

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

K. 223 VOL. 450 Vg. 26 546 - 26 642

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-30

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 450

(Bladsve 26 546 - 26 642)

THE COURT RESUMES ON 30 AUGUST 1988

MR BIZOS: As your lordship pleases. I am informed that all the accused are before court this morning. I may have given your lordship an indication that I would be dealing with the march next. I do not remember..

COURT: Yes, I do not know, I was under the impression we were going to do the - all the violence in the Vaal, but it does not matter.

MR BIZOS: Yes well, Mr Tip who has been described as the appointed marshall to the march situation, that argument is (10 not quite ready so we have altered the order that I think I indicated to your lordship. I am going to make certain general submissions in relation to the 31 areas to your lordship and thereafter my learned friend Mr. Yacoob will take the argument in relation to certain of the areas.

Now the submission that we want to make to your lordship in relation to the 31 areas is that sight was lost by the state of what it had specifically alleged against the accused in regard to the 31 areas which your lordship diminished to 23 at the end of the state's case. (20

COURT: Is it now 23?

MR BIZOS: It is now 23, yes. We will refer to them as 31 for the sake of convenience otherwise the record may read in a strange fashion.

COURT: In any event it is also more impressive.

MR BIZOS: As your lordship pleases. Now because of the general submission that the state is bound by what it has alleged we want to refer your lordship to the indictment and then submit to your lordship what the parameters of the allegations are; summarise what we submit the state has. (30

to prove in relation to each one of the areas in order to try and bring it home to one or other or any of the accused before your lordship. What we will submit in fact happened was that evidence was in fact led by the state and by the defence to rebut that evidence but that much of it with the greatest respect is outside the ambit of the indictment. I would invite your lordship to have a look at paragraph 66 of the indictment. The preamble to it is the usual allegation of the conspiracy or sub-conspiracy alleged throughout the indictment and I do not propose reading it, it has become familiar if not monotonously so to your lordship by this stage of the proceedings, but in paragraph 1 to be found on page 268 it is alleged that.. (10)

COURT: That is sub (1)?

MR BIZOS: Sub (1), 63(1) - 66, I beg your pardon, 66(1) and let it be remembered m'lord that it is in furtherance of that conspiracy that this is said. It is alleged that a campaign was conducted then, that is the black local authorities and the Koornhof bills mentioned in the preamble. And let me at the outset say that it is common cause that there was such a campaign against the black local authorities and the Koornhof bills. Your lordship has heard the evidence of the witnesses in relation to that, but what is the issue is it was not for the purposes of furthering the conspiracy and certainly not to commit acts of violence or to render the Republic of South Africa ungovernable. It is important to remember this because much reliance is placed by the state on certain documents and more particularly C.110, that when somebody, the person who composed C.110 says: the UDF succeeded in its campaign against the black local authorities, the state (20) (30)

quotes / ..

quotes that as evidence that the UDF admitted that the campaign was in furtherance of the conspiracy or to commit actual violence. And although it is common cause that there was a vociferous campaign against the BLA and the Koornhof bills, the accused have given evidence and argument has already been given to your lordship which I do not intend repeating that it was to be done by peaceful means and your lordship will find the argument which is addressed in this regard in volume 438 page 25 701 to page 25 768..

ASSESSOR: Is that the state's argument?

MR BIZOS: No, m'lord.

ASSESSOR: Defence argument?

MR BIZOS: Our argument. I will continue calling the state's argument "betoog" for your lordship's shorthand purposes. Our case in relation to this area is that the people in these areas and indeed throughout South Africa had their own perceptions. Your lordship will find that at page 268(1), had their own perceptions and if I am translating the words of the indictment correctly that it was not necessary, we submit for anyone to either delude or incite, "opsweep" I suppose is incite, or to indoctrinate or condition; insofar as it is alleged that it were - a propaganda campaign was conducted depending on what one means by propaganda, it is also admitted that propaganda was in fact conducted against the BLA and the Koornhof bills but in the sense which the witnesses have given to your lordship that it does not mean that untruths were told but rather that there were these deep-seated grievances which they were. Now sub-paragraph (1) sets out a number of things that were done in furtherance of that campaign and the things that were said against councillors.(30

The state assumes and I will submit that your lordship will not make that assumption that because it was proved that councillors were called puppets and sell-outs and other uncomplimentary names and because there is evidence to show that some of the things set out there were said that it has proved its case, we submit that what was said and what was done was in furtherance of the BLA campaign without the advocating of violence. We would ask your lordship to take sub-paragraphs (2), (3) and (4) appearing on page 273 to 274 of the indictment together. What these three paragraphs mean is that activists including 19, 20 and 21 laid down certain principles which were prescriptive, that had to be done. The principle of prescription that is alleged is that they must carry out all the campaigns including the BLA campaign. This of course is not shown and we would refer your lordship to the argument already delivered in relation to the independence of the affiliates generally and the independence of for instance the Vaal civic association. These paragraphs single out Mr Molefe, Mr Lekota and Mr Chikane, accused nos. 19, 20 and 21. They single them out (20 as having laid down this prescription: "voorskryf" or "voorskrif" I think is a prescription. In relation to this particular allegation the evidence of all three of them and a number of defence witnesses which we will give your lordship in due course from various affiliates has not been proved and in fact we will show your lordship that the witnesses were not even challenged by it.

What the prescription must be in order to be meaningful within the ambit of this indictment is that they were told to conduct this campaign in furtherance of that conspiracy (30 otherwise/..

otherwise it is not a prescription. What we would say in other words is that evidence that accused nos.19, 20 and 21 told people to take part in the anti-BLA campaign is not evidence that they must take part in that campaign in furtherance of the conspiracy. The state again assumes that because it has some evidence to show that the UDF produced some documents and some speeches were made that people should take part in this campaign, that it was a prescription to further the conspiracy of which we will submit there is no evidence whatsoever. Sub-paragraph (4) alleges that the (10 prescription was that day to day issues and the other things mentioned must be - I am using my own shorthand, m'lord - must be abused. That is what the indictment means, that abused day to day issues for the purposes of furthering that conspiracy, exploit, abuse these not for the benefit of the people, not for the purposes of alleviating their misery but for the purposes of furthering the conspiracy and that was the only purpose for which it was done; this is what the allegation is. In sub-paragraph (5) again accused nos. 19, 20 and 21 are alleged together with other activists to (20 have given certain "leiding" which we submit there means guidance as to how affiliates should go about the campaign. This "leiding" is of importance because it recurs in sub-paragraph (7) to which we shall shortly come and make a submission to your lordship. (6) says that there were to be regular reports to the area committees - there is no such evidence. Then sub-paragraph (7) says that they adopted and conducted in accordance with the guidance and instructions of 19, 20 and 21 and other activists and we emphasise so successfully that violence broke out in certain places. So again (30

what / ..

what that refers to is that there was guidance - "leiding" - to conduct the campaign in various places in furtherance of that conspiracy. Then sub-paragraph (7) sets out from sub-paragraphs (i) to sub-paragraph (ix) examples of the unlawful conduct in generalised terms that occurred as a result of that; they must conduct the campaign in furtherance of the conspiracy, they must abuse the grievances of the people in furtherance of the conspiracy, they must report regularly to area committees for the same purpose and that the acts were committed as a result of that guidance given by 19, 20 and 21 and other activists they committed the particular acts. To summarise all that, the allegation really is that as a result of the direction and guidance given by accused 19, 20 and 21 and other activists, the BLA campaign was carried out to a successful violent end. We would submit that it follows that in order to succeed the state had to prove that the three office bearers of the UDF mentioned and other activists who have not been identified gave such guidance to bring about the violence. We submit that if those allegations were not in the indictment the allegations in regard to the happenings in the 31 areas would have been irrelevant and a justifiable complaint of embarrassment would have been addressed to your lordship in October 1985, if we can remember that far back when some objections were taken to the indictment. Furthermore, if in the absence of such allegations your lordship's decisions may have been different on the application to strike out the evidence at the end of the state case which your lordship did not do in your lordship's judgment - perhaps I should give your lordship the..I will be referring to it later as well. We keep the judgments separate and I (30

have not got the volume number, it is on page 7 629. Mr Yacoob remembers it, m'lord, 157.

COURT: Volume 157.

MR BIZOS: Yes, thank you. The argument that we could find in the "betoog" relating to this appears on pages 42 to 46. They have not referred your lordship to any evidence in the record to prove this importance allegation against three of the accused. They believe or I am sorry, they submit in relation to this that certain documents which they have referred to might help them along. We will deal with that (10 in due course.

COURT: Hasn't this "beplanning, koördinasie en bevordering" been dealt with by Mr Chaskalson?

MR BIZOS: That is so except that Mr Chaskalson did not deal with the one document left for this purposes, C.110 on which the state relies and I do not intend repeating that. In fact I am at a disadvantage; if I do repeat anything it would be unwittingly because I do not know precisely - although I know the general tenor of the argument, I do not know..but in the little time that we had to consult with one another (20 I know that he has not dealt with C.110 with which I shall be dealing because that is really what the state is relying on. And we would submit that there is no evidence of such guidance of prescription or "leiding" to violent conduct. That is what the state has undertaken to do - violent conduct and much less that there was conduct to further the conspiracy as set out in the preamble of the indictment.

We submit that there is furthermore no direct evidence in relation to each of the areas as to precisely who was responsible for the violence and in what capacity such (30 person / ..

person or persons acted, nor under whose incitement or direction if any. This statement may not be well-founded in relation to two areas namely Leandra and Adelaide which will be specifically dealt with when we deal with those areas. On pages 7 629, volume 157; page 7 629 to 7 638 of your lordship's judgment in the application for a discharge some of the issues that we are about to raise, were raised in support of an application for the striking out of the evidence but we submit that at this stage the position is quite different. Firstly the test is now different and secondly (10 some 60 odd witnesses were led to show that there were other reasons for the violence that took place to disturb the prima facie view of relevance expressed by your lordship at the application for a discharge stage. It is admitted that violence took place in at least 22 of the 23 areas now left after your lordship's judgment and it was not contested that violence took place in Mankweng in respect of which there is no admission. On the indictment we submit that in respect of each area the following questions have got to be asked and answered in favour of the state in the evidence before (20 your lordship can take any notice of any of that evidence as relating to the liability of any of the accused before your lordship. The first and fundamental question is who committed the violence. Secondly, why did the individual or group of persons commit that violence. Thirdly, was there an organisation or organisations which were an affiliate, where an affiliate - sorry, was there any organisation which was affiliated or an active supporter of the UDF. Did that organisation carry out the anti- BLA campaign at the instance of the UDF, knowing that the campaign was for the purpose (30

alleged / ..

