increase, when confronted by complaints, councillor Zegobane claimed that the council was not responsible for the increase in the rent. It was actually the municipality that had done so. That is the testimony of Mbatiyaswa, volume 331 page 18 901 lines 19 to 25.

COURT : Was he not repudiated at the same meeting?

MR BIZOS : By councillor Dlamini?

COURT : Yes?

MR BIZOS : But now ... (Court intervenes) (10)

COURT : Just mention it.

MR BIZOS : It is the next heading. Immediately afterwards councillor Dlamini got up and said that the councillors had the power to arrest and the power to release and said that in actual fact the rent was supposed to have been increased by R50,00, but because of those who disagreed with that kind of increase, they agreed and fixed it to R5,90. The same witness, volume 331 page 18 902 lines 5 to 12.

Matthysen was seconded from the development board to the Lekoa town council from May, 1 1984. For the previous (20) three years he had been employed by the development board in Lekoa region and would have been regarded by the people in that region as a person belonging to the board. That is his own evidence. Matthysen, volume 55 page 2 828 line 7 to page 2 829 line 4.

Another question to the continuing influence of the Orange Vaal Development Board is the insinuation that board control is information, that is at least in one instance given by Matthysen, the information that there had been R5.5 million in the reserve fund, was not conveyed to the (30)

town/...

town councillors. Matthysen, volume 56 page 2 856 lines 5 to 29.

Ordinary people in Lekoa would still during 1984 have viewed the town clerk, Mr Louw, as a person who was very closely associated with the development board. Again the evidence of Mr Matthysen, volume 57 page 2 926 lines 22 to 25.

The continuing role of the Orange Vaal Development Board emerges also from the fact that a notice which was distributed to the residents, EXHIBIT AAQ19, was to say (10) the least ambiguous for the reasons that the rent was being increased. The one thousand five hundred people who had been transferred from the town council and the 15% which went to wages in the budget. Again this is the evidence of Louw, volume 57 page 2 926 line 26 to page 2 927 line 21.

We submit that the evidence of the ineffectiveness of the council is further corroborated by what happened after November 1983. Despite promises made the council did not improve the plight of the people living in the area. The corruption, the evictions and the lack of consultation (20) continued.

Despite the state's attempts to show that there were some meetings in the early part of 1984 in which people were asked what do you want, there was really no consultation on the question of the increase of the rent. The evidence is that during 1983/1984 was a time of severe economic pressures that lay against the township residents in the Vaal Triangle and that is proved that there was tremendous rate of unemployment in the Vaal. Mokoena, volume 42 page 2 172 lines 18 to 22. (30)

That/...

That it had been necessary to scale down the number of projects that were to be undertaken because of the bad economic climate in the area. Mofokeng, volume 50 page 2 498 lines 1 to 5.

In a contemporaneous town council report, EXHIBIT AAT3 it was recorded that this was a difficult economic climate. Matthysen, volume 56 page 2 856 lines 15 to 21.

The majority of the people found it difficult to make ends meet. Many people were not happy about the increase. Councillor Mogayane himself found the decision to increase (10) the rental particularly disturbing. Volume 59 page 3 057 line 12 to page 3 058 line 24.

Mayor Mahlatsi said that he was aware of the retrenchments in the steel industry in the vicinity of the Vaal Triangle. Volume 60 page 3 147 line 18 to page 3 148 line 9.

According to McCamel in the Vaal community it was a bad time. Prices were increasing and people were losing their jobs. Through the extended support system families, the result and burden was spread throughout the community. McCamel, volume 35 page 1 618 line 4 to page 1 619 line 11. (20)

An example of this is to be found in the evidence of Miss Myeza who lived in a four roomed house with eleven other people. Three members of the household were working and one received a pension. Not including the pension, the net monthly income of the household was approximately R319,00. This was not enough to maintain the family and on many occasions the house would be locked for failure to pay the rents. This was the case prior to the proposed increase in 1984.

Such was the situation that Myeza's father thought that he would move from Sharpeville to Hershell where he (30)

had/...

had originally come from, because he was unable to afford the proposed rent increase. Volume 312 page 17 923 lines 7 to 11.

Again one may say well, the family was too big, it was bad luck, why should there be a responsibility on the town council or anyone in authority to do something about it. Well, if there were lines of communication, it may well have been that Miss Myeza would not have suggested to Father Moselane, accused no. 3, that came to have a pamphlet roneed for his congregation, that meetings would be held of the (10) residents as a whole. Things might have been different if anybody listened to what was said at the meeting of the 12th and called people together but of course all that was ignored.

The economic climate in the Vaal Triangle was very hard hit by the rise of inflation as well as retrenchments and the steel industry was dominant there. This downturn occurred in 1983 and continued until 1984. That was the evidence of accused no. 10, volume 159 page 7 773 lines 13 to 21. (20)

And again, according to Myeza, a new thing was introduced. Families would also have to pay the cost of a lodger's permit for any of the children living in their house over a certain age. Volume 312 page 17 913 line 27 to page 17 914 line 4.

The witness Mary Zulu worked as a domestic servant and earned R5,00 per day in 1984 prior to the rent increase announcement. Her husband was ill and not working. Three children were living at home. She was paying rental R50,06. She decided to attend the meeting of the 26th because she (30)

found/...

found it impossible to keep up with the rent. Volume 319 page 18 281 line 8 to 18 282 line 3.

This was not something new. Residents of the townships had themselves already developed complaints about the councillors long before they attended these meetings. Mary Zulu again, volume 319 page 18 289 lines 18 to 23. According to her these complaints became all vociferous because the councillors had promised to give the residents good treatment after their election and solve the problems, but they had not done so. Volume 319 page 18 289 lines (10) 24 to 29.

Even a person in the position of accused no. 8, Mr Nkopane. He was paying R82,00 per month and earning R435,00 per month. He says that this resulted in a financial hardship because of this money he had to pay for not only the rental but the children's schooling and food and giving assistance to his father-in-law who had suffered a stroke. Accused no. 8, volume 169 page 8 724 line 6 to 8 725 line 11.

In the context of the economic pressures which emerged from the foregoing paragraph, we submit that it is (20) readily understood that the report appearing in EXHIBIT AAQ21 would have occasioned further displeasure concerning the rent increase of 1984. Matthysen agreed that this article which quotes Lekoa - the Lekoa mayor to the effect that the only reason for increasing the rents was a transfer of employees to the Lekoa town council, appeared in the newspaper widely read in the area and the reason given by the mayor in this report for the increase would have been taken by the residents as the real reason for the increase. Matthysen, volume 55 page 2 829 line 29 to page 2 833 line 2. (30)

Matthysen/...

Matthysen agreed further that this report, EXHIBIT AAQ21, would have been received by people in Lekoa in effect of a notice of the rent pending increase. The report was never referred to at any meeting of the Lekoa town council, at which Matthysen was present.

Of course - there is an answer to this possibly. These hard luck stories do not really matter. A township has got to be administered and in the view of some, the only way in which you could raise the money is by increasing the rent. There are people with strongly felt views the other way. (10) I do not want to repeat them. They have been developed by a number of the accused, Dr Motlana, Dr Nkomo and others. One cannot create townships which have to depend for capital expenditure on the rent paid by the people who are living on the breadline.

The 1984 rent increase was a continuation of the pattern of increases from the community council era which had been made without the consultation or inspite the protest of the community residents. The evidence in this regard also in the main comes from state witnesses. There had been rent (20) increases made practically every year from 1977 to 1984 without reasons being given to the community and without any notice of the increase. Mokoena, volume 45 page 2 239 lines 20 to 29.

From 1979 strong objections had been voiced by the community to these rent hikes. Nobody in Lekoa needed the formation of the UDF in 1983 in order to take up day to day issues.

According to Mgcina the position had been quite reverse, in the sense that there had always been meetings in the (30)

past/...

past held to discuss proposed rent increases but there had been none in 1984. Mgcina, volume 47 page 2 351 line 19 to page 2 352 line 6.

We do not know which of these two state witnesses the state is asking your lordship to accept, but whichever, the one is better than the other as far as the inference is concerned. If there were no meetings before that were banned, if there had been meetings before and if there had been no meetings in 1984, it is even worse for the state. From 1977 there were rent increases and these created dissatisfaction(10) and sometimes resentment among members of the community even before August 1984. Mofokeng, volume 50 page 2 490 lines 1 to 8.

According to Phosisi it was a major grievance of the community that the council had not previously informed the community of the reasons for the rent increases. Volume 53 page 2 711 line 21 to page 2 712 line 5.

It is a matter of some insight into the legitimacy of the complaints about the workings of the town council and its lack of proper democratic foundation, that not only (20) were there no consultations conducted with the community, but there was no attempt on the part of officials done before the rent increase in 1984 was decided upon, to conduct any investigation into the level of the Vaal rents in relation to those of other areas. Your lordship will find that in the evidence of Matthysen, volume 56 page 2 894 lines 7 to 12.