alleged by the state. The next number, did accused 19, 20 or 21 or other activists acting on behalf of the UDF and in consonance with the policy of the UDF and there would be two sub-paragraphs in relation to that paragraph, direct or instruct the affiliate or active supporter to abuse the emotional issues to indoctrinate or stir up the masses of the people into violent action and the other sub-paragraph, gave guidance to activists of affiliates or active supporters as to how to conduct the violence against the targets alleged in the indictment. That is the councillors, the black (10 local authorities, the administration buildings, etc. and they must have done both, there must be evidence that they did both these things. The next number, that the activists of the affiliates or active supporters acted as a result of and in accordance with the guidance they received to conduct the campaign violently, and finally that the violence that was committed by the persons that did commit it was a direct result of what 19, 20 and 21 did or other activists, that is that they really gave effect to the guidance and instructions. Now we submit that failure by the state to prove any of (20 these essential elements would have the effect of the whole section of the case tendered by the state to collapse. One might even go further that it would, the state would have to establish even further that even if such guidance were given, of which there is no evidence whatsoever, that there was no intervening cause. Put in another fashion or even further, even if an activist committed an act of violence it must be found that his act was directed or authorised by those that the state seeks to hold legally responsible for that activist's act. Now may we come back and submit to (30

your / ..

your lordship as to who committed the violence. In the main in relation to all the areas your lordship does not know who committed the violence. Your lordship does not know whether any of them were activists in the sense set out in the indictment. Your lordship will recall that even though the identity of these persons is not known the state presumably asks your lordship to rely on some of the facts that I shall shortly be referring to but as the state has not advanced argument as to what it has to prove and what it has proved - what it has done was it set out a summary and we will show (10 your lordship at times inaccurate to the extent that it may be described as misleading, or the evidence given both by the state witnesses and the defence witnesses. Some criticisms are offered in relation to the defence witnesses, some reference is made to the documents in general terms, we will submit of doubtful admissibility and relevance; and finally in each one of these areas the state reaches the conclusion that certain organisations are responsible for the violence committed generally by the unknown persons because they say those organisations were affiliates or active supporters of the (20 UDF. And it takes the further jump, therefore, that UDF and through it, its office bearers or supporters; all the office bearers or affiliates of the UDF are responsible for all the violence that took place throughout the country. The general pattern of the state's evidence was to call a police officer or councillor who had not attended the local UDF or other alleged affiliate or active supporters' meetings and to say that although they were not there to hear what was being said, it must have been what was said at the meeting or the funeral which led to the violence. It also tried to prove (30

its case by relying on the wearing of a number of T-shirts either of the UDF or some of the affiliates, or the shouting out of certain slogans or the painting of certain slogans on walls by unknown persons and because unknown persons were singing freedom songs. By way of contrast the general pattern of the defence case was to try and extract from state witnesses and to lead evidence of other relevant facts which must be taken into account when seeking to draw a permissible inference. Your lordship and learned assessor will be given details of those facts and circumstances. In many of the (10 areas concessions were made by the state witnesses supporting the defence contentions. The state has ignored many of these concessions and their effect and ignores further that the witnesses for the defence have in many instances not been contradicted by any evidence to the contrary, nor were these witnesses challenged in many cases when they challenged the state's evidence in many respects. It would appear they rely heavily on certain documents such as SASPU National which have been contradicted by viva voce evidence, they rely on these documents as if they were the gospel truth and that (20 any witness who contradicted them must not be telling the truth. The state of course ignores in those documents those portions which support the accused's case, but be that as it may, we submit that those documents cannot be used to discredit the witnesses for the defence. We submit that it is significant that what is alleged in the indictment must of necessity have encompassed hundreds if not thousands of people throughout the country and if there is truth in the allegations made by the state, there must have been hundreds if not thousands of people who would have been able to give viva voce (30 evidence / ..

evidence of the alleged guidance, instruction to do these things for the conspiratorial reasons set out in the indictment. Its failure to do so is consistent only with, that such instructions were not given. It is perhaps not irrelevant in relation to this that very late in the day one witness in this regard was interviewed who came to your lordship and is recorded, identified on the record as IC.10 who was only interviewed early in 1985, some 7 months after the drawing of this indictment against the accused. Your lordship may also find it significant that this witness came (10 and told your lordship that she was compelled to give untruthful evidence against Mr Lekota, accused no.20. We submit that among the facts that have to be added onto the defence side of the scale which are destructive of the state's allegations in relation to the three accused are the statements made by Mr Molefe, Mr Lekota and Mr Chikane, had no policy of violence and that was publicly stated in various documents and at various meetings. Secondly, the evidence of people holding responsible positions in leading affiliates such as the Rev McCamel in the Vaal; Dr Motlana in Soweto, (20 Dr Nkhomo in Atteridgeville; Francis London in Huhudi; Mkhonza from Tsakane, Mr Mokoena, accused no.6 from ERPA before your lordship; all the accused who were members of the VCA and affiliate; Mr Motlana, accused no.16, who was the secretary of the SCA.

COURT: I think you will have to change his name.

MR BIZOS: Montata - did I say Motlana? I beg your pardon, I am sorry. Mr Skweyiya, the elderly and knowledgeable..

COURT: Skweyiya.

MR BIZOS: Skweyiya, the elderly and knowledgeable (30 gentleman/..

gentleman from Cradock and many other of the witnesses whose names will be drawn to your lordship's attention who categorically stated that they knew nothing about any instruction in relation to violence even though they had their own ideas about the black local authorities and the Koornhof bills. There is of course the evidence of two state witnesses to which we want to draw your lordship's attention, who come from COSAS. Your lordship says in your lordship's judgment that prima facie COSAS is a revolutionary organisation. We have not been able to find any argument in the "betoog", (10 any submissions to support that but we submit with respect that your lordship has had no evidence of what COSAS was about save for certain documents and your lordship relied in that what we submit is an obiter dictum and prima facie at that stage, but at this stage with a different test and taking all the evidence into consideration that finding cannot with the greatest respect be supported and in any event your lordship is not trying COSAS in this case. The only one who had anything to do with COSAS was accused no.14 and the state has conceded that your lordship should discharge him. (20 There was nothing, we had a blank sheet in relation to him in the state's betoog. But let me just refer your lordship briefly to the evidence of Miss Sam from Graaff-Reinet - I beg your pardon, that is a defence witness. Yes, let me deal firstly with the evidence of the state as such. It is state witness IC.12 who was the chairman of the Soweto COSAS and thereafter the chairman of a branch of AZASO. I am informed that your lordship was referred to that evidence, that he was a member of AZAPO, of COSAS and it never occurred to him that he did anything unlawful. The two defence (30 witnesses/..

witnesses is Miss Sam of Graaff-Reinet, your lordship will be referred to that in evidence, and there was the evidence of Mr Muller. Your lordship will recall the meeting of COSAS at the university, the university meeting at which COSAS was represented at Rhodes university where a statement was made that COSAS disapproved of the violence that had been committed. Of course the state says in relation to that, well, they have got to say that publicly. Of course what the liability of any of the accused before your lordship will depend on having some secret knowledge outside the (10 public knowledge that this was a revolutionary organisation in order to bring home anything that COSAS might have done to any particular accused. Now what we submit on the evidence, the viva voce evidence and certainly on the plethora of evidence that has been placed before your lordship, that proof by T-shirt is not proof. It is not even a badge of membership. They were readily available. Your lordship heard from, if my memory serves me correctly, from IC.6 about whom we shall have to say something more in the near future, that even the ANC has bundles of it which it hands out to (20 its cadres that it sends into the country with an instruction that they should keep away from the UDF - I do not know, but anyway I do not want to enter into that debate at the moment, but brothers and sisters, boyfriends and girlfriends in this unisex age might even interchange COSAS or UDF T-shirts.

COURT: If it is big enough they might share it.

MR BIZOS: I suppose they would have to make some big ones. And what does it really prove? I would submit generally that your lordship having seen the videos, the proportion of people wearing these T-shirts is much less at meetings (30 than / ..

than some of the witnesses whose evidence could not be empirically tested would give your lordship to believe, but nevermind, if 5% or 10% of the mob that attacks a councillor's house wears a COSAS shirt or UDF shirt this is not evidence against Messrs Molefe, Lekota and Chikane. In any event as far as what we call the Vaal accused are concerned they were in custody when most of these things happened, even the three UDF accused were for some of the time in custody and for some of the time out of the way. And the first question that your lordship would have to answer in favour of the state (10 as to who was the perpetrator, the fact that a person is a member of an organisation even if he has been convicted by a court for having committed that act of violence, is not evidence in these proceedings that he committed that act or that he committed it on behalf of the organisation or that what he did was in consonance with his organisation's policy and if that organisation happened to be an affiliate, that people on the UDF executive are vicariously liable for it. There are too many links in the chain which have not been forged together at all. We would submit that it is not (20 a chain at all, that they are just loose bits of evidence hanging in the air.

I merely want to refer your lordship to this at this stage because it will be a little bit more difficult for Mr Yacoob to do when he does the area. Your lordship will recall that in one of the areas the police officer told your lordship that they were members of COSAS who did it, he knew them to be members of COSAS because they came and negotiated with him about how to settle matters and that they were convicted for some attack on the house. Now of course that is not (30

evidence / ..

evidence before your lordship.

COURT: Evidence of what?

MR BIZOS: It is not evidence that they committed the acts of violence even though they may have been convicted. That is the law, m'lord, and I would like to - I know that it sounds surprising but in a criminal case the fact that another court has convicted someone cannot have a police officer to come here and say that another court convicted so and so and he was a member of an organisation. The issue is where is the evidence that who committed it.. I am sure that - I do (10 not want to carry this too far..

COURT: How far can one take it? Let us leave the conviction out of it, if a man comes along and tells a police officer: I come here, I represent COSAS and I come and negotiate with you. Can you take it on the basis that he represents COSAS? Can you take it on the basis that he said he represented COSAS?

MR BIZOS: No, that may be admissible, that is not the part. The part that I am referring to is that he committed the act of violence in the absence of the police officer. And (20 the mere fact that he has been convicted of public violence is not prove before your lordship. Your lordship will find the cases in Hassim v Incorporated Law Society of Natal 1977 2 SA 757 (A). The cases support the submission that I have made. An attorney cannot avail himself of that in an application to strike him off because of the practice that has arisen in our courts. Mr Hassim was convicted of an offence and he wanted to put in issue an application to have him struck off, as to..

COURT: Yes, he wanted a retrial.

(30

MR BIZOS / ..

MR BIZOS: He wanted a retrial and there is apparently a difference between..

COURT: Between disciplinary proceedings and a court case.

MR BIZOS: Disciplinary proceedings and a court case. That is really precisely the matter. So that although it does not avail an attorney or any other person in the disciplinary proceeding, it may well in fact fortify the submission that the fact that they were wearing T-shirts or that they were shouting slogans is not evidence that brings home to the accused before your lordship the basis. There is of course (10 another matter and that is that the basis of the affiliation was the public image of the UDF and your lordship has had enough submissions in relation to that and I do not intend making any submissions, any further submissions on that. I think that your lordship has it that it was generally speaking the declaration and the working principles on which the affiliation was done.

I want to refer your lordship in the specific passages in the accused's evidence which had not yet been referred to in which they deny this and also to deal with C.110 before (20 we go on to the..

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR BIZOS: The state's case in its attempt to connect the UDF and through it accused 19, 20 and 21 and those who were members of the VCA was by using EXHIBIT C.110. It put it to accused no.10, Mr Vilakazi, to Mr Ramakgula, accused no.9, to Mr Manthata, accused no.16; to Mr Molefe, to Mr Lekota, to Mr Chikane and others. It has not drawn to the attention of your lordship the evidence that deals with what I may call the prominence of this document. It relies on it heavily (30

because / ..

because it says that this is an acknowledgement of the UDF successes and it puts an interpretation on successes. But your lordship will have regard to what Mr Molefe (accused no.19) said about this document, to be found in volume 251 page 13 439 line 2 to page 13 442 line 5 in chief and what - perhaps I should read it to your lordship, on top of 13 440. Your lordship may possibly start on the previous page in order to show that we are really dealing with this document. It is clear that it was drawn by a person called Barbara Cressey.. (10

COURT: Was it drawn by Barbara Cressey? Where do we find that?

MR BIZOS: If your lordship has a look at the bottom of 13 439 and read on 13 440, we will show your lordship that this evidence was forgotten altogether by the state and let me start off by telling your lordship that we can find no place in which Mr Molefe was cross-examined or that this was in any way put in issue and there is internal evidence that this woman, whoever she might be, actually went to the newspapers and took cuttings and put them together and this is upon (20 hearsay, and this is the fountain of the state's drink on this part of the case.

"By whom? -- One of the people working there, Barbara Cressey."

Incidentally the organisation is a service organisation and not an affiliate.

COURT: Yes wasn't there something about that as well, that service organisations could no longer be affiliates?

MR BIZOS: By June/Julie 1984.

COURT: Therefore they were put out but not in the cold. (30

MR BIZOS: Well, their services were made use of as consultants. Media organisations that people were asked well, look in the newspapers and tell us what the newspapers say about us. Incidentally the education and..this particular organisation, the education and information centre was never shown to have been an affiliate so it is even one removed from Mars and the others that had been affiliates. He says that this was at the request of the Transvaal region in terms of a report received by him; that he, Molefe, received the report either from Vally or Lepunya and that they asked the (10 research organisation to do the work for them. He is not aware of it being adopted by the UDF and he does not remember whether the schedule was part of the document which he saw Your lordship will find that in volume 273 page 14 846 line 3 to 17. And then at the bottom of page 13 444:

"Did you yourself have occasion to go through the document at all prior to your arrest? -- At the time of my arrest I had not read the document yet."

Your lordship will recall that it was dated February and by that time Mr Molefe was lying low and not attending the (20 office regularly.

"Do you know whether what was given to you contained everything from pages 125? -- I do not."

If your lordship actually has a look at it, it would appear..

ASSESSOR: Where are you now Mr Bizos, please?

MR BIZOS: I am at the bottom of page - I was at the bottom of 13 440, top of 13 441.

ASSESSOR: 440? You said 444.

MR BIZOS: I am sorry, 440. I am reading from 441 now but I was going to draw your lordship's attention to the fact (30 that / ..

that the schedule is obviously at least typed by someone else and we do not know what its state really was, whether it was attached or not but be that as it may, we submit that there are better points than that to be made in relation to this document not being able to be used by the state for the purposes for which it intends to use it. It has used it in this argument. The document, I am reading from 441:

"The document C.110, was that document ever placed before the national executive committee whilst you were aware of it ever having been debated the national (10 executive committee? -- I am not aware.

Are you aware of it ever having been debated anywhere else by the United Democratic Front? -- I am not aware.

Are you aware whether the document was ever adopted in any way by the United Democratic Front as stating its position in any way? -- I am not aware of such adoption.

Do you know what the source of the information was from which the document was compiled? -- I do not know.

Do you know what the source of the information was (20 from which pages 17 to 25 were compiled? -- No.

If it were to be said that this document shows that the UDF had a policy of damaging property and injuring councillors, what would you say about that? -- I would reject that allegation. It would simply not be true, it is not part of the policy of the UDF. The policy of the UDF was quite clear. It has got nothing to do whilst it is opposed to the policy of apartheid and the local authorities set up in terms of the Koornhof bills, one of the Koornhof bills. The UDF has always operated (30

on the basis that it would not use violent methods and it would not attack the properties of whose it differed with, neither would it employ violence in its dealings with its opponents. This policy was clearly understood by all the affiliates of the UDF."

So that I submit that there is direct evidence of, if I may use the expression that was often used in relation to another part of the case, there is direct evidence as to the lack well, the provinance, there is evidence of the provinance, but there is certainly no evidence whatsoever that this is (10 a UDF document, and we want to give your lordship an assurance that we worked particularly hard in our perusal of the record to find any cross-examination in relation to the provinance and non-adoption of this document by the UDF. We have not been able to find any, any cross-examination.

COURT: What exactly do you mean by provinance?

MR BIZOS: Where it comes from, what it is..

COURT: Its origin?

MR BIZOS: Its origin, yes, its origin. Your lordship will recall the expression in the cases in relation to the dates (20 provinance and authenticity, those are the catch phrases that were used in the cases. That it is a sort of sociological study done by some person who actually chased up information. If your lordship has a look at page 8 of the document..

COURT: Could I just pose a problem here? As everybody is sticking strictly to the rules of evidence, is this evidence by accused no.19 not hearsay?

MR BIZOS: No, because..

COURT: He gets a document from Vally or Lepunya. He knows nothing about this document. Can he say more than I know (30

nothing / ..

nothing about the document, it was never discussed. Can he say its origin is the so-and-so or the so-and-so?

MR BIZOS: No, he can because he is in the defensive position that he is on trial, that this proves that this is your document.

COURT: No, no, he can say of course what he wants to but strictly speaking in law does his say-so which is hearsay prove that the Transvaal UDF did not adopt the document? He was on the run?

MR BIZOS: No, with the greatest respect the issue before (10 your lordship is whether he, whether the statements made in this document are evidence against him. It has got a heading: UDF and the Black Local Authorities.

COURT: Yes?

MR BIZOS: He is told that that is admissible - I do not want to enter again for what purpose.

COURT: Yes?

MR BIZOS: He says: I want to tell you that this is not admissible against me for the following reasons.

COURT: No, it is not so easy because it may well be that (20 a document issued in the Eastern Cape proves a certain set of circumstances in the Eastern Cape, which in turn is used to prove a general sort of conspiracy although he does not know about that particular document. Now the same sort of reasoning might apply in respect of this particular document. Is it just strictly speaking on the hearsay rule?

MR BIZOS: Yes, the state thesis is..

COURT: No, no, the Act says section 69(4), a document which is found - not only section 69(4), I think section 246 as well is applicable, it says that if a document is found (30

there / ..

there you draw prima facie a certain conclusion from it, from the contents thereof. Now the only question that arises is, can his evidence, I do not know anything about the document plus what he heard about the document, take it any further?

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MR BIZOS: Well, generally speaking I do not know, it would depend on what was tendered to prove that this document, that this document is evidence against you to prove that you are party to a conspiracy.

COURT: Yes?

MR BIZOS: His response to that is that although this (10 document was found in one or other of the UDF offices - it may not have been because according to his evidence it was the Transvaal people that actually asked for it - although this was found there, this is my explanation as to how it came to be there.

COURT: I heard?

MR BIZOS: I heard.

COURT: Yes well, it is admissible as an explanation but what weight does it carry to refute the prima facie inference to be drawn in terms of this section? The question could be (20 asked why was Mr Vally not called or Mr Lepunya or anybody else from that office who knows about the document?

MR BIZOS: Well, once this evidence is given and it is not challenged why is it necessary to give any further evidence?

COURT: Does one challenge hearsay evidence?

MR BIZOS: No, in a conspiracy trial it is admissible with respect because here it is..

COURT: There is no doubt that it is admissible. It is a question of weight, not admissibility.

MR BIZOS: Yes, but once it is admissible, once it is (30 admissible / ..

admissible because he is alleged to be in a conspiracy with Lepunya and Vally. He says my alleged co-conspirators that I have supposed to have furthered the conspiracy with by the evidence of this document..

COURT: Inter alia?

MR BIZOS: Well, we are dealing only with this document.

COURT: Yes?

MR BIZOS: This is what they have told me. Far from conspiring with them to claim these things as UDF successes I say this is what they told me, it disproves that there was a (10 conspiracy between him and Lepunya and Vally and others. The moment it is not challenged why should Vally and/or Lepunya be called? If it was said, if it had been put to Mr Molefe that you are telling a lot of..well, I do not want to repeat some of the gentle words that have fallen from our learned friends' lips in cross-examining some of our clients, but if it was suggested to him that that was not true, then we may have had to buttress it up but once it was not challenged there was no duty and the prima facie evidence which really does not say that it is a UDF - well, I do not want to (20 enter into that argument because enough has been said, but be that as it may, if your lordship has a look at page 8 that the guts of it was really according to the document taken from the Star of 05/12/84 and then a judgment is expressed by the person who wrote this on the admissible evidence: "The resignation of councillors and the suspension of the rent increases has been an important victory for the Front and its affiliates in local areas." Now this is a good example of the misinterpretation of the document by the state. The state reads: you see, here you are, you are (30 claiming /..

claiming these things, everything in the schedule is your successes. It is a mixture of comment and fact and it lists the town and village councils in South Africa and the community councils still in existence and the local communities still in existence and then the exercise is done as to which organisations did what in what area; no source of information is given but on what basis can this be said to be evidence against any of the accused? Incidentally, it does not only deal with affiliates. The schedule does not only deal with affiliates. It includes all sorts of organisations and comes to all sorts of conclusions in this schedule. One really... (10

Mr Molefe said that this was not a document of the UDF in volume 264 page 14 244 line 9 to 13 and in volume 273 page 14 847 line 6 to 7 Mr Lekota told your lordship that he did not see this document before. In volume 286 page 15 780 line 13 to 18 where he says he has never seen the document before. Mr Chikane in volume 301 page 17 080 line 2 to 10, has not seen the document before.

Certain aspects of the document were put to Mr Molefe, certain evidence was given by him in volume 273 page (20 14 846 line 3 to 14 848 line 30. Portions of the document were put to Chikane, volume 301, page 17 080 line 25 to 17 009 line 5 and again..

COURT: 17 080 to 17 081?

MR BIZOS: No 17 080..

COURT: To what?

MR BIZOS: 17...it must be 081 line 5. I am sorry I gave your lordship the..and again in volume 305 page 17 477 line 7 and the following pages. Without any basis it is put to Chikane that the document was compiled in the UDF office (30

but / ..

but which is denied. He says he knows nothing about it, but in any event he is the person who said that he did not have a pigeon hole there. If your lordship wants the reference it is volume 301 page 17 081 lines 9 to 12. I do not know whether your lordship wants the references where it was put to the people who were in custody at the time that - to the Vaal people. I have them.

COURT: On what basis do they know anything about this document?

MR BIZOS: Well, this is the point m'lord. (10

COURT: I mean we have lists of dates when these things were put and I have notes of what each accused said, at least the UDF accused about this document so what you are telling me is not new.