Although it cannot be argued that such a survey would necessarily have produced a different decision, the information it may have revealed is startling. Professor Potgieter has confirmed that the effect of EXHIBIT AAQ namely that there(30)

was/...

was a percentage increase of 469,50% in the Vaal from 1977 to 1984. When compared to approximately twenty other places it is clear that the Vaal Triangle was the highest percentage increase of all areas. The state has argued to your lordship so what, there was no evidence that the people in the Vaal were not better off from the point of view of housing than others. That was put to Professor Potgieter and as a social scientist he must be given credit with knowing what he is doing. He was not comparing things that cannot be compared and that his evidence is that he had no evidence that the (10) people in the Vaal enjoyed any superior accommodation to any of the other areas mentioned in the comparative table. Volume 424 page 24 799 line 19 to page 24 801 line 6.

I want to now deal - we are not unmindful that it is not your lordship's function to give a judgment on the validity in law of the proposed - for the proposed increase. I do have an argument which I want to advance to your lordship, that in fact it was patently an invalid attempt to increase the rent. I only have to refer your lordship to the statute and the proclamation regulations, in order to show the (20) slovenly and who cares type of attitude in which the affairs of this council were administered.

The local town council or the Lekoa town council is a local authority in terms of section 1 and 2 (i)(a) of the black local authorities act no. 102 of 1902. I will refer to it as the principal act.

The Lekoa town council was formed by way of a government notice no. 2041 published in Government Gazette number 8885 of 16 September 1983. In terms of section 27(1) of the principal act, the local authority may make by-laws with (30) the/...

the approval of the minister on any matter within its powers. Section 27(4) of the principal act requires that the by-laws so made should be published by the minister. Further requirements for the making of by-laws by local authorities, such as the Lekoa town council, are set out by regulations made by the minister of Co-operation and Development, by government notice R1993 published in Government Gazette 8886 of 16 September 1983 and we will refer to these as the by-law regulations. Section 2 of the by-law regulations provides that no by-law shall be made by a local authority save on (10) a resolution adopted by a duly constituted meeting of such local authority authorising the making of any such by-law. Section 3 of the by-law regulations provides that the by-law is to be published and provides the manner in which this publication should take place. Let us deal with the relevant ones only. Let me just indicate to your lordship that our submission will be at the end of all this that a lawful march was organised against an invalid rent increase and that must have tremendous repercussions for the state case who says ... (Court intervenes) (20)

COURT : Is it argued that anybody knew the march was lawful and anybody knew the increase was invalid?

MR BIZOS : Many witnesses told your lordship that they did not know the march to be unlawful, but they gave the wrong reason. I do not know that that makes any difference to the state case. The other was that there was talk particularly in the Sharpeville meetings about the legality of this and the taking of advice, but the reality of the situation where a conspiracy to overthrow the state by violence, is concerned, it would be ironic if in fact a lawful march planned (30) against/...

against an invalid increase of the rent, was evidence of treason. The first requirement is that the chief executive officer shall forward a copy of the resolution adopting the by-law and the draft of the by-law to the director of local government for submission to the minister for consideration by him.

COURT : Within what period? Before it is adopted?

MR BIZOS : Before it is adopted. All this is before it is adopted.

COURT : To who must he send it? (10)

MR BIZOS : To the director of local government for submission to the minister.

COURT : Wait a moment. Is the rent increase an amendment of an existing by-law?

MR BIZOS : I will deal with it in the argument. It has to be done by by-law.

COURT : Yes.

MR BIZOS : It is in effect a by-law which increases the rents and service charges. The chief executive officer shall cause a notice to be published in two issues of a (20) newspaper circulating in the area of the jurisdiction of the local authority, setting out the general purport of the draft by-law which notice states that a copy of such draft by-law is lying for inspection during normal office hours at the office of the local authority for a period of fourteen days as from the date of the second publication of such notice and which notice also states that any resident of such area or jurisdiction who desires to record any objection to such draft by-law or who wishes to comment thereon, shall do so in writing to the chief executive officer within (30)

twenty-one/...

twenty-one days of the second publication of such notice. The other requirement is in terms of section 4 that after the expiry of the periods referred to and a consideration of any objections that may have been submitted, the minister may in his discretion approve the by-law, amend it or reject it and cause an approved or amended by-law to be published in the Gazette.

In the definition section 1(4) the chief executive officer is the town clerk of the council. If your lordship has a look at the notices and the minutes which are the - (10) the minutes are to be found on EXHIBIT AAT3 and the notices were proved on EXHIBIT AAT19 - no, it is not 19, I am sorry, I have a note of it in the argument. I will find it in a moment. 22 It may be a wrong reference, but I will look into it. I want to refer your lordship to AAT3.

ASSESSOR (MR KRUGEL) : The budget report.

MR BIZOS : And the Rand Daily Mail and Vaderland notices is AAQ13. I will check the AAT reference during the adjournment.

COURT : I do not think that validates an increase in (20) rent.

MR BIZOS : No, I did not say 13. I said I will check the AAT reference during the adjournment.

ASSESSOR (MR KRUGEL) : And the AAQ reference?

MR BIZOS : 22. Your lordship will see, leaving aside whether the regulations are otherwise complied with, that the notices in the Rand Daily Mail ... (Court intervenes)

COURT : What are the dates of these notices?

MR BIZOS : They were published on 1 August 1984. Your lordship will see that the one is signed Town Council of (30)

Lekoa/...

Lekoa, Orange Vaal Development Board, D.C. Ganz, director.

The one in the Vaderland is signed by D.C. Ganz, hoofdirekteur - it is difficult to read it on my copy but it looks like Stadsklerk van Lekoa.

COURT : Hoofdirekteur, Stadsklerk.

MR BIZOS : On the right-hand side it is hoofdirekteur and on the left-hand side it looks like Stadsklerk van Lekoa. Oranje-Vaal Ontwikkelingsraad. Your lordship knows who the town clerk was.

COURT : It was Mr Louw.

(10)

MR BIZOS : Mr Louw.

COURT : Was this put to Mr Louw?

MR BIZOS : Oh, yes. He said something about that it was a mistake or it may have been if I understood his evidence correctly, although he did not want to do it expressly, that the newspapers would give credit or would publish on a telex message from the board and not from the ... (Court intervenes)

COURT : Yes, but did you put to Louw that by reason of these facts the notification was invalid?

(20)

MR BIZOS : Oh, yes. This was put to him. I submit with respect that there is no answer to this and it is not the only reason. It is not the only reason why on the statute or on the regulation that this was invalid.

I think I have found the correct exhibit number. We will look at it during the lunch hour.

We would submit that the point about giving notice of the proposed by-law is to give the opportunity to people to object, if they want to, but also of course here, it goes a bit further. It also shows - it would have shown to anybody/... (30)

anybody who had anything to do with the concerns of the Lekoa council that the allegation of being a mere front would have been justified on the official notices that were published on behalf of the Lekoa town council or the board or apparently both. Anyone reading the notice on the face of it, would have been entitled to assume that they treated each other as they had at least concurrent jurisdiction in these matters.

The resolution which I will find for your lordship, I have a note of it, passed by the council on 29 June 1984 (10) there is an annexure to AAT6 and your lordship will find it on the printed page 40 and what it says - the resolution says is that the present stand rental in all the townships situated in the area of the jurisdiction of the town council of Lekoa be increased with R5,50 per site per month. Those are the minutes of 29 June 1984. It is annexure C to the report that your lordship marked accordingly. What we draw attention to is that, if your lordship has a look at AAQ22. They do not even purport to accurately reflect in the advertisement what the resolution was. In the newspaper reports (20) your lordship will see that a notice of the increase refers to various tariffs applicable in the area of jurisdiction of the local authority of Lekoa. There is a difference between stand rental and various tariffs applicable in the area of jurisdiction of the local authority of Lekoa. To make it a little bit more difficult for anyone to make any sense of it, your lordship will remember that in AAQ19 which was a letter that went out to the various residents refers to it that this increase is for both service charges and rentals. It says "A levy of a general increase in the (30) service/...

service charges in an amount of R5,90 per month for the board's houses and R5,50 per month for private houses.

It is perhaps a pity that an application was not made to have this proposed increase invalid, but it was not and on that ground alone we would submit that it is a relevant fact, but there is another ground.

COURT : Let me just see what your ground is. As I understand it the Gazette says that there has to be notification of the fact that an increase is proposed.

MR BIZOS : Yes.

(10)

COURT : There was notification of the fact that an increase was proposed. The fact that Ganz signed the notification and not the town clerk, what difference does it make?

MR BIZOS : A big difference.

COURT : Why is the difference? This is not a resolution that is published as such. People are notified that they must come and look at the document which is lying open for inspection for fourteen days.

MR BIZOS : Signed by who?

COURT : Signed by a person who calls himself Ganz, but the notification is published. Had nobody signed it, what difference would it have made?

MR BIZOS : But surely, if a notification is published and a particular statutory body has to do that publication through the authority of its chief officer, can someone else purport to give that notification and publish that? If this application had come before your lordship in order to restrain the increase on 1 September, would your lordship, with the greatest respect, have had any difficulty in saying that go and put your house in order?

(30)

COURT /...