MR BIZOS: As your lordship pleases. Well, on that basis I will not burden your lordship with any references. It was even put the illiterate person, Mr Ramakgula, in order to prove something or other. Now we submit that the document as it was put, was not - as saying things that it in fact did not say and it certainly cannot be interpreted as a (20 statement of the UDF that it is responsible for the killing of councillors or the damage to property. References by Mr Lekota and Mr Molefe which had not yet been given to your lordship I understand where they deny this, any knowledge or any instruction having been given by them at any stage in relation to violence in various areas is to be found in volume, Molefe, volume 251 page 13 465 line 14 and subsequent pages and Mr Lekoto, page 285 - sorry, volume 285 page 15 728 line 14 to 23, to page - volume 286, page 15 780 line 20 and subsequent pages. Now we would submit that the deeply (30

felt grievances over an extended period in relation to the disadvantage and deprived state of many people was expressed and was as often ignored. We submit that each area had its own at times miserable conditions such as the shacks in Leandra and Tsakane, the threat of removal in Huhudi, the transfer of the only mathematics teacher in Cradock, the bucket system in Tembisa and Duduza, were probably at a time of political debate, promises of reform, rejection of the proposed reform as reform at all, the whole scenario sparked off violence in various parts of the country from time to (10 time. The school problem is not connected with this allegation in the indictment, but somehow or other I submit that we became bogged down by evidence of what the perceived immaturity and stubbornness of youth in the eyes of some of us did or did not do from one area to the other. The accused cannot be held responsible for the quarrel, the stay-away from school, the perception by the police that shouting out in the school yard: "We want SRCs" as riotous behaviour and trying to deal with it with teargas and batons can hardly bring home to any of the accused any of the happenings that (20 occurred as a result of such behaviour.

We have a situation, in our submission, where the direct evidence in relation to lack of responsibility is from one side only and that is the defence side. On this basis your lordship is being asked to bring home, to say accused no.14 who was in custody, accused no.20 who was in custody, what happened in the Vaal on 3 September; the killing of the councillors. All the witnesses who have given evidence have denied that. Documents of doubtful admissibility and strained interpretation are relied upon by the state which (30

asks your lordship to draw an inference against the accused despite their denials. We are sure that your lordship will have regard to the salutary principle in R v Blom 1939 AD 188 at 202-204, a judgment by his lordship WATERMEYER J. I do not intend reading it out, we all had to learn it off by heart a long time ago.

ASSESSOR: I have never heard of it before.

MR BIZOS: (Laughs) But in relation to the sort of inference that the state is asking your lordship to draw in this case, your lordship would also have regard to the dicta in a (10 number of other cases. Again I do not propose reading them but merely to give your lordship the reference. R v Magatusi 1941 AD 201 at 202. The case that I have already referred your lordship to in S v French-Beytach 1972 3 SA 430 (A) at 439H to 440A; S v Sesetse 1981 3 SA 353 at 369H to 370B. I submit that there is a very useful passage in the South African Law of Evidence 3rd edition by Zeffert who after reviewing the cases says the following:

"The possibility of error.."

COURT: Page?

(20

MR BIZOS: Page 464:

"The possibility of error in direct evidence lies in the fact that witnesses may be mistaken or lying. All circumstantial evidence depends ultimately upon facts which are proved by direct evidence, but its use involves an additional source of potential error because the courts may be mistaken in its reasoning. The inference which it draws may be a non sequitur or it may overlook the possibility of other inferences which are at least equally improbable or at least reasonably possible. (30

"It sometimes happens that a trier of fact is so pleased at having thought of a theory to explain the facts that he may tend to overlook in consistent circumstances or assume the existence of facts which have not been proved and cannot legitimately be inferred."

May I just remind your lordship of just one fact. South Africa is in fact a country where there are difficult political and social circumstances and Dr Motlana has told your lordship that Soweto has hardly been without violence certainly since 1976. And we started off with 31 areas. It is true that (10 the events in the Vaal triangle were events which reverberated right through the country but 31 areas reduced to 23 may sound many but I happened to just have a look at the magisterial districts of the country and the towns in the country. It takes 157 pages to set them out, I do not want to do an analysis of it m'lord.

COURT: How many on a page?

MR BIZOS: Even that would be difficult.

COURT: Or how many pages per magisterial district?

MR BIZOS: Well, it is place names as well as magisterial (20 districts, so it is not only magisterial districts.

ASSESSOR: I think there are 405, I am not quite sure..

MR BIZOS: Of the magisterial districts?

ASSESSOR: Yes.

MR BIZOS: I did not count them but I would accept that with respect, m'lord, it will be a matter of record.

ASSESSOR: Something like that.

COURT: That is the sort of thing one usually leaves to your juniors to count.

MR BIZOS: I did not want to burden them with it. But (30 something / ..

something that journalists and some sociologists use is the copycat principle. It has been - we cannot close our eyes to it. It has been given as a reason for the emergency regulations not allowing newspapers to report unrest and not allowing the media generally to report unrest because of what has been described in journalistic parlance as the copycat principle. The young man who sees one group on television or newspaper throwing stones, if he has substantially similar grievances or he lacks discipline, or for many other reasons, he may pick up stones himself so that the fact (10 that out of the 450 odd magisterial districts during troubled times there was proved trouble and for this purpose I think in fairness to the state that we must state that there was proved trouble in 29 out of 31 areas, some of those your lordship excluded because there was no nexus between anything, between the organisations and what have you. But how does one from a pattern or rather how does one come to the conclusion that this is a pattern? The period is a long one and also your lordship will hear that we have a place like the Free State, Parys, Kroonstad, Welkom, the state tries to (20 make out a case that it was on somehow or other basis accused no.20, Mr Lekota, that was really stirring the pot there; evidence on which they no longer rely if I read the "betoog" correctly. But m'lord, look at it. July in Parys, in Seisoville February 1985, Welkom in August 1984 and of course it may be argued that if there was such a conspiracy it may well be that it was not transmitted but the isolated events and the lack of co-ordination in these events, that something happens in Cradock for a particular reason and something happens in Adelaide for another reason and something happens (30

in Seisoville for yet another. We submit with the greatest respect that whatever the prima facie position may have been at the end of the state case at that stage, it no longer applies. Along the line referred to by Zeffert he refers to Baron Alderson's dictum in a footnote and it is particularly instructive in our submission in relation to this case, and we all - it applies to all of us with the greatest respect:

"The mind was apt to take a pleasure in adapting circumstances to one another and even straining them (10 a little if need be, to force them to form part of one connected whole and the more ingenious the mind of the individual the more likely was it in considering such matters to overreach and mislead itself, to supply some little link that is wanted, to take for granted some facts consistent with its previous theories and reasoning to render them complete."

I submit that in the absence of direct evidence under these circumstances any inference that there was a conspiracy would be mere speculation and of course the appellate division (20 has told us in Caswell v Powell, Duffrin Associated Collieries Ltd 1939 - sorry, it is not..it is the court of appeal and not the appellate division - 1939 3 AELR 722 at 733.

"Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable (30 probability /..

probability but if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculations or conjecture."

That was adopted by the appellate division in S v Essack

ASSESSOR: S v Essack?

MR BIZOS: Essack, 1974 1 SA 1 at 16D and S v Mtsweni 1985 1 SA 590 at 593G. Those are the general submissions that we want to make in relation to these 23 areas. My learned friend Mr Yacoob will address your lordship on certain of (10 the areas. I am not unmindful of your lordship's request that we should try and get the references down in writing. There is just one problem. Mr Yacoob's work is in a manner in which it is set out in his own way and the manner which makes it almost impossible for us to pick it up. He will have to give your lordship the references. We are trying to condense as much as we possible can in other parts of the case and we are looking in cutting down much of the argument of post 3 September. Your lordship will recall the funerals and the meetings about rent and that sort of (20 thing. We do not know what the state wants to make of that. Your lordship made certain remarks in relation to some of those events whilst the cross-examination was on. We are in the dark but we are trying to cut it down as much as we possibly can. That is all I wish to say.

COURT: Yes, Mr Yacoob?

MR YACOOB: Thank you, m'lord. We will try as far as it is possible to deal with the areas in the order in which they originally appeared in the further particulars and in the order in which your lordship dealt with them in the judgment

(30

in / ..

in connection with the charge. It may actually not be possible I have a feeling that Soweto might well be dealt with somewhat out of turn but apart from that I think we will succeed in achieving that result, so that the first area we then turn to is Tembisa, which has been always referred to as area no.1. And the state's argument in relation to Tembisa starts at page 973 of the "betoog" as I understand the documents are now called.

COURT: Yes, go ahead.

MR YACOOB: As your lordship pleases. What we are doing (10 is giving your lordship a very brief idea of what the state case was all about so that we all know what area and what time period and what the issues really are; then deal with the evidence to show your lordship firstly that in relation to the relationship between UDF and Tembisa, that there was no affiliation between or that Tembisa civic association was not affiliated to the United Democratic Front and secondly that the relationship between the UDF on the one hand and Tembisa on the other, whether one talks about COSAS in Tembisa or the youth organisation in Tembisa or the Tembisa civic (20 association; I prefer to say the UDF on the one hand and Tembisa on the other was not of any great moment or significance and cannot be described as such that any inference can be drawn therefrom that the accused or anyone else from the UDF gave the guidance which is described in paragraph 66.5 of the indictment.

Then we will go in to the local issues and what happened in Tembisa in a broad sort of way to establish two propositions. One is that the TCA was not responsible for the violence. There I will need to take your lordship (30

through / ..

through the methods employed by the Tembisa civic association in achieving the results that it sought to achieve simply to establish that these methods were inconsistent with the achievement of ungovernability and with the prosecution of what one might call non-negotiation politics. Finally I will deal with COSAS and hopefully establish to your lordship's satisfaction that COSAS was not responsible for any of the problems or troubles in the area and that the violence could not be ascribed to this organisation. From the nature of what happened all I will not be able to show to your (10 lordship in this area is at least exactly how the violence in fact arose; something which just remain beyond the understanding, especially one is limited by the evidence one has on record.

The state evidence was that of one policeman, I forget his rank now his name was Smith and I intend no disrespect to him by not referring to his rank. I will get it at some stage but his evidence appears at volume 115. Before we deal with that it is important to bear in mind precisely what the allegation was. The allegation in the further parti- (20 culars in relation to Tembisa was that violence broke out from 19 October to 23 November 1984. I emphasise this date not because the submission will be that the state must stick to the letter and that any evidence of violence on 18 or 17 October is not relevant, but rather to say that all other developments, all other things that happened, whether they happened in the UDF in Johannesburg or whether they happened in Tembisa, whether they happened in the civic association, whether they happened in schools, and such facts as are common cause and there are many of them must be assessed in (30

relation/..

relation to this particular allegation, because there are a number of organisations mentioned but that at this stage need not trouble us. I simply wanted to say that the period must be very carefully borne in mind because when one arrives at documents and so on it is important to date these documents or trying to date them and to see where they actually fall. The evidence or before we get to the evidence, the admission in relation to this area contained in AAS.3, makes it very clear that there was a lot of trouble in this area during this period; a great deal of violence and it also makes it clear if one has a careful look at it, that not too much emphasis can be placed on this fact that there were specific targets. The reason for that is the one area which does not take the admission too much further unfortunately, but which says that houses, shops and so on were destroyed. The houses, obviously they refer to private houses because police houses I in fact refer to separately, businesses in fact would be private businesses. It seems that there was a great deal of violence that occurred during this period.

The evidence of the witness, and he was a sergeant I am informed, Sergeant Smith, is of a general sort of nature. He of course could not tell your lordship precisely who was responsible for the violence or precisely how or why the violence occurred. Certain facts were placed before your lordship which of course your lordship will have to take into account in drawing a proper inference. But the first point that one wants to make is that there was no specific evidence of how the violence was caused. What was clear of course is that there was a lot of violence during that period. I want to deal in a little detail with Sergeant Smith's evidence / ..

evidence in connection with whether there was a campaign against black local authorities in the area. I ask for volume 115 to be brought out, not because I would like to read from it but because - if your lordship would look at page 5 769 while I talk about it, it would probably be very useful. I am interested in the way in which the evidence in connection with the campaigns in fact came out and the extent of that evidence. Your lordship if you look at the top of the page, is asked about posters. He tells your lordship what appeared in the posters themselves. Asked whether there were (10 pamphlets as well he talks about the pamphlets and then produces a pamphlet, ABA.47 which we will look at in a little more detail shortly. He produces a pamphlet which has both the things that he had referred to earlier on on that page as having been contained in pamphlets and posters circulating in that area. One looks at ABA.47 which is available, it is quite clear that it says "Long live UDF" at the top. It says "Ban apartheid" at the bottom and it makes reference to the withdrawal of troupes from the township, but not a general reference as this witness will have your lordship believe; (20 the reference is specifically in that pamphlet to the withdrawal of the army I think it is from the Vaal area. This will help us later to take the pamphlet but the only point I want to make is that a sergeant who gives your lordship evidence in this way and says that he saw many posters and pamphlets and tries to create the impression that there were many different ones and can only mention an aspect of pamphlets and posters which are contained in the only pamphlet he produces, that fact must be taken into account in assessing the value of his evidence. And the value of his (30

evidence / ..

evidence which I dispute really concerns identification and concerns of course the extent to which his evidence can be trusted in relation to the extent to which campaigns were carried out, but..

COURT: Why? He saw numbers of pamphlets, he picked one up and he took it along. What is wrong with that evidence?

MR YACOOB: No, the impression I got from that evidence was that he - if it was only the one occasion when he saw numbers of pamphlets and numbers of posters all saying the same thing and he brought along one that is a perfect explanation but (10 my submission is that a fair reading of that passage does not justify that conclusion. But let me go further. The way in which the campaign in relation to the community councils was drawn out of him I would submit with respect is also interesting. It was drawn to his attention that the pamphlets said something about community councils and then he was asked a leading question: was there a campaign against community councils conducted in the area and he says yes and that is all the evidence there is. One does not know what the witness understood in relation to a campaign against commu-(20 nity councils and what sort of campaign it was, when it was conducted, over what period it was conducted or what was said in relation to the campaign; what issues were taken up..

COURT: But now what is the debate, Mr Yacoob? I thought it was common cause there was a campaign against the so-called community councils?

MR YACOOB: There was no evidence in Tembisa that the TCA carried out a campaign which involved - which was around the rent increases in a particular way and that is all the witness meant by a campaign against the community councils, then I (30

have / ..

have no difficulty at all, but the state - if the state says that that is all that is meant by the campaign I have no difficulties at all. So all I want to say is that your lordship has no detail in connection with that campaign. Beyond that, so there is this evidence in relation to the campaign. In relation to the violence what the witness says is quite important. He says that the violence began some time in August, that things got very bad around October and presumably the violence ceased round about 23 November in terms of the admission as well as in terms of the allegation made in the indictment. This evidence is to be found again (10 in volume 115 page 5 774 lines 1 to 2. There is of course no direct evidence of any act performed by anybody.

Now there is evidence also of a memorial service, Brian Mazibuko memorial service which was held five days before. It was held on 14 October 1984, five days before things got very bad, so that has to go into this can. Some difficulty about whether this witness can say whether it is the Brian Mazibuko memorial or not but there is other evidence. There was this meeting. It is quite clear though from the witness' (20 evidence that there was no UDF personality present at this meeting, there were no UDF speakers present at this meeting, there were no UDF banners present at this meeting or anything of the sort. So there was this meeting. The other occasion which is referred to is interestingly enough shortly before the end of the period in the indictment, on 17 November. That incident, that event is the funeral of people who died so the witness said during the stay-away on the 5th. At that funeral, of course we have a programme in relation to that funeral which I will deal with in some (30 detail / ..

detail shortly but at that funeral again there was a UDF banner seen. The witness observed the funeral and again there is no evidence of any UDF presence either among the speakers or anyone else..

COURT: I am sorry, did you say there was or there was not an UDF banner?

MR YACOOB: There was.

COURT: There was one?

MR YACOOB: There was a banner according to the witness, and there was no other evidence. So there was a banner but (10 nothing else. There were no speakers, no slogans are referred to or anything of that sort. Further evidence in relation to the UDF is the fact that slogans were found painted, saying "Viva UDF". It is interesting to note that this sergeant gives no evidence himself concerning the chanting of UDF slogans. Now all this evidence is in a very range of the record. It is the same volume and it is found at page 6 770 to page 5 772. It is very easy to get at. So the evidence about the UDF is that there were these. There is evidence about posters which in fact were not produced (20 and as your lordship says, the real meaning of the evidence is that the posters and the pamphlets were found on one occasion then there is really no difference between the posters and the pamphlets having been found.

Now the organisations which are described as being active in the area are the Tembisa youth organisation, the Tembisa civic association and COSAS but this witness does not give your lordship any indication of what this word active means. I am tempted to suggest that that evidence that these organisations were active in the area is so bad that it amounts (30

virtually / ..

virtually to opinion evidence because one does not know what they did except for certain acts which I will come back to; one does not know what exactly they did, how active they were, what their activities were and so on. Different organisations as your lordship well knows are active at different times. One does not know how active or how efficiently these organisations worked, what their policies were and what they in fact did. All the evidence we have is that COSAS was active in the area. Then of course there is the evidence that UDF claims in A.1 that the Tembisa youth organisation (10 and the TCA are its affiliates. Quite clear from A.1 that the UDF makes such a claim and I now turn against this short background of the summary of the evidence to deal with the question of the relationship between Tembisa and the UDF, and it may be as well to start with the relationship between the Tembisa civic association and the UDF. The state, in the "betoog" particularly in paragraph 6.1 of the submissions contained at page 1 003 of the "betoog", make the submission that the TCA was affiliated, there was contact between them as appears from several documents which I will refer to and (20 the evidence of Smith. Now the documents that are referred to must of course each be dealt with in turn and in their context. ABA.46 is in fact the programme or the programme on the face of it, of the funeral of 17 November. Of course one must bear in mind the fact that there was this programme does not in fact mean that the programme was in fact implemented. It is clear that paragraph 12 of this programme cites that a UDF speaker will be speaking at this meeting, at this funeral. In terms of the state's thesis this funeral is an occasion for mobilising and organising people (30

"opsweep"-ing /..

"opsweep"-ing them - if I may use that term - and ensuring that great strides are made in the freedom struggle. On the assumption that the state is right and that this funeral too was being held pursuant to the conspiracy and I may say that this could be the only purpose for which the evidence in connection with this funeral had been led, because there is no evidence that there was any specific violence after this funeral or that anything was said at this funeral which gave rise to violence or anything of the sort. But if the state thesis is correct then at around this time there would (10 have been a great deal of excitement in the UDF about the fact that this particular funeral is taking place, make the arrangements for speakers, ensuring that they have pamphlets and so on, making sure everything is properly co-ordinated and so on, and this funeral your lordship knows was held on 17 November 1984. It is instructive to go to the UDF, take a little trip to Johannesburg on 15 November, two days before this particular funeral by way of the minute S.17. This minute is a document which on the face of it are minutes of the UDF regional executive committee, so it is not a meet- (20 ing of a large body like a regional general council or anything of that nature where things must be kept secret. It is very instructive to look at that m'lord because what it says - firstly it says nothing at all, not a word about the funeral. Of course there is reference in..

COURT: This minute is of 7 December. S.17 you are referring to?

MR YACOOB: S.17.

COURT: Yes, that is of 7 December.

MR YACOOB: Oh God m'lord, it must be that my documents (30 are / ..

are differently numbered.

COURT: Maybe.

MR YACOOB: From the way in which they were put up it may well be that if your lordship goes back to..

COURT: S.15 is the Transvaal REC committee meeting of 15 November. Is that the one you were referring to?

MR YACOOB: As your lordship pleases, that is the one I am referring to. Thank you, m'lord.

COURT: It is S.15.

MR YACOOB: S.15. If one looks at that document firstly (10 the funeral is not mentioned at all. All the violence which took place in Tembisa is not mentioned at all. The organisational activity which takes place at Tembisa is not mentioned at all but there is a reference to Tembisa interestingly enough. That reference to Tembisa on 15 November while the violence is going on in Tembisa and then there is a phenomenal opportunity for organisation and mobilisation and so on at the doorstep two days away. It simply reads that a Tembisa trader wants to have a meeting with the UDF and they want to take a decision at this regional executive committee about (20 whether this meeting should take place or not. Of course they take the decision that they cannot take this decision without consulting officials in the area. I almost hear the state say: aha!, so the UDF did have officials in Tembisa and these minutes in fact prove it. Really not, m'lord, because the evidence shows that there is an affiliate called ERAPO which is responsible for the whole of the East Rand. The minute does not say officials in Tembisa, it in fact says officials in the area. So if one looks at that document..

COURT: I am sorry now, I am sorry. Are you disputing (30 that / ..

that the TCA was affiliated to the UDF?

MR YACOOB: Yes, m'lord.

COURT: Wasn't the TCA mentioned in A.1?

MR YACOOB: Yes, m'lord.

COURT: Now has it been explained that that is a mistake?

MR YACOOB: No.

COURT: Now on what basis do you dispute this then?

MR YACOOB: I dispute on the following basis. I am going to refer to the state argument about the absence of an explanation. Firstly I want to say that, I must emphasise that (10 what appears in A.1 is simply prima facie proof of the contents. We have had witnesses here who have given evidence that is the first point, witnesses to whom I will refer who has said the Tembisa civic association is not affiliated. That is one of the facts which one must take into account. There are lots of other factors and I will deal with them one by one. Secondly, the position is your lordship knows from the evidence that the UDF offices have in fact been raided by the state on a number of occasions, documents which - the way in which this document would have been compiled would (20 have been from records available at the national launch. I would imagine that there would have been a register or something of that sort, that entries would have been made in it; someone would have sat down and..

COURT: Did accused no.19, the secretary, come and tell us the TCA was not affiliated?

MR YACOOB: No, m'lord..

COURT: Why not?

MR YACOOB: He has not been able to find any evidence..

COURT: Why not? Or the publicity secretary who compiled (30

A.1? Did he come and explain there was a mistake in A.1?

MR YACOOB: I am saying that even though that is so..

COURT: But Mr Yacoob, we are not busy with a game. Why was this not placed before court by means of the proper officials?

MR YACOOB: M'lord, we had the secretary of the Tembisa civic association..

COURT: Yes, but we had the secretary of the UDF.