COURT : I do not know what I would have done. I am just debating the matter with you, because there was a notification, the notification did notify the people to come and look at the document for inspection. A person called Ganz signed it.

MR BIZOS : On behalf of the board.

COURT : And also the "stadsklerk". On behalf of the board and the "stadsklerk." You have read to me, I did not look at it, it says "stadsklerk" and it says "Development Board" and it is signed "Ganz". So, it is on behalf of both. (10)

MR BIZOS : The notice purports to have been issued by Ganz on behalf of the board. That is the only construction ...
(Court intervenes)

COURT : Where does the "stadsklerk" come in that you referred to?

MR BIZOS : It may be interpreted that he holds more than one position.

COURT : I have not got it in front of me. I understood you to say on the one side it is "stadsklerk" and on the other side it is the board. (20)

MR BIZOS : On the right-hand side - it is not the same in both newspapers, but on the one side the person ... (Court intervenes)

COURT : So, a person who calls himself Ganz "hoofdirekteur", we know he is of the Vaal Development Board, signs on behalf of his board and of the town council of Lekoa.

MR BIZOS : What authority has he got to do that?

COURT : That is a different matter. I do not know. I do not know whether he was authorised or not, but should I decide this, was this taken up with Louw, except in passing (30)

to/...

to say well, this indicates how subservient the council was to the development board.

MR BIZOS : I do not remember the precise words that I put to him and I will have to look them up, but I submit with the greatest respect that the - but let me try and find those words and take the matter up again. I do not think that it really matters whether it was nor not, with the greatest respect.

COURT : No, the question is whether somebody can sign as an agent for somebody else this type of notice? You are (10) asking me to decide ex post facto whether the notice was valid or invalid, when nobody ever thought of taking the matter to court up to this stage. Whereas we know that all over there have been this type of applications. Why was it not brought in Lekoa?

MR BIZOS : It may be that the people that were active were arrested before they could do anything about it or there was this unfortunate violence where people could not come in and out, on the evidence that your lordship has heard, but be that as it may, I would submit that the notice is (20) not the only reason. Let me go on to the other reason and then we can ... (Court intervenes)

COURT : We will take the adjournment now to 14h00.

COURT ADJOURNS UNTIL 14h00.

THE COURT RESUMES AFTER LUNCH

MR BIZOS: Perhaps I should ask your lordship to defer my further argument on the question of the validity of the rent. I have not been able to find the references in the short period available having regard to the other things that had to be done during the lunch hour.

COURT: Yes, we can come back to it later.

MR BIZOS: I will come back to it because let me say it is not our contention that the mere fact that the notice may be invalid that that entitles people to go over to violence (10 but what is of some..

COURT: No, I did not understand you to say that.

MR BIZOS: No but it may be of some importance because the way the state put it, but I want to get all those references out, the way it was put to some of the accused and the witnesses was that it had to be withdrawn but in truth and in fact we will show your lordship that way into 1985 there was no publication at all and it was not out of a sense of powerlessness that the local authorities were not collecting rent. They did not pay attention to the statutes, that is really (20 the - it may or may not have been put into some sort of order late in 1985, beginning of 1986 judging by the notices but insofar as it is relevant we will show your lordship that it was not really...Now what we also submit is that the evidence does not show that the increase in rents were related to the services rendered to the residents because every time your lordship will recall the evidence, every time an increase was made it was in order to improve the services. Leaving aside the incorrectness of the assumption that capital expenditure had to come out of rent, the evidence clearly shows that (30

there / ..

there were increases but no improvements. Mokoena says that every year that rents were increased there was talk of the council, of electrification, extension of electrification, parks, fencing and the making of signs for roads, road making etc. Your lordship will find that, Mokoena, volume 45 page 2 249, 7-13. Councillor Mgcina agreed that despite earlier rent increases the streets were still unlit and houses were flooded and there was flooding on the roads. Volume 47 page 2 352 lines 27 to 31. Certain public works were done only in Sharpeville, yet the rents of everybody in the Vaal (10 triangle were increased and that there were objections to this. Volume 45, page 2 240 lines 1 to 6. Now what is the effect of saying to a township, to the dwellers of a township like Boipatong that has had electricity all this time, to say that we require an increase in rental in order to have capital expenditure on electrical installations. If there is any logic in it, it was certainly not explained to the people most vitally affected by this. Councillor Mofokeng in his party manifesto allege that in the past rent increases had been accompanied by promises to what was to be done (20 with these increases but those promises were not fulfilled. Mofokeng, volume 50, page 2 493, lines..

COURT: 2 - 500?

MR BIZOS: Sorry, m'lord?

COURT: Two thousand?

MR BIZOS: 2 493 lines 9 to 19. Councillor Mofokeng felt that if he had argued for more projects in his district he would have been outvoted because the people did not have the money. It is now - I will give your lordship the reference to that, volume 50, page 2 498 lines 14 to 17. The state takes a (30

very / ..

very simplistic line that if you wanted these things to happen you must expect the increase in rent or it would compare the salaries or wages of people 5 or 6 years ago with the rent now and try to work out a proportion. I would submit that on a proper analysis that sort of thing does not cut much ice. If people were living on the bread line and are still living on the bread line these comparisons do not enter their mind and they are hardly relevant to the issue. If people were very short of things in 1978 and they are very short of things in 1984 and there is annual increase of rent they are going to balk against the payment of the increased rental (10 even if the arithmetic or the simple statistical analysis may tend to show that they were not worse off than they were in 1978. If you were badly off in 1978 it does not help to say well you are just as badly off now. People wanted to see an improvement in their lives.

M'lord, this whole question of a dispute between the state and the defence as to whether day to day issues were really exploited by the UDF and the VCA or whether they were deeply felt grievances is really dealt with by a very ordinary (20 man in many ways - Mr Ramakgula, accused no.9. In volume 179 page 9 201 line 1 to page 9 204 line 3. I am sure that your lordship has not got to read these three pages in order to be reminded of what made him lead the march, something that was incidentally lost by the state in submitting his personal liability. This was a man whose door was taken away and if ever a sad story were ever told in any court of law I think that this must really rank fairly high up, having bought a door he falls in arrear with his rent and he finds in the middle of winter that his door has been removed as (30

a method of enforcement of a civic obligation to pay rent. The facts speak for themselves, I do not want to say anything more about it. There were community objections to the rental increases which were not heeded. Although the decision to increase the rent was made on 29 June 1984 it was not officially announced to the community until 5 August 1984. Somebody thought of putting out notices dated 2 August but they were kept back your lordship will recall in order to give councillors an opportunity to have some meetings. After the announcement there was much public objection to it, (10 however no notice was taken of the objection whatsoever. In the background there could have been nothing which was more contemptuous of the feeling of people than the attitude of the council and whoever else was responsible. Let us look at some of the evidence of the background. Eight members of the Bafutsana Party were elected to the Lekwa town council on the platform of no rental increases without explanation, almost no taxation without representation type of slogan. Your lordship will find that in volume 50 page 2 493 lines 9 to 11. That is the evidence of Mofokeng. However, none (20 of these councillors voted against the rent increase. Page 2 493 lines 24 to 26. In response to this announcement of the increase in rental there were public resignations from the Bafutsana Party by members who believed that the vote in favour of rental increases was a betrayal of their party's principles. Your lordship will find that in the evidence of Mofokeng, volume 50 page 2 494 line 31, page 2 495, line 29. Henry Mokwane who had been an organiser of the Party of the Poor as a member of the Bafutsana Party along with other members of the Bafutsana Party raised their objections

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to the rental increases at the meeting of the town councillors on 5 August 1984. Your lordship will find that in the evidence of Bosisi volume 54 page 2 766 line 7 to page 2 767 line 5. There is one piece of evidence which for cynicism one has to go a long way. The council had decided not to divulge news of the rental increase until 5 August 1984, from a councillor himself. Mogadjane, volume 59 page 3 061 line 10 to 18 to page 3 061(a) line 7 to 13. Compare this to the amount of publicity that is given when staple foods are to increase in price or other matters are to be done people (10 are prepared for it by foreshadowing the happening, calling for comment about it; getting people to say well, in view of the increase in the cost of this and the increase in that we will just have to pay a bit more for the milk otherwise you won't have farmers producing milk and so on, but of course nobody thought of the views of the people of Lekwa were of any importance and the council deliberately decided that they should not make known the fact that there was going to be a rent increase. A meeting was held on 5 August 1984 to explain the rental increase to the community. (20

At this meeting someone immediately asked the obvious question: why do you come to us with an accomplished fact and that is evidence is given by Fosisi, herself a councillor in volume 54 page 2 770 lines 5 to 11. It was quite clear to Fosisi from the audience's reaction to this question that they were not satisfied about the rental increase.

Again Fosisi, volume 54 page 2 770 line 18 to 21. Insofar as opinion on this issue may be admissible according to councillor Jogosela the rent increases were a material cause for the unrest. Jogosela, volume 49, page 2 431 lines 20 to 22. (30

Maomoglatsi stated soon after the violence of 3 September that he hoped that freezing of the rentals would lead to the end of the unrest. Moaglatsi, volume 62 page 3 258 line 24 to 25. Councillor Jogosela stated that given the events of 3 September 1984 it would have been a good idea to have cancelled the rent increase beforehand. We submit that a better way of putting it, not to have proceeded with the proposal to have the rent increase because there was in fact no rent increase. Volume 49 page 2 430 line 2 to 25. The problems of the unemployed, the aged and others who could (10 not afford the rent were never discussed in the council meeting when the rent increase was decided. Mogodjani, volume 59 page 3 069 line 22 to page 3 070 line 16. That it be remember m'lord that on Mogodjane's own evidence he had been elected on a platform of doing something to reduce the rents of the elderly. Volume 58, page 3 048 line 31 to page 3 049 line 11. He goes on to say that he was unhappy about the rental increase in response to unhappiness expressed by people at the council meeting on 29 June 1984. Again in volume 50, Mogodjane, page 3 083 line 10 to 16. At the (30 meeting held of councillor Segobane to discuss the rental increase Mr Paul Mohlapo a semi-paralysed man spoke and said the following:

"Now today we are here at a meeting convened by the councillors to come and tell us that they have already increased the rent. People like ourselves who are suffering so much, where do we get that money from?"

That your lordship will find in the testimony of Madigwaswa volume 331 page 18 899 line 2 to 5 to page 18 900 line 26.

I am almost certain that this Mr Mohlapo referred to was (30

the person who gave evidence before your lordship. Your lordship will recall that he is the man with the Inkatha background, the elderly gentleman who came into the witness-box. He expressed..

COURT: It was Paul Mohlapo.

MR BIZOS: Was it Paul Mohlapo. Yes, I think that he was the man. Nyembi felt strong about the rent increase, volume 326 line 23 to 24.

COURT: I am sorry, what page is it?

MR BIZOS: Volume 316, line - sorry could I just, I will (10 just get the page. I am sorry, I haven't got the page for that. I will give it to your lordship in due course. Mokati decided to join the march on 3 September 1984 because she was upset about the rent increase. She had been having a difficult time paying for the rent of her then salary. It is volume 324 page 18 560 line 3 to 13.

Let us look at the voracity of these councillors. Although the rent increase decision was made on 29 June 1984 councillor Mogodjani told the meeting in his ward in July that the rents had not been increased and that the council (20 was considering their complaints about increases. Volume 59 page 3 058 line 21 to page 3 059 line 9. The general evidence of accused no.8 in relation to the rent and that of his neighbourhood is to be found in volume 169 page 8 738 line 6 to 16. The evidence of accused no.3, the Rev Moselane about his attempts to consult an attorney to take some action against the increase in the rental to be found in volume 230 page 12 194 line 13 to page 12 195 line 15. It was a matter of great concern to the witness Namane, volume 317, page 18 192 line 30 to page 18 193 line 3. Nathaniel Mofala felt (30

very / ..

very strongly about the increased rent and that prompted him to join the march, volume 320 page 18 332 line 2 to 3. At the meeting held by the councillors on August 5 on which the councillors announced the rent increase many people announced their displeasure at the proposed increase but Huwaswa vol 332 page 1 891 line 14 to 18

COURT: It should be more than that, I think. 891? 18 191?

MR BIZOS: 18 901, line 14 to 18. May I give your lordship the page number of Nyembe that I did not have at the time. I merely gave your lordship the volume number, 326 and it (10 it is page 18 672 line 23 to 24. I had better put it in my notes as well.

ASSESSOR: What was the man's name?

MR BIZOS: Nyembe. I do not remember whether it is a man or a woman. I had better just check.

COURT: The witness' name?

MR BIZOS: Yes. Mr Matthysen's evidence also show a sorry state of affairs. Despite the fact that he attended all the meetings of the executive of the Lekwa town council, that is Matthysen, and in spite of the numerous accounts given (20 by amongst others councillors of the widespread dissatisfaction among the residents of Lekwa concerning the proposed rental increase he was unaware of any such dissatisfaction. Now a remarkable picture emerges from Matthysen's evidence that these councillors never made any report at meetings of the town council that dissatisfaction was being expressed against the rent increase. Matthysen, volume 55 page 2 835 line 1 to page 2 837 line 10. We submit that the only inference that can be drawn from this, that the councillors were either carelessly indifferent to the dissatisfaction (30 expressed / ..

expressed by the Lekwa residents or that they had such a sense of impotence that they did not even bother to raise these matters at the council meetings that followed the meeting of 29 June and more particularly after the 5th and even more particularly after the 12th and the 19th and the 26th. Small events, small initiatives sometimes put an end to a syndrome of unfortunate events that lead to tragedy or sometimes catastrophe. Had the council reported the dissatisfaction that was expressed at the meeting of the 5th or had the council taken any notice of what happened at the (10 meeting of 12th in Sharpeville which was reported by Mr Nkabinde in AA.26 if my memory serves me correctly and had taken some step to say the anti-rent action committee is making a lot of noises - come, let us hear you. The VCA really reacted to what was happening in Sharpeville we will submit in due course. So the non-recognition of the other group was not one way. It was not only the VCA that was not prepared to speak to the council; the councillors were not prepared to take any notice whatsoever what the residents were saying at meetings whether of councillors or at public meetings. It may (20 well be that if some initiative had been taken at the time the recent history of South Africa may have been slightly different.

That confirms the fact that there were people who had objections to the rent increase was never raised at the town council meetings. The general feedback which were received from the councillors was that there were no objections in the various wards to the increase. Volume 57 page 2933 line 31 to page 2 934 line 21.

Another very deeply felt grievance was the question (30

of / ..

of evictions. The council was responsible for the eviction of residents. The evidence shows that evictions were often carried out against the elderly or others who were unable to afford the rentals. In addition evictions were carried out illegally by corrupt officials against even those who had paid rent. Other incidents of malpractice in relation to housing also took place. Instances of evidences relating to these matters include the following: Despite a resolution by the new council taken in 1984 that persons should not summarily be evicted from houses for being in arrears (10 with their rental, the practice continued. Mokoena volume 45 page 2 222 line 28 to page 2 224 line 5. Now the fact that a resolution had to be passed is cogent evidence that this was the practice. Accused no.10 agreed with allegations in the Van der Walt Report, EXHIBIT AAQ.34, that it was common practice for local authorities to lock people out of their houses when they were in arrears with their rents. Often children would come home from school in the afternoon to find the doors of their houses locked. Accused no.10 told your lordship that he had actually seen specific instances of (20 this in volume 159 page 7 774 line 10 to page 7 775 line 15, page 7 776 line 11 to line 25. At a meeting called by the councillors, councillor Mokati was accused by a woman of selling her grandmother's house. Councillor Mofokeng who gave evidence of this, said the meaning of this was the following. If somebody is in arrears and it does not matter if they have been in the house for 20 years and have made improvements to the house, is repossessed and the councillor as a go-between sees to it that the house is allocated to someone else with a strong suspicion that money passes to the councillor. (30

That / ..

That is a quote from his evidence. And that this was in fact that they were doing according to Mofokeng, volume 50, page 2 545 line 4 to page 2 546 line 10. See also the evidence of Mokati in volume 339, page 19 362 line 28 to page 19 363 line 4. When Mr Rakgula, accused no.9, moved into his present home in 1977 after having applied for it in 1976 he was told that he had to pay four months back rental from the previous occupant before he could move in. Volume 179 page 9 199 line 8 to page 9 200 line 2. Councillor Mogadjane was concerned about evictions being executed without good reason. (10 Volume 58 page 3 043 lines 13 to 16 to page 3 044 lines 24 to 28. Even when the new council came into power there was a cripple that he had been wrongfully evicted although he had paid his rent. Again volume 58 page 3 047 lines 1 to 5. Councillor Mogadjane felt that there was a serious problem about the evictions of the elderly whose pensions were insufficient to pay the rent. Volume 58, page 3 048 lines 13 to 17. He had been proposing since 1977 a plan to reduce the rental for the aged. Volume 58 page 3 048 line 20 to page 3 049 line 13. At his elections meetings he said he would (20 definitely try to achieve this. Volume 58 page 3 049 line 9 to 11; but having been elected to the council he did not raise the issue at any council meetings prior to and including the one at which rents were raised for everyone on 29 June 1984, volume 58 page 3 051 lines 2 to 18. Councillor Mogadjane knew stories about councillors securing evictions for the purposes of their own families taking up residence and some times that they did so for bribes. Volume 59 page 3 079 line 25 to 3 080 line 19. It was the perception of councillor Mogadjane that as of September 1984 there had not been a (30

change in the attitudes of the township managers and superintendents in relation to evictions. Volume 59 page 3 081 line 1 to page 3 082 line 17. Maria Mokati had served in councillor Dhlamini's executive committee but had resigned. She resigned because he was not satisfying the community specifically he would have people evicted from their houses although they owed no rent. We will have occasion to refer to this particular witness, Maria Mokati if my memory serves me correctly is the grandmother who is shown on the film of 26 August, the one who said we spoke nicely last week and (10 look what the children had gone and done. We will submit that she is quite a remarkable woman who does not mind expressing her mind, or who is not shy to express her mind on matters that she considers to be wrong. There is ample evidence that election promises were made and were broken. I do not suppose that that is confined to Lekwa, but taken together with all the other factors in that community it must have exacerbated the feelings of despair of the community having regard to the increase without any prior notice. Nyembe attended a pre-election meeting of councillor Mokwane in 1983. The coun-(20 cillor promised at that meeting to electrify the area, install traffic signs and that he was going to speak to the whites about the rent. The things he promised were never carried out after he was elected. Volume 326 page 18 670 line 4 to 17 672 line 10. Councillor Dhlamini had made the following promises when he was elected in 1977: that nothing would be done without consulting the community; that the rent would be reduced because of the condition of the houses which he himself described as being rotten; that pensioners would receive their pension moneys at their homes which would be(30

brought / ..