MR YACOOB: Yes, but the difficulty about that is that there was a lot of evidence which had to be canvassed. As your (10 lordship says we are not playing a game and the understanding that must be reached is that there was a lot of evidence which had to be canvassed by accused 19 and 20 and in the nature of things one or two little technical matters might have been left out. Your lordship can take that into account that this was not mentioned but your lordship must also take into account that the evidence that had to be covered was phenomenal. We are trying hard to reduce the size of the case as much as possible to make sure that we deal with relevancy only and on that basis in the manner of a mistake (20 things actually get left out. And this was a long case so one can take into account the fact that the publicity secretary and the secretary of the UDF did not in fact say so. One must also then take into account the fact that other people did say so, that you have, your lordship does have evidence here to the effect that the TCA is not affiliated. And I will go a little bit further because what is clear also or let me put it this way - may I just finish with the question of affiliation and then I will take the next point, and give your lordship very quickly the references in (30 connection/..

connection with the non-affiliation of Tembisa CA to the UDF. Evidence was given by two people, unfortunately because we did not call one person who was within the UDF for the whole period. The first witness who gave your lordship this evidence was the witness Mokoebob.

COURT: Mokoebob?

MR YACOOB: Mokoebob. He said there was no UDF affiliation effectively until the end of 1983. There was no UDF presence in Tsakane and therefore..

COURT: I am sorry, did he say there was no UDF affiliation(10 in Tembisa until the end of 1983?

MR YACOOB: Until the end of 1983 effectively.

COURT: Yes?

MR YACOOB: And he says also that there was no UDF presence in Tembisa except for slogans on walls like "Viva UDF" and he added that he also saw slogans like "Viva SADS". This evidence, these were not UDF witnesses they were TCA witnesses. In other words we prove non-affiliation from the other side. And this evidence is to be found, unfortunately we do not have the volume number here but 21 795 line 28 (20 to 21 796 line 30 and the volume number is 376. Then we called to continue this evidence, the evidence of Mr Ngobisi Mr Solly Ngobisi who was the secretary and who begin work within the Tembisa civic association during 1984 in March. And his evidence in connection with this is to the effect that there was in fact no affiliation, that the committee did not affiliate to the UDF, nor was the UDF discussed at any of the meetings. There were no UDF speakers he says at any of the meetings of the TCA. He also says that there was no campaign to get councillors to resign. He says also (30 that / ..

that there was no boycott of councillors' businesses. I may say that the last aspect had not been challenged, but this evidence is to be found in volume 413 page 24 112 line 16 to 24 130 line 1.

Now technical affiliation even if it is proved does not get the state anywhere in relation to proof that UDF and the accused are responsible for the violence in Tembisa. It is for this reason that I have chosen to call this section the relationship between the UDF and Tembisa and it is for this reason that I said that I submit to your lordship (10 that the relationship between them was of such a nature that it was of no great significance or moment and on the basis of that relationship one comes to the conclusion that the UDF cannot inter alia, one of the reasons, one can come to the conclusion that the accused were not responsible for what happened. One could get an organisation which is affiliated which does not attend any meetings thereafter, which does not really participate in any UDF campaign and the affiliation is on paper to the extent where the people from the affiliates even the secretary does not know about it. That is the (20 sort of affiliation we have and one cannot say that the TCA if one takes paragraph 66 and applies it, one cannot say on the basis of mere technical affiliation, on the evidence that your lordship had, that the Tembisa civic association in terms of 66.2 had to carry out all the campaigns; 66.3, had to carry out this particular campaign; 66.4, had to carry out the campaign by abusing issues and I borrow my learned friend's tongue; 66.5, was given guidance by 19, 20, 21 and others, that is TCA, or activists from there and that as a result of this guidance which has been given, as a result (30

of the execution of that guidance, 66.7, violence broke out. But my fifth submission remain that there is indeed the evidence of affiliation is so indeed but if it is regarded as evidence of affiliation, it is so technical in its nature that it has to be totally disregarded. Again that background then I go on to investigate the nature of the relationship between the TCA and the UDF. I have already made the point that one would have expected and I was in the process of making it when your lordship asked me the question about affiliation. The point I was in the process of making is (10 that if this funeral was to be held on the 17th, should one not have expected some mention of this, particularly if the state's thesis in relation to funerals in relation to organisation and mobilisation and UDF involvement is accepted one would have expected some reference especially and more so since Tembisa is in fact referred to, Tembisa is referred to but there is no reference to the troubles there. My submission is that that is a strong indication, that is one of the factors which your lordship puts onto the scale in order to draw the inference in regard to whether or not the (20 various allegations in 66 of the indictment have been proved. Then particularly since the state refers to AM.50. If your lordship looks at it, it is in fact this UDF occurrence book. Your lordship will see that the document which had lots of handwriting on it, different kinds of handwriting and the evidence in relation to this document if I remember it correctly is that different people wrote messages in it as they came in from time to time. One would particularly have expected in a work co-ordinated organisation which is intent upon bringing about revolution in this country, a (30

degree of precision because in that register the state in fact refers to an entry there to the effect that the UDF received information in connection with this meeting and this information is contained at page 29 in connection with this funeral. Your lordship will see that everything is set out there about the date, the people who died and so on and so on. The state of course contends that this is evidence of affiliation and/or contact between the UDF on the one hand and the Tembisa civic association on the other hand. The point I want to make there is that nothing from that entry shows that the (10 information was conveyed by anyone from the Tembisa civic association. And if I may just make one more point while one is looking at AM.15, if one can get to page 18 of it, that is where information was conveyed to the UDF about the Mazibuko funeral on 14 October. Interestingly there is nothing there in that entry to indicate that the Tembisa Civic Association contacted them; somebody called Pat gave them the information. One does not know who Pat is, he probably comes from Tembisa or something like that but more importantly it seems that there was no UDF speaker at the meeting (20 because if there was one would have expected particularly with the sort of cases the state tried to prove, one would have expected some evidence about it. We have evidence of the funeral but no evidence about any UDF speaker despite the entry in this particular document. I want to say that AM.15, these entries demonstrate further particularly the entry in relation to the funeral taken together with the fact that the matter was not discussed even at the meeting of the 15th, is a clear indication, a further clear indication that the relationship between the UDF and the TCA was very (30

thin / ..

thin indeed and not of much moment. M'lord, shall we take the adjournment now?

COURT: Yes, may I just ask a question? I am sorry, I was looking at this occurrence book. Where does the name "Pat" appear?

MR YACOOB: At the beginning of the entry on page 18..

COURT: 18?

MR YACOOB: Relating to - it was on 3 October as I see it the entry, it is next to the thing which says 12/22.

COURT: Yes, thank you, I found it now.

(10

THE COURT ADJOURNS FOR LUNCH.

COURT RESUMES AT 14h00.

COURT : Before you start, Mr Yacoob, is Mr Bizos available?

MR YACOOB : No, he went back to Johannesburg.

COURT : Well, then I will have to discuss the matter with you I am afraid. I mentioned to Mr Chaskalson yesterday the duration of the argument for the defence and asked him whether it was possible to set a time limit. We did not get very far yesterday. I had lunch with the acting judge president today and I would like to be informed how long your argument will take according to your estimate. (10)

MR YACOOB : We had a brief discussion last night in connection with this matter as a result of your lordship having raised the question yesterday. At this stage our estimate is that we should be over by the end of next week. The difficulty is that it has been difficult to make the estimate. It is a very honest estimate which was difficult to make. We think that we will finish by the end of next week.

COURT : Is there any reason why I should not apply a guillotine to the oral part of your argument?

MR YACOOB : Yes, there is. The difficulty I find usually (20) is that would the tone of voice and so on in an oral argument, one can make one's point in a more convincing fashion and as I understood it the accused, provided that it is not overdone, would be entitled to such benefits and might get them. An argument in cold print certainly does not serve the purpose as well. One can do a lot with intonation and so on and tones of voice.

COURT : Yes, obviously, but one can lift out the main points of your argument for the oral part and the rest you can have on paper. What is wrong with that? (30)

MR YACOOB/...

MR YACOOB : It takes a long time to get it on paper.

COURT : Yes, may be. The state took a long time to have it on paper, but they had it ready.

MR YACOOB : We in fact did find it more difficult, but we ought to finish by the end of next week. My own submission is that your lordship ought to let the matter continue and then it will be over by the end of next week. We will try and get any written argument that we can get across to your lordship.

RULING

(Sent for revision)

MR YACOOB : My lord, I was busy with the question of the relationship between the UDF and affiliates and we were busy with AN15. The state referred to one more section in AN15 which must actually be read together with ABA39 which is a pamphlet again which is before your lordship and these two entries relate to a meeting which was held on 3 February 1985. My simple submission in relation to that is that this has no bearing on the nature of the relationship between the UDF and its affiliates at the relevant time and my submission is that this happened - the violence is alleged (10) to have occurred up to 23 November 1984. This one is three months later - two and a half months later and as such my submission is that it had little to do with it - little to do with the question of whether the activities of the UDF or the relationship between the UDF and the Tembisa Civic Association gave rise to the violence.

A further point I wish to make is that accused nos. 20 and 21 were in detention during the period when this violence occurred and this must be taken into account in determining the extent to which they are responsible. Furthermore, (20) a study of the minutes of the UDF general council to the extent that they are available and they are from EXHIBIT K to EXHIBIT R, make it plain that the Tembisa Civic Association did not attend meetings of the UDF general council as far as we were able to make out.

Then if one looks at the minutes of the executive committee, in the S series, one would come to the conclusion that the Tembisa Civic Association and events in Tembisa were not much discussed. The state has relied in order to say that there was some sort of relationship between the UDF and (30)

other/...

other areas, on EXHIBIT C118 which is the UDF working document. I will deal with that document in more detail when I refer to another area. At this stage all I want to point out about C118 is that where emergency arrangements are sought to be made on the face of the document in respect of the East Rand, Tembisa is actually not mentioned in the East Rand townships. However, I must point out in fairness that the word "et cetera" appears after the list of townships or areas which would appear under the term East Rand. So, this in my submission must be taken into account. (10)

I now turn, having - oh, finally I want to refer to EXHIBIT C99 to which the state has also referred. My learned friend, Mr Chaskalson, as I understand it, has dealt with this document in some detail, but on the basis that your lordship finds that this document does prove the truth of its contents, at page 2 of that document, the area that is referred to under ERAPO makes it quite clear that ERAPO did not have a close relationship with affiliates in Tembisa. ERAPO is an organisation which on the face value of C99 has branches in various parts of the East Rand, but it says it (20) does not have a close relationship with the areas. My submission is that the fact that ERAPO had no close relationship with Tembisa, with the association in Tembisa as indicated by C99 makes it perfectly plain or is another factor which your lordship takes into account in determining the absence of a closeness of relationship between Tembisa Civic Association and the UDF, because it is admitted that ERAPO is a UDF affiliate in respect of the East Rand.

COURT : Is ERAPO referred to in C118? Because I do not see an ERAPO there. I see an East Rand Area Committee there? (30)

MR YACOOB : That is right.

COURT : Is that the same as ERAPO?

MR YACOOB : No, it is not.

COURT : What is the East Rand Area Committee then?