brought to them. According to Mokati these promises generally speaking were not fulfilled. Volume 169, page 19 364 line 22 to page 19 365 line 12. According to accused no.8 each and every year whenever they increased the rentals they said that they were going to do certain things as improvements. Some of these improvements to use his words, were made here and there but mostly they were not. Accused no.8, volume 169 page 8 729 line 28 to page 8 730 line 3. Now the area where it has been proved beyond reasonable doubt, we submit is that there was rampant corruption by the town councillors in this community. In its other major area of jurisdiction (10 the allocation and regulation of business sites, the council was perceived of being guilty of nepotism and self-serving corruption. The evidence indicates a long-standing pattern of allocation of public resources for private gain and the abuse of regulatory power. The evidence further indicates that the primary beneficiaries of these practices were the members of the ruling Lekwa People's Party, its allies and the family of Esau Mahlatsi, the leader of the Lekwa People's Party and the mayor of Lekwa. (20

The question of the allocation of the bottle stores can only be described as a fiasco. The minutes alone show the lack of any respect for legality and morality i that council. Without wishing to be disrespectful when enquiries were made to your lordship as to why questions were being put as to why people did not pay their rent, your lordship's response was well, one must assess the morality of these people that would stay in a house without paying any rent. The morality of the councillors, the morality of these men who have done the things that come out of their own mouths (30

and /..

and their own minutes is so patently corrupt that if one were to weigh the one against the other, the scales would go down very, very heavily against them in our respectful submission. At least an unsophisticated labourer who takes advantage of a situation of troubled times not to pay his rent, has got some moral excuse that his poverty may give him. Their avarice is quite different. Previously all these establishments have been owned and operated in Lekwa by the board. The evidence indicates that the majority of the outlets and licences granted were to members of the Lekwa People's Party, its allies on the council or relatives of mayor Mohlatsi. The evidence also indicates that the sales were opposed by the community and we refer your lordship to the evidence. Of 12 liquor outlets formerly administered by the board, 9 were allocated to councillors, one to an ex-councillor, one to a partnership in which there was a councillor and one to a person who was not connected with the council. Your lordship would find that evidence in volume 45, page 2 138 line 4 to 20. The minutes of the Lekwa town council meeting of 17 July 1984, EXHIBIT AA.2 to 24 indicates that the council approved a resolution accepting tender offers for the sale of liquor outlets. Mayor Mohlatsi admits that such was a resolution of the council. That is volume 60, page 3 172 line 27 to page 3 173 line 8. Of course by the time this saw the light of day before your lordship mayor Mohlatsi claims that resolution 7.11 was a mistake. Volume 60, page 3 173 lines 23 to 24. The following month's correction to the minutes contained no mention of this resolution being an error although a number of other corrections were made. You will find those at volume 61, page 3 179 lines 11 to 18.

According / ..

According to resolution 7.11 the Mohlatsi family obtained an interest in six of the bottle stores. Volume 60 page 3 174 lines 11 to 31. In spite of the obvious conflict of interest involved mayor Mohlatsi did not recuse himself from discussion of resolution 7.11 nor did he request any of the other councillors who made tenders to do so. Volume 61, page 3 206 line 30 to page 3 207 line 14. I may say that it was not in ignorance because I recall putting this to Mr Louw as to whether the attention of the councillors was drawn to the fact that they were not supposed to vote on matters (10 which would benefit them. He did draw their attention to it and I wonder whether anyone can ever forget the response of Mr Louw because it is really worth of the punch line in a musical comedy that if all who had an interest were to withdraw there would be no quorum. Your lordship's assessor asked questions as to whether there were tenders or not. Well, there is no evidence that there were any tenders but councillor Jogosela was orally informed about the opportunity to make a tender offer for the bottle stores but he knew of no published announcement to the public as such of such an (20 offer. In his area it was not announced in such a way that people could know about it without being told by others. Volume 48 page 2 424 line 4 to 14. Even if there had been any tenders or if there were any tenders rather, let me put it that way, if there had been any tenders I think that it would have been an absolute boon to the paper industry. There would have been thousands of them. Who would not have a bottle store without putting a penny down, m'lord? Councillor Jogosela did not get any shares in the bottle stores because unfortunately nothing was left over for me to take over (30

from that. He had to be satisfied with a dry-cleaning licence after the predominantly Mohlatsi family had grabbed the lion share. In view of councillor Mccina a community perception of self-enrichment on the part of the councillors was justifiable. Mgcina, volume 47 page 2 345 line 7 to 15. Councillor Mofokeng had become aware of general rumblings in the community about the bottle stores being given over to councillors. Volume 50 page 1 488 lines 10 to 14. In explaining why a motion opposing the sale of liquor outlets to private individuals had been accepted in the council, coun- (10
cillor Mogadjane expressed the view that this was because the people opposing the motion were those who wanted the liquor outlets for themselves. This majority in the council were businessmen and some of them only acquired businesses when they were voted into the council. It was his perception as well as that of the community that these councillors were working for their own interests. Mogadjane, volume 59 page 3 067 line 14 to page 3 069 line 9. I do not know whether your lordship or your lordship's assessor has noted recently the proposed published amendments to what is the substitute (20
for the provincial council, the authority, the new..

COURT: The regional authority?

MR BIZOS: Above that, has just published..

COURT: The administrator?

MR BIZOS: Well, legislation has just been published taking this power away from councillors, if it is passed, which may also be a bit of evidence of the general state of affairs.

COURT: You mean the power to grant licences?

MR BIZOS: To grant licences and businesses to themselves.

To grant licences and businesses at all in these areas (30

and / ..

and that a new procedure, a centrally controlled procedure is going to be, in terms of the legislation. Councillor Mokoena successfully tendered for a beer garden from the board in early 1984 soon after the town council was elected. He had never been in business before, he had no capital; he did not live in the area where the business was located; he remained employed as a personnel officer whilst he was running the beer garden for which he paid nothing. Mokoena, volume 44 page 2 173 line 16 to page 2 174 line 8. At the time of his testimony councillor Mokoena had been running the beer (10 garden for nine months yet had paid nothing towards the purchase price nor did he believe had any other tenderers. Volume 45 page 2 138 lines 18 to 30. May I also remind your lordship of the minutes that nobody else was going to get the right to sell liquor for 20 years until the councillors had made enough profit to pay the bottle stores and beer gardens that had been handed to them without a deposit. So this is the morality of these people that they are in office, they pass a resolution binding their successes for 20 years in order that they may benefit themselves from a sort of (20 monopoly.

COURT: Binding their successes of course is not entirely correct. The resolution can be rescinded again.

COURT: Unless they claim that they had a contract. If they have a contract - I agree that possibly with parliamentary authority you cannot really bind it but I think if a contractual, and it looks as if a contractual obligation was created they would have been sitting pretty for the next twenty years or the are sitting pretty for the last three and a half years whilst we have been busy here and it looks as if they will(30

be alright for the next 16½ years. A loan to be made either by the board or to be arranged with the board, by the board. Of the 25 liquor licences granted by the Orange-Vaal Development..

COURT: But did not one of them go to a bank to arrange a loan?

MR BIZOS: Mokoena mentioned..

COURT: Trust Bank I think (simultaneously)

MR BIZOS: ..the alternative. He said there would be an alternative but the board would arrange that. Of 25 liquor (10 licences granted by the board, 12 went to the extended family of mayor Mohlatsi, just under 50%. Mokoena, volume 45 page 2 190 lines 19 to 26. All the stores that were sold were profitable. Mokoena, volume 45, page 2 197 lines 21 to 31. How topical this grievance of the people in relation to the bottle stores was maybe evidenced by the article written in The Sowetan on the very fateful 3 September 1984. EXHIBIT AAQ.12. The gravamen of the article is that there was a call by the community as a whole that council should resign following news that they had allocated bottle stores to (20 themselves. Your lordship will find that in volume 45 page 2 201 lines 27 to 29 and your lordship may recall that this was confirmed by Mr Rabaroko who gave evidence, the newspaperman who gave evidence for the defence later on. In my anxiety to make what I thought a good point I pre-empted the point and did not give your lordship the reference but I do not want to repeat the point. Your lordship will recall that when I gave your lordship the - that Mr Louw drew attention of the councillors to the provision of recusal. Your lordship will find that in volume 57. It was fairly recently, I think (30

it would only be half a page or three quarters of a page of your lordship's..

COURT: What is your reference?

MR BIZOS: It is volume 57, page 2 958 line 26 to page 2 963 line 7. But that was not the only form of corruption. We have already given your lordship the evidence of Magila having been convicted of bribery. Mokoena conceded that allegations of corruptions amongst councillors were well-known in the community and they were believed. Mokoena volume 45, page 2 205 line 23 to 2 209 line 29. Mokoena (10 made it part - I am sorry, Mofokeng, made it part of his campaign to publicly allege that councillors were corrupt and that he believed this to be true. Mofokeng, volume 50, page 2 539 lines 3 to 15.. IC.8 confirmed a quote from Prof. Van der Walt's report "that there were persistent extensive rumours about corruption, self-enrichment and maladministration within the black local system of the Vaal triangle" to be found in volume 19 page 836 line 31 to 837 line 8. Despite the confirmation that there were these perceptions of corruption the only person that apparently had never (20 heard of it is mayor Mohlatsi where he denies that he ever heard anything of the sort. Volume 62, page 3 233 line 21 to page 3 235, line 21. Councillor Phosisi testified that it was agreement of the community as a whole that the Lekwa People's Party, that is Mohlatsi's ruling party, was only interested in self-enrichment. Volume 52, page 2 715 lines 19 to 28, page 2 714 lines 23 to 25.

It had been reported regularly during the period 1983/1984 that the trade committee of the Lekwa council was guilty of corruption and councillors Dhlamini, Chikane, Motsoane (30 were / ..

were councillors who were members of this committee. Mokoena, volume 45, page 2 210 line 6 to 23. Councillor Mokoena had heard of an allegation that Mosale had to pay R10 000 to councillors Magile and Sekobane in order to get the right to set up a supermarket. Volume 45, page 2 211 lines 3 to 8. In 1984 now Mohlatsi's wife got a garage and a roadhouse stand. Mokoena, volume 45, page 2 212, line 14 to 17. The Mohlatsi family own at least seven businesses other than bottle stores in Lekwa. Volume 60, page 3 135 lines 14 to 23. With one exception these businesses were established (10 between 1978 and 1984. Volume 60, page 3 135 lines 24 to 28. Mohlatsi's first business was acquired while he served on the trade committee of the community council. Volume 60 page 3 129, line 8 to 13. He first served in this committee in 1978. Volume 60, page 3 129 line 6 to 7. Applications for businesses were decided upon by the trade committee both out of the community and the town councils. Volume 60, page 3 132 lines 19 to 23. For a reckless disregard of the image that they had in their community, the next bit of their behaviour documented mainly through their own evidence (20 would rank very high. At least one business owned by Mohlatsi family pays then than 25c per square metre in rental to the Lekwa town council. Mohlatsi, volume 60, page 3 139 line 30 to page 3 140 line 10. This is a standard rate paid by businessmen in Lekwa for the certain size of business. Volume 60, page 3 140 lines 9 to 11. Under this scheme of hiring out business sites the council that increased the rent in 1984 budgeted for a deficit of R52 750 on business rentals. Volume 60, page 3 140 line 28 to page 3 141 line 22. Councillor Paul Mohlatsi, the owner of five businesses himself, (30

suggested / ..

suggested whilst housing rental increases were being considered that the business rentals were too low and should be increased. Well let me be one of the first to join the chorus and say: good for you, Mr Paul Mohlatsi. His proposal was rejected. Mayor Mohlatsi, volume 60, page 3 142 line 13 to page 314 line 10. Matthyssen confirms that at a meeting of the town council when the rates charged in respect of business premises came under discussion there was no suggestion from anybody not even the town clerk, that those who were owners of businesses should withdraw from the discussion. Volume (10 56, page 2 869 line 28 to page 2 870 line 12. Your lordship heard from many witnesses that it is their belief that rate-able property should really be taxed in order to make improvements to the living areas where people live and where businesses prosper as result of the custom of the residents. Here we have the reverse position. The poor of Lekwa were actually subsidising the shopkeepers' rent, who paid 25c per square metre for their shops. The councillors according to the evidence were quick to take away stands allocated and which had not been developed timeously, but that did not happen (20 if a person concerned was a Mohlatsi or was connected or related to the Mohlatsis in some way or another. This is the evidence of Mohlatsi in volume 61 page 3 221 line 17 to 29. May I correct myself that it was not a Mohlatsi but a Dhlamini who had not developed it. Volume 61, page 3 221 line 17 to 29. Matthyssen confirms that there was no increase in respect of business premises and that although one of the councillors strongly urged that such premises should be subject to higher charges, it was decided by the council that this should not be done. Matthyssen's evidence, volume 56 page (30

2 865 lines 2 to 29. It was not only the residents of Lekwa that were treated with contempt by the Mohlatsi and members of his party, but a motion of no confidence, EXHIBIT AAQ.26 was introduced by two councillors from Sandela on 28 November 1984 but was ruled out of order and rejected by mayor Mohlatsi because Lekwa was spelled Lekwa instead of Lekoa. Volume 61 page 3 209 line 10 to 22; Louw, volume 57 page 2 973 line 10 to page 2 976 line 6. The motion alleged inter alia that deputy mayor K J Dhlamini once owed the town council R800 for the site that he had not built on for three years. (10

However no investigation was carried out by the council into this matter, Mohlatsi volume 61, page 3 223 lines 10 to 28. Despite the clear reference to him and his wife mayor Mohlatsi pretended still to have doubts as to which town council and mayor was being referred to in the motion whilst he was giving evidence in this court. I would submit that mayor Mohlatsi underestimated the intelligence of everyone in court when he gave the evidence in volume 61, page 3 212 line 26 to page 3 214 line 1. If your lordship, if he expected his lordship to believe that he did not know that this (20 motion referred to his council and that he was serious in this then he really is expecting too much. There is evidence that mayor Mohlatsi was willing to perjure himself to hide his family connections to the liquor outlets. On page 3 219 he was asked if Mr Adonis Mofokeng was his brother-in-law. It is volume 61 page 3 219. He denied knowing him or being related to any person with that name or that surname. Only later when the correct name of Sonny Mofokeng was put to him did he admit that he was related to a person with that surname namely Sonny, volume 61, page 3 220 lines 4 to 5. (30

Is a person even though he may be the mayor of Lekoa entitled to toy with his cross-examiner and when he is asked whether his brother-in-law Adonis Mofokeng had this business he says: I do not know anybody by that name or surname and the excuse for it when it emerges is that he is also known as Sonny Mofokeng. Did I give your lordship volume 61 page 3 220 lines 4 to 5? Did I do that?

COURT: Ja.

MR BIZOS: But Mboswa(?) had been trying to get a house since 1979. He was unable to get a house... (10)

COURT: Who is that?

MR BIZOS: I beg your pardon?

COURT: Who is that?

MR BIZOS: I think he was - could I spell the name? Mbatiyazwa (spells it) If my memory serves me correctly he was the short shop steward at Stewarts & Lloyds in Vanderbijl Park. Yes, apparently, I am told by Mr Fick that the spelling is actually something different - Mbatshwa - oh, oh, that is how I should have pronounced it I am told.

COURT: Mbatshwa. (20)

MR BIZOS: Mbatshwa yes, I am sorry. So the spelling is right it is just that my - although he had been told that there were no houses available residents of the township had informally told him that if he wanted to get a house he should either pay a bribe of at least R100 or pay the back rent of someone who had been evicted, which could amount up to R300. So you see the choices given and the bribe is the cheaper way of getting a house. Volume 331 page 18 897 line 9 to 22. According to accused no.10 at an inaugural meeting of the Vaal civic association councillor Mofokeng came to (30

speak / ..

755

speak. He said that he had been in the council with the firm belief that the community council would serve the interest of the people but that this had not been so. He spoke about the corruption of his colleagues and made an example that in the quarters of the council there were piles of blankets which were meant to be handed out to old age pensioners during the winter period but this has not been done; merely for the purpose that those could be used by councillors to entice pensioners to vote for them in November 1983. Volume 159 7 787 line 23 to page 7 788 line 12. If my memory serves (10 me correctly, in fact I am almost certain of that, one of the councillors actually admitted this practice. I should really try and get your lordship the reference to it. But they kept them in winter. I remember him conceding this, that they kept them in winter - that they were given in winter but they were kept back until the summer election was in the offing. Namane had heard the councillors described as being traitors, sell-outs, having taken bribes, having enriched themselves at the expense of the people before the August 26 meeting at which rents were discussed. He believed those complaints (20 to be justified. Volume 319 page 18 277 line 25 to page 18 278 line 7. From the evidence of Louw himself it is clear that the council was less than vigilant in regard to restraining the abuses by Mr Magila and although since 1 January 1984 the council had to operate under a new system, Louw agreed that the general public still regarded it as being more or less the same council. Louw also confirmed the portion of the Van der Walt report that there were many stories and rumours concerning corruption amongst councillors. Your lordship will find that in Louw's evidence, volume 57, page 2 978 line 3(30

to page 2 980 line 31. The councillors did not consider themselves accountable to the residents of Lekoa. When residents attempted to petition councillors with various grievances they were subjected to verbal abuse, threats of punishment and an unwillingness to discuss issues at meetings. Councillors from opposition parties never voted against the ruling party. Well consensus may sometimes be a good thing but if vociferously opposes a particular party but then finds almost consensus with it when one comes into office, a little bit more than a suspicion may arise. Opposition groups were not permitted to use meeting halls, thus members of the community were provided with no outlet for their grievances within the town council structures. There were no effective opposition voice on the council and instances of evidence relating to this includes - I do not want to repeat about these motions of no confidence nor to repeat the references in relation to the liquor outlets, but councillor Mofokeng's party, the Bafetsana Party and other opposition party, the Maglasedi, were denied the use of community halls during the election campaign.