MR YACOOB : What happened was that ... (Court intervenes)

COURT : On the evidence.

MR YACOOB : On the evidence, of course. What happened is, if your lordship looks at Q2 your lordship will find that during June 1984 at a meeting of the Transvaal regional general council a decision was taken to establish area (10) committees for the more efficient co-ordination of the work of the UDF and East Rand Area Committee was one of the area committees which was in fact to be set up. I will deal with it in more detail, because my submission is that the East Rand Area Committee on the documents did not function. Your lordship will recall the state argument in relation to some other areas where the area committee is talked about, but the East Rand Area Committee is contemplated. That is the first problem, but there is a conflict then between that and C99 because C99 talks about branches in different parts of (20) the Eastern Transvaal.

The state has drawn to our attention that C118 does in fact mention Tembisa.

COURT : Oh, I am sorry, I missed it.

MR YACOOB : It does mention Tembisa but not under the East Rand. I looked for it only under the East Rand. It is on page 2 1.4.

ASSESSOR (MR KRUGEL) : Under the Johannesburg Area Committee.

MR YACOOB : I looked for it simply under the East Rand and did not find it. It seems to be included under the Johannesburg Area/... (30)

Area Committee which in some minute later is set to be working well. I will give your lordship the reference to that, but that brings into focus the further point about the extent to which one can rely on minutes which say that area committees are in fact working well, because if one tests the work of the Johannesburg Area ... (Court intervenes)

COURT : Let us not take step two before we have done step one. It states here - the initial paragraph says that the following area committees be established and be set into action immediately to address the priority issues as indicated. This is now 25 September 1984 and on Johannesburg it says Johannesburg with neighbouring suburbs including Fordsburg, Western Coronationville, Bosman, Riverlee, Alexandra and possibly Tembisa. So, either possibly Tembisa here and not under the East Rand or possibly Tembisa does not exist yet and is to be formed, but one does not form an area committee and include an area where you do not have either a civic or something else. (10)

MR YACOOB : Not necessarily, because - the point is probably against me, but one could in theory, to be quite honest, (20) have referred to an area, which intends to do some work, intends to establish some kind of organisation where one thinks it is necessary and then you mention it in a long list, because what this records simply is intention. So, I do not know whether it is against me or not, but notionally it is certainly so that you can have it.

The work possibly in relation to Tembisa is interesting and the uncertainty about where it should go, but any way, there is some doubt about the exact status of Tembisa and the only reason why we point that out is to simply say (30) that/...

that your lordship must in fact take that also into account in determining ... (Court intervenes)

COURT : Can you tell me what is the admission in respect of this document?

MR YACOOB : I think it was found at the UDF ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : What was the admission on Mr E.A. Saloojee again please?

MR YACOOB : The admission in regard to Mr E.A. Saloojee is that he was the treasurer of - the national treasurer of (10) the UDF.

COURT : Why I am asking these questions is, is there a debate about the proof of this document or is it accepted that this is a UDF document?

MR YACOOB : Yes, that is true.

COURT : This is accepted?

MR YACOOB : Yes. The state interprets the document in a particular way, but I will come to that at some later stage.

COURT : Yes, I have never seen that your side and the state interpret a document in the same way. This is not (20) news to me.

MR YACOOB : One hopes that our side and your lordship will interpret the documents in the same way. That is perhaps closer to the point.

COURT : There is also a third possibility.

MNR. FICK : As ek net van hulp kan wees. Ek sien in BEWYSSTUK AAS6 word erken dat hy is lid van die Transvaalse Uitvoerende Komitee van Julie 1983 tot Maart 1985 en hy is ook die tesourier van TIC volgens BEWYSSTUK AAS4.

MR YACOOB : It is accepted that this was a UDF document, (30)

but/...

but the document will be carefully analysed and one must look at it very carefully to work out exactly what it says. That is the area of the debate.

I pass on then to what is happening in the area. My submission is that it is quite clear from all the facts that I have pointed out to your lordship that there is not or there was not at the relevant time a close enough relationship between the UDF Transvaal and events in Tembisa, to hold the UDF responsible for those events even if the court finds that those events were the result of work in connection (10) with the black local authorities.

As far as Tembisa itself is concerned, we called three witnesses. One of them was a scholar who was 20 years old when he gave evidence and 16 approximately at the time when the incidents occurred. My submission is that that is fairly important in determining its credibility and the other two were part of the Tembisa Civic Association and I would like to highlight some of the evidence basically to establish two propositions. First I would like to deal with Tembisa Civic Association. The first point I would like to make there is (20) that the association has itself made a statement in which it says that - or a written document, a newspaper article, EXHIBIT DA207, which was confirmed by the witness Mr Ngobisi in which - and from which it is clear that during July 1984 Mr Ngobisi, the witness, addressed a meeting at which he dissociated effectively the Tembisa Civic Association from violence of any kind. In fact he said in this document that violence begets violence. My submission is that that document makes the attitude of the Tembisa Civic Association to violence quite clear. The argument that this sort of (30) statement/...

statement would be made publicly even if the association were violent, is not a particularly good one because then you get yourself into a difficult situation. You have got to get people to act violently, you have got to do that in some way and large masses of people if you have got to achieve it to the extent to which things happened in Tembisa. You can do that on the one hand and on the other hand you tell people at mass meetings that you are not - you are actually not violent at all and you believe in a peaceful method. There is no better way not to - there is no better way to (10) discredit yourself and your organisation absolutely and totally. My submission is that in these circumstances that argument does not hold too much water.

Then as far as the methods employed by the association are concerned. My submission is that they work in such a way that the inference cannot be drawn that they were part of any conspiracy. The evidence of Mr Mokwebo applies in respect of the early days to the end of 1983 of the Tembisa Civic Association and is largely not disputed. He says that he had heard about the Tembisa Civic Association from one (20) Mr Goba Ndlovu who was the chair person of that body and he says that at that stage the aim was to sit around a table with those in charge of the township to talk about problems of the people. He says that he joined the association in 1981. He says that he would attend a report back meeting of residents in his area from time to time. Reference to that is at volume 413 page 21 793 line 12 to page 21 795 line 27. Sorry, that was volume 376.

I have already referred your lordship to the evidence in relation to UDF affiliation. He refers to the fact (30) that/...

that - under cross-examination he gives a few more details about these report back meetings and the way in which this association worked and more details about his own participation. He says that he knows of no mass meetings held by the Tembisa Civic Association at that time and we are dealing with up to the end of 1983. He says that he attended meetings, he attended residents meetings in the area. He says he attended no committee meetings. He says that there was from time to time reports about responses received as a result of negotiations with the councillors. This is in volume (10) 376 page 21 808 line 26 to page 21 814. He gives some detail about that.

This evidence was really not disputed except that at some stage it was put to the witness that the launch of the VCA in fact took place in 1983. By implication in fact it was put that the launch meeting in fact took place on 12 March 1983. By implication this was a dispute of all his evidence in relation to his activities in the association from 1981 to 1983 and that dispute might imply that all his evidence is fabricated. My submission is that it may not (20) imply that - and even if it does, your lordship cannot find that, because he gave fairly detailed evidence and it is difficult to invent that sort of thing in such great detail.

We then go and this person stops in 1983 and that means to trace the matter somewhat further we need to go to the evidence of Mr Ngobisi who took over as secretary during 1984. Mr Ngobisi says that he joined the association in March 1984 and he was called upon to join - he was called upon by Sitau(?) to join the organisation at this stage when the rent had in fact gone up and this evidence is to be (30)

found/...

found on page 24 103 volume 413. He gives an interesting account of a meeting which he attended and at that stage when the rent went up they called a meeting. This meeting was held in March 1984 to hear what the community said about the increases and the decisions that were taken were particularly important. It was decided to meet the councillors, to try and persuade them not to increase the rent. It was further decided to take legal advice and this evidence too is not disputed and my submission is that this is a background against which the actions of the TCA must in (10) fact be assessed. They tried to meet the council according to the evidence of this witness. Mr Moloko was sent. Mr Moloko was a man on their committee. He was also part of the council as I understood. He worked in the council offices and he was asked to take a message to the councillors and the councillors in fact refused to meet him. This evidence is in the same volume page 24 103 line 17 to page 24 105 line 22. This evidence as I emphasise is really not challenged.

The chairman of the association was asked to consult in relation to - to consult with lawyers in connection with (20) the increase and he consulted the Legal Resources Centre. An objection - there was a reprieve as far as the rent increase is concerned. Thereafter the rent was to be increased again and a further objection was filed. The council in the meantime had refused to meet them. That was the problem, but despite that, they went further and took further legal steps. My submission is that this too is common cause and inconsistent with the conduct of a violent organisation and your lordship will find this evidence again in the same volume at page 24 105 line 24 to page 24 108 line 13. (30)

When/...

When the council refused to meet the Tembisa Civic Association, they did not give things up and that is a matter to be emphasised as well. They did not go back to the people and say these councillors have refused to meet us, let us do something about it. They sent a letter to the Department of Co-operation and Development. As a result of this letter the town council met them. That evidence is fairly reasonably summarised by the state as well. The meeting in fact did take place between the council and themselves and there is no dispute about the fact that a meeting did take (10) place, as I understand the cross-examination.

At this meeting the witness said that they were unhappy about it, because security policemen were in fact present at the meeting and that is fairly important because it sets the stage for why the press statement DA207 which is also not in dispute was made. This lot of evidence you will find at page 24 110. It is in the same volume still.

Then of course there is the evidence that this meeting was held and the press statement or the newspaper article EXHIBIT DA207 was in fact handed in. He makes it quite (20) plain that there was no rent boycott advocated in Tembisa at the time, but he says that the rent did not go up because of the work which the organisation did. He says also that they had discussions in connection with routes and so on, with PUTCO and the taxi association. This evidence is to be found at page 24 111 line 28 and onwards.

My submission is that it is clear from this evidence that the methods employed by these organisations were not methods which were intended on causing any kind of ungovernability and that these methods would not do that. (30)

I emphasise that his evidence has not been challenged.

Perhaps it should be convenient at this stage since I have relied on the evidence of these two witnesses, Mr Mokwebo and Mr Ngobisi, to deal very quickly with some of the state criticisms of their evidence.

The first submission that is made which we quarrel with in relation to Mr Mokwebo's evidence is at page 985 paragraph 2.14.18 in volume 7. The submission there made is that Mr Mokwebo ... (Court intervenes)

COURT : That is now "betoog"? (10)

MR YACOOB : Yes, that is right.

COURT : We have been referring to it as "betoog".

MR YACOOB : Page 985 paragraph 2.14.18. The submission made there is that Mr Mokwebo's evidence, that is the only witness, is false because he is contradicted on affiliation by the document itself. My submission is that the document would be prima facie evidence of affiliation. You cannot then say that although it is prima facie affiliation, it must be accepted as true and every witness who testifies contrary to what is contained in the document is in fact false. (20)

One cannot say that.

Then the next submission is at paragraph 2.14.19 of the "betoog" ... (Court intervenes)

COURT : Just before we leave this point. What has been troubling me in the beginning is - the reference here is to A1 page 60, but is that not allegation or argument by the state enforced by the reference to C118, the document we referred to where it says possibly Tembisa, a member of the area committee?