Volume 50, page 2 530 lines 5 to 12. They were however (20 made available to mayor Mohlatsi's party, volume 50, page 2 529 line 20 to page 2 530 line 7. At a council meeting of 5 August 1984 Mrs Motlong got up and complained that the councillors had convicted a granny out of her house and that at that moment she had no accommodation. Councillor Dhlamini's response was: Don't bring your problems of the ward here. Those you must settle at your area where you live within your own ward. Mokati, volume 339, page 19 362 line 28 to page 19 363 line 7. Your lordship will recall that I said that there was a concession in relation to the blankets and (30 that / ..

that it was a concession made a councillor. It in fact was not made by a councillor, it was a concession made by Mr Louw which may give it even greater authority. It is in volume 56, page 2 913 and I am sorry for claiming credit for it m'lord, I did not ask the question. Your lordship asked the talkative Mr Louw something entirely different. Your lordship asked him a question about what happened at the financial meeting - he had been talking about the financial meeting in 1984 and 1983 and your lordship merely asked him this: (10

"Dan het die vergadering van die ding niks met die saak met die saak te doen nie? -- Dit het.."

and then he goes on for about three pages but on page 2 193 and apropos apparently..

COURT: 2 91 or 19?

MR BIZOS: 2 913, m'lord. (reads on)

"In 1983 was dit nie die geval gewees nie omdat die gemeenskapsraad se begroting reeds van 1 April af het ons aansoek gedoen vir die goedkeuring wat gekom het in omtrent April/Mei. Die tender het gesluit in (20 Junie en die komberse was wel beskikbaar hier in Junie-maand in die wintertyd vir die oues van dae maar baie van die raadslede het hulle komberse teruggehou met die idee en dit is heeltemal korrek dat dit is uitgedeel in Oktober/November van die verkiesingsjaar."

and then he read something out. Anyway, it is there. And also I think I could not claim credit because it was answered to Mr Jacobs as I say on page 2 912, that some of the councillors did not pay their rent.

COURT: Yes, it was a blanket answer. (30

MR BIZOS / ..

MR BIZOS: On page 2 912. But mayor Mohlatsi informed the members of the council that even though they were elected through different parties into the council, while they were on the council they must speak in one voice. Presumably when Mr Mohlatsi said yes, they must say yes and when he said no, they must say no. He further said that they must not do things to their own party but must forget about parties and serve in unity. It may be that unity in action a word favoured for the proving of the conspiracy even reached mayor Mohlatsi. Your lordship finds the evidence in volume 63 page 3 340 lines 8 to 20. After a council meeting on 5 August 1984 another meeting was held on 16 August 1984. Councillor Phosisi was told by mayor Mohlatsi that this was to be a secret meeting. Four people were summoned who had uttered certain words which were not acceptable towards councillors. Volume 53 page 2 752 lines 5 to 25. This meeting was attended by mayor Mohlatsi, councillor Dhlamini, councillor Kolisang as also councillor Mofokeng, councillor Sekobane, councillor Mokate and Mr Neethling, the township manager. All four persons summoned were members of Phosisi's party, the Bafetsana Party who had not defected to Mohlatsi's party. Your lordship will find all that in volume 53, page 2 754 line 16 to 27 and page 2 755 lines 14 to 19. They were there to be rebuked and reprimanded. Rebecca Mothlongo, a middle-aged woman at this meeting, saying that he was disappointed in her. They were very concerned because, councillor Kolisang said he was very concerned because she got the people to side against him. When Mrs Mothlongo objected to this, she accused him there and then of receiving bribes and the response was well, if that is the sort of information that she had

she / ..

she must not make it public. All this appears at volume 53 which is Phosisi's evidence on page 2 755 line 26 to 2 756 line 6; 2 757 lines 21 to 24, 2 758 lines 5 to 11, line 16 to 29 and 2 759 line 23 to 29.

Evidence of how they used their power in relation to this meeting that Henry Mokwane whose house file was placed on the desk Phosisi, volume 53 page 2 761 lines 14 to 24. He had been called to the meeting because of what had been said at the council meeting on 5 August, that is: Look, we do not want to hear a thing about what you are announcing to us (10 at this meeting. We are not interested because all what you are talking about is meant for you people as councillors. You must fatten your pockets with our money just because you are councillors. Even those sites you are talking about, industrial sites are meant for you councillors and not the community. You are just making it inconvenient for yourself to acquire those businesses. He also made it clear he was against the rent increase, and that is the reason why he was there. We were about to lead evidence of what was put in cross-examination but your lordship with respect said that (20 your lordship was not concerned with it, that it was detail but your lordship may recall what was put; but then we did not lead evidence on it. That was the relevance of his father's file on the desk; that if he continued this way his father would be endorsed out of the area. Now the fact that they summoned people in order to lecture them at least negatives the suggestion given by the councillors that no opposition was expressed to the rent increase at the meeting of 5 August. Apparently somebody pointed a finger at councillor Dhlamini and this led to difficulties and she was (30

warned never again to do that. Phosisi, volume 54, page 2799 lines 21 to 26. Their attitude to the churches also shows a highhanded attitude. It was decided by the council that if new applications were made by churches for sites to erect new structures they would be required to prohibit the use of churches for political meetings. Your lordship will find that in Mokoena, volume 46 page 2 259 lines 11 to 18. It may of course have been completely unnecessary to use churches for political meetings if community halls were made available to groups of people to do that but they were not and your (10 lordship will find that in the evidence of Mokoena, volume 46 pages 2 258 lines 14 to 17. In the last week of August 1984 a group of about twenty people including about five councillors went to the home of Father Moselane, accused no.3. Evidence of Mohlatsi, volume 52, page 3 262 line 30 to page 3 265 line 28. Amandla su Wendle were councillor Mohlatsi councillor Motsoane, councillor Shale, councillor Jogosela and councillor Mphulenyane. Mohlatsi, volume 62, page 3 266 lines 1 to 16. Jogosela, volume 49, page 2 434 lines 16 to 21. This group was accompanied by municipal policemen (20 in a van. Jogosela, volume 49 page 2 440 line 24 to 25. Whatever it is that happened there it embarrassed councillor Jogosela, at the manner in which accused no.3 was spoken to. Volume 49, page 2 438 lines 28 to 30. He tried to remove himself. Volume 49 page 2 439, line 6 to 12. Those who spoke to Father Moselane were utterly abusive to him and his wife. Jogosela, volume 49, page 2 440 lines 5 to 6. They wanted to know: is it true that you are holding rental meetings in your church building or words to that effect. Jogosela, volume 49, page 2 441 line 25 to 30. May I (30

just pause here for one moment?

The person Khuago was a colleague of another security policeman Mphondo is it? Mphondo, m'lord. It is significant that Mphondo was also a councillor. The worst that could be alleged against accused no.3 at this threatening meeting on the evening of the 28th/29th - I do not remember, there is a dispute about the 28th or 29th, but I think it was proved that it was the 28th. That the worst that could be alleged not that you allow your church for violence to be preached - Manthata preached violence - is it true that you are (10 holding rental meetings in your church building. Well, they only had to read the Rand Daily Mail and The Sowetan to find out that, they did not have to ask him; but it was obvious that they had been there for bully him for his church not to be used for meetings at which the rent was protested. Councillor Jogosela did not deny that councillor Mphondo had said that he knew all about Father Moselane, that he got his information from Johannesburg and that he had the power to detain him. Volume 49, page 2 442, line 3 to 8. Persons at this meeting actually threatened to assault Father Mose- (20 lane. Volume 49, page 2 443 line 31 to page 2 444 line 2. Mayor Mohlatsi recalls reading in a paper that soon after this meeting but before 3 September Father Moselane's house was attacked. Volume 62, page 3 286 line 26 to 3 287 line 1. All this of course will be relevant as to what happened in the office of the then Captain Steyn; something that we will deal with more fully when we deal with the Sharpeville case.

According to accused no.10 at the meeting held in January 1982 by councillor Edward Mofokeng to explain the R10 increase the councillor had a gun hanging from his waist, from his (30

belt / ..

belt and this was visible to the people attending the meeting. As a result a man from the audience later said to him I am surprised how you can come and address a meeting while having a gun with you, as a result of which then the community and the audience shouted the councillor down. Volume 169, page 8 725 line 12 to page 8 727 line 14. At the meeting of the councillors held in Bophelong at the community council to discuss grievances, there had been no meetings called by councillors on 5 August 1984. At this meeting no explanation was given for the rent increase. Mohlatsi (10 volume 63 page 3 326 line 4 to 29. At this meeting people were airing their grievances for about 45 minutes. Now I will ask your lordship to bear in mind that this is the evidence of mayor Mohlatsi and is to be found at volume 63 page 3 327 lines 1 to 31 and that it was not a meeting arranged either by accused no.3 or his committee or the VCA. During this time the..

COURT: What date was this - 29th?

MR BIZOS: 29 August, yes. During this time the chairman carried on the meeting without police assistance. Volume (20 63 page 3 328 lines 10 to 12. After this time eight to ten police entered the hall carrying half metre long firearms entering back to back. There had been no injuries or threats of injuries to anyone. Volume 63, page 3 328 line 16 to 22; page 3 329 lines 1 to 12. And this is of the utmost importance in view of the argument that we are going to develop later on as to the genesis of the violence in the Vaal. Mayor Mohlatsi could find no reason for their presence in the hall. The chairman had not invited them in. Volume 63, page 3 229 lines 22 to 30. Mayor Mohlatsi asked the police to leave.(30

Immediately

Immediately after they left the lights went out. Volume 63, page 3 330 lines 20 to 22. This switching off of the lights created fear and confusion in the people and they scattered in all directions. Again the evidence of Mohlatsi, volume 63, page 3 332 lines 10 to 15. This is the sort of action which we submit is counterproductive in situations such as pertained at the time. The police with camouflage uniforms armed, coming into a meeting where residents were discussing their grievances with the councillors and behaving as if they approaching a murderous mob when in the opinion of the (10 state witness, the mayor of Lekoa, there was no reason for them to be there, is hardly conducive to a peaceful co-existence between the forces appointed to maintain law and order and the people. Generally speaking if some people are treated as if they are going to stab people in the back, well they may take very strong exception to this type of behaviour. We do not know who switched the lights off. If a finding has to be made on the probabilities and there was talk at the time that it was the police. There is certainly no explanation as to why they went in or how the lights (20 went out. The councillors had come there in order to speak to the community and the community had come there in order to speak to the councillors. The only people that really wanted to put an end to this meeting were the police and having regard to where the violence started shortly thereafter your lordship may be able to draw inferences in relation to this. At the meeting held between the clergy and councillors in August 1984 the chairman of the meeting said that he had information that anti-rent increase meetings were being held in the churches and that such meetings should not be held (30

in churches, Mofokeng, volume 50, page 2 519, line 31 to page 2 520 line 7. At a meeting held on 5 August 1984 to announce the rental increases some of the councillors blamed the increase on the authorities whilst others boasted about their powers. Councillor Phosisi conceded that these contradictory answers confused the people there present and they did not know where they were. Phosisi, volume 54, page 2 780 line 27 to page 2 781 line 6. Also the remark of councillor Sekobane was a particularly insulting one. When people had come to complain that no notice had been given (10 in relation to the increase in rental what did Mr Sekobane have to say? What is the complaint about the rent. Your husbands and your sons go to the shebeen and drink their money away. Your lordship will find that in volume 54, page 2 781 lines 9 to 21. That is the evidence of Phosisi and it was confirmed by the evidence of Mbatiyaswa, volume 331, page 18 902, line 13 to line 16.

COURT: I was attempting to find out who you were referring to. Just give me the reference again? I think it is Mbatiyaswa. (20

MR BIZOS: Why on that spelling it should be pronounced that way I do not know, m'lord. Mbatshwa (according to pronunciation) I understand is the correct..

COURT: Yes, and the reference is?

MR BIZOS: Volume 331, page 18 902 line 13 to 16. And also confirmed by the witness Mokathi, volume 339, page 19 361 line 10 to page 19 362 line 21. After this meeting Mr Mbatiyaswa saw councillor Dhlamini had drawn his gun and aiming it at somebody. Volume 331, page 18 903, 15 to 19.

COURT: After the meeting of the 5th? (30

MR BIZOS / ..

MR BIZOS: No after the meeting was broken up, that is of the 29th.

COURT: I thought you went back to the 5th.

MR BIZOS: Sorry, let me just see. May I just check that m'lord, it may be that the - well, it is true I think that the meeting..could I just check at which meeting that was.. Yes. No, it is the 5th. It is the 5th.

COURT: This is also the 5th now?

MR BIZOS: Yes, the meeting of the 5th also broke up. Your lordship will recall the description of Mr Paul Mohlapo (10 that he could not get out quickly enough, I think.

COURT: Yes, a lady attacked the councillor.

MR BIZOS: They slapped the councillor. That is the one, yes. On 25 August 1984 - well, it may be arguable as to whether it is ladylike conduct or not, but that is really.. On 25 August 1984 a meeting was held in Sharpeville which a great many councillors attended to discuss the rent increase. Most of the speakers at this meeting indicated that they were not satisfied about the rent increase. One of the speakers was Bhatsophane who said you, the councillors, are only (20 looking after your own interest and that you be rich. You do not think for the other man. You are the people who are saying to us when we were supposed to canvass for your elections that we must go and tell the people we were canvassing for your elections and that you were not going to increase the rent. Here you are today increasing the rent. Rather than to increase the rent you should decrease it. Whilst he was talking councillor Dhlamini stopped him from continuing by laughing at him and waving his hand. Other councillors were laughing at him at the same time. Testimony of (30

Mjesa, volume 312 page 17 918 line 9 to page 17 921 line 8. Councillor Mogodjane had come to the conclusion that it was pointless for him to object to actions of the council majority or state his opinion because he was an independent. Volume 59 page 3 066 line 7 to 9. During the 1983 election promises were made by candidates who were elected that there would be no rent increases but they have not been elected - voted for the rent increase..Mjesa, volume 312, page 17 904 line 4 to page 17 905 line 1. The fact that this Mohlatsi, mayor Mohlatsi's party was running the show is corroborated by (10 councillor Phosisi who was a member of the opposition Bafetsana party but she never voted against any proposal by mayor Mohlatsi or a member of the Lekoa People's Party. Volume 53, page 2 720 line 3 to 9, neither could she remember any time that a suggestion of a member of the Lekoa People's Party was rejected by the council. Volume 53, page 2 720 line 17 to 19. The same applies to councillor Mofokeng, volume 50 page 2 537 lines 27 to 31. Could I take credit for a couple of minutes and I will finish this section, that is all I have. (20

COURT: Yes. May I give your scriptwriter some advice? When he writes about 1983, let him put everything about 1983 together, not at the end add on something to 1983. The same on Mohlatsi's party.

MR BIZOS: As your lordship pleases.

COURT: Otherwise I have got to write it twice.

MR BIZOS: I am sorry, m'lord, yes. The Bafetsane Party was formed to get away from the Lekoa People's Party since it was (speaks indistinctly) considered to be the case but nothing came of their promises and this is really again (30

the evidence of Mjesa in volume 312..

COURT: We had this story of the Bafetsana Party.

MR BIZOS: Bafetsana Party. Yes, I think I can leave it out. Now in conclusion of this aspect the foregoing evidence it is submitted presents the following picture. Prior to 1983 the black local authority in Lekoa was a community council which was considered impotent and corrupt. In 1983 the residents of Lekoa were presented with a new dispensation which still excluded them from parliament and which was perceived as identical to the old system. There was much (10 evidence that the Lekoa residents felt was good reason that the new council was ineffective and that it was in fact just a front for the board. They felt that the 1984 rental increase was presented as a fait accompli without any discussion by the people affected. They believed that the councillors were although impotent to solve the problems of the community using the small amount of authority that they did have to enrich themselves. There was also much evidence to support the position that the town council system provided almost no opportunity for responsible opposition (20 groups to operate and that those who did challenge the operation of the council were threatened and harassed. We submit that reasonable people living in that area must have been outraged by the conduct of the Lekoa town councillors. We submit that the portions of Prof Van der Walt's report which have been confirmed through witnesses, that that report taken with other reasons coupled with the inability of the residents to pay the rent as well as persistent and extensive rumours about corruption, self-enrichment and maladministration contributed to the outbreak of violence. Even councillor (30

Mokoena admitted that the people did not need the UDF to tell them that the council system was nothing but an excuse to deprive them of meaningful political rights. Your lordship will find that in Mokoena's evidence at volume 45 page 2 238 line 19 to page 2 239 line 1. The decision not to continue with the increase is an implied admission that the unwise and foolhardy decision in the manner in which it was done, the decision to scrap it was an implicit admission that it contributed to the unrest. Your lordship will find that in the evidence of Mr Louw, volume 56, page 2 909 (10 line 7 to 19.

In the light of the long term frustration of the community about their living conditions combined with the complete lack of meaningful or effective political forum for their grievances, we submit that it is all too understandable that this latent frustration should have manifested itself in the violence that started on 2 September 1984. That concludes that portion of our submissions.

We are going to go on with the meetings of August 1984 with this sort of background. (20

THE COURT ADJOURNS UNTIL 16 AUGUST 1988

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