MR YACOOB : No. The document C118 does not refer as I (30)

understand/...

understand it only to areas in which there are affiliates. I must make an analysis of that and I will give your lordship that analysis tomorrow, but what it does say is that areas - there are areas in which work is to be done. There is nothing in that document which says that these are UDF areas in which we need to do work, in which we have affiliates and that is why we need to form area committees. It does not say that area committees relate only to - or would have included in them or would work only in areas or townships in which they have affiliates. As I pointed out to your lordship (10) ... (Court intervenes)

COURT : I thought, I may be wrong, but reading the documentation of the UDF, is that one has affiliates and then if you want to group them together you form an area committee which consists of those affiliates and then you can have a bigger area which becomes a region?

MR YACOOB : That is what ... (Court intervenes)

COURT : That is the impression I gathered also from Mr Bizos's argument. I may be wrong.

MR YACOOB : No, it is true that an area committee would (20) consist of affiliates in the strict sense of that word, but there is nothing to say - there are two areas. Firstly the existing organisations must be maintained. Secondly work also has to be done by the area committee in areas where there is no organisation. So, if one says that an area committee covers this area, what one is doing by mentioning those towns, as I understand it, is to define the area in which the area committee would operate or over which the area committee would in a sense have jurisdiction. It is like defining magisterial districts. That is how I see 118. (30)

What/...

What it says is that a particular area committee would be responsible for a particular area. So, if an organisation comes to existence in Tembisa or if an organisation from Tembisa applies to the UDF for affiliation, you do not have to sit around saying - trying to work out which areas are going to be in it and what is in fact going to happen. We already know that this magisterial district as it were has been geographically defined. That is the sense in which I read the definition of areas in C118. Then as far as the composition of the area committee is concerned, the area (10) committee would consist firstly of affiliates in the area and then if there are interested people in a particular area they might also get some kind of observer status or something like that. I must find the reference for your lordship for that proposition in terms of interested people being observers on area committees, but as I understand C118 what it is doing is it is defining the area of operation of a committee.

I was at the stage I think where I was dealing with the arguments advanced by the state in relation to Mr (20) Mokwebo's evidence and said that it was an incorrect approach to say that the witness is not talking the truth because he is contradicted by a document and possibly by two documents. As I have pointed out a whole range of other issues need to be put into the balance and I have drawn your lordship's attention to all those.

The next objection appears shortly after page 985 of the "betoog". It is 2.14.19. The criticism there is that he says he became a part of the Tembisa Civic Association in 1981 but he does not dispute that it started much later. (30)

The/...

The "betoog" says that it does not dispute that he started in 1985. That must be a mistake, because the state's contention is that the UDF is affiliated to the UDF is actually a mistake because what was in fact put was that ... (Court intervenes)

COURT : Actually the argument refers to 1983, March 1983.

MR YACOOB : That is correct. That was put and that criticism where he says he cannot comment on whether there was such a meeting or not, if your lordship looks at the question and the answer in relation to this. Your lordship would (10) find it was a relatively long sort of double question coupled with a meeting at which Mr Frank Chikane I think it was spoke and he said is "I do not know." My submission is that witnesses quite often do not hear this sort of question properly and very often give this sort of answer and if the suggestion is that because he said "I do not know", the whole of his evidence in relation to his association with the body in 1981 and thereafter my submission is that that suggestion is not valid.

There are no other criticisms of Mr Mokwebo which I (20) would specifically like to single out. I want to say that the criticisms are not of much - and particularly where the evidence has not been disputed it should be relied upon. As far as the UDF affiliation question is concerned, I agree that it had been disputed, but my submission is that that evidence is in fact in accordance with the probabilities and should in fact be relied upon for that reason.

I have also dealt with the evidence of Mr Ngobisi and I would like to deal with a few of the criticisms of his evidence advanced by the state. It is volume 7 still (30)

paragraph/...

one bears in mind the dispute is unfair. If he did not regard COSAS as a political organisation, this cannot be held against him.

Then the next criticism is at page 996 still 2.26.22 of the "betoog". The point that is made here is that the secretary of the UDF had in his possession certain documents such as the UDF declaration, calender and a UDF newsletter. The point I want to make here is that if the TCA had been affiliated and if there had been a close relationship between the two organisations, one would have expected to find in (10) the possession of Mr Ngobisi documents of a different sort. Communications between UDF and himself, notes perhaps of meetings and things like that. Instead what he had, a public document and the evidence cannot be disputed in regard to having got those documents at the University of the - in the vicinity of the University of the Witwatersrand where he worked. My submission is that that point is really against the state because Mr Ngobisi was found only with documents which are publicly and easily available.

Then we go on to page 997 of the "betoog" paragraph (20) 2.16.24 and this concerns the pamphlet CA39 which was found in his possession. Your lordship will recall the pamphlet. It was a pamphlet in which the TCA was written in small writing. There was a lot of cross-examination about the circumstances in which the witness got into possession of this particular - why he had this pamphlet and whether a joint meeting between the TCA and - a joint meeting was convened by the TCA and COSAS at which the public was invited dealing with certain issues. The state seems to rely a great deal on the fact that the witness's evidence cannot be (30)

correct/...

paragraph 2.16.19 page 993. Here the criticism is really that the state has given your lordship an inaccurate account of the evidence and it could lead to some sort of misunderstanding, more particularly because of the issues in this case. He says that they arranged a meeting for March 1984 "oor die huurverhoging sodat die inwoners se gevoelens getoets kan word hieroor." That is not actually the evidence. The evidence is and the specific evidence will be found at volume 413 page 24 104 lines 1 to 2, so that we could hear the views of the residents regarding this. (10)

I make this point simply because the state is trying to prove the case of the making use of emotional issues as it is put in paragraph 66(4) and in that context there is a very important difference between testing feelings, because if one tests feelings, there is the implication that you are trying to work out how far you can go, what you can do, what you can get the people to do and so on. Really the witness did not say that and he used completely different terminology.

Then Mr Ngobisi is again criticised at paragraph 2.16.19(20) and 2.16.20 page 996. The whole point here is whether Mr Ngobisi was correct in his evidence or whether he contradicted himself in his evidence concerning whether he knew about political organisations and the assumption made by the state is that Mr Ngobisi himself ought to have known of his own analysis of COSAS that this is a political organisation and that trying to put that as fairly as I can in the light of the fact that there would be a dispute in this case about whether as to what extent COSAS is a political organisation or not, but the assumption against Mr Ngobisi even if (30)

correct because the TCA is in fact in small writing and that if they wanted to use the name of the TCA then of course it would have been in large writing. My submission is that the fact that it is in small writing in fact shows what I might for want of better terminology a roguish use of the name, stealthy use of the name. At best for the state the question - the fact about the document being in small writing does not take the matter any further, but there is a further point. The further point is this, under cross-examination Mr Ngobisi himself was quite frank with the court in connection with (10) COSAS itself. He cannot be said to be avoiding the COSAS issue, because what he said under cross-examination is that he became aware of COSAS because he saw - because there was a letter - he became aware of COSAS in 1984, early 1984 at a stage when there was a letter which was received while he was secretary of COSAS and this letter was included in the objection which was filed and contained the point of view of scholars in relation to the rent increase. He conceded that perfectly freely in cross-examination as it would appear from page 24 117 of Mr Ngobisi's evidence. That was volume (20) 413. So, my submission is, if one takes into account the fact that he was perfectly frank with the court about a joint dealing between the TCA and COSAS where some representations were actually included, when he had no reason I would imagine - there was no reason why he should lie about a joint meeting some time later and that in all the circumstances his explanation in relation to why he had the pamphlet must at least be reasonably possibly true.

Then, still at page 997 paragraph 2.16.26 of the "betoog" - reference is made at 2.26.26 to the fact that Mr Ngobisi (30) said/...

said that there was a no go situation at the schools. This must not be taken in isolation. If your lordship goes to the evidence which is referred to by the state under that paragraph, your lordship will find that he amplified his answer because the words "no go situation" can be a little bit deceptive and misleading. What he said is that the students were on boycott and there was no harmony. The use of the word "harmony" in that context too seems to give a very interesting analysis of the sort of understanding that Mr Ngobisi himself had and the sort of person Mr Ngobisi (10) himself is. He says further, if your lordship follows up the same reference, that he regarded the educational area as a special field. It was clear quite that he did not know too much about it, because when he spoke about the parents committee he said the parents committee or some such. It is quite clear that he does not know very much about what is happening in the education sphere and therefore I do not think that too much reliance can be placed on his evidence. He was somewhat out of it and did not really know what was going on. (20)

He was criticised of course also in the same paragraph on the basis that he says he kept the pamphlet in order to investigate why or how it came about that the name of the Tembisa Civic Association was in fact misused. He was criticised because he did not make the investigation. A simple answer is that he probably was not a particularly industrious person and therefore did not make the investigation. He resigned during December 1984. By October 1984 it would seem, if one takes a round view of the evidence, that the rent issue would have been more or less resolved, his need (30)

to/...

to be on the organisation would have decreased somewhat and he just did not continue doing the work.

Finally paragraph 2.16.30.

COURT : Just a moment. I am just sorting out things here. Sorry, go ahead.

MR YACOOB : I then refer to the criticism at page 998 of the "betoog" 2.16.30. This is the letter - this concerns the letter which was not put into the record, but which gives or purports to give reasons for Moloko's resignation. All we know about this letter from the record and from the (10) evidence, is that the witness admitted that it was signed by Mr Moloko and that he knew Mr Moloko's signature. We do not know where it was found. We do not know - I do not think this is a document which qualifies under section 69(4) on any basis. In any event it is not before the court. We do not know whether it was in fact delivered to the chair person. We know of course that it is dated March. A number of problems appear from this letter, because if one assesses it against the evidence that is common cause, then one cannot accept the contents of the letter or one has to accept that (20) the organisation changed meaningfully after that. The letter was written in March 1984. If the organisation changed meaningfully after March 1984 and started having negotiations with councillors and so on which it was not having before and started keeping minutes and so on, it means that Mr Mokwebo's evidence must be relied upon in relation to the methods which the organisation used and so on, but the complaint in the letter concerning this fact that people were not talking to the councillors, that complaint can have no weight at all if it is weighed against the fact that it is common cause (30) that/...

that the meeting with the councillors happened. It is common cause that after that meeting certain other things happened and the statement EXHIBIT 207 was issued. If one accepts all that - none of this was really challenged in cross-examination. It could have been if there was no meeting held with the councillors, one would have expected in the way in which this trial was conducted in particular that the evidence would have been obtained in relation to that and the matter would in fact have been put right. If I recall - on the record certainly nothing more was (10) put to this particular witness. I am not sure about this, but it occurs to me now that this may be the witness who gave evidence over two days, but I will check that point and come back to your lordship and that there was time for these investigations to be made, but nothing was put about the fact that you had no meetings with the council or anything of the sort. My submission is that if nothing was put and if all that is common cause, that letter cannot actually be held against him.

Paragraph 2.16.31 of the "betoog", there the criticism(20) is that he said that Tembisa Civic Association represented 83% of the population. Quite obviously this was tossing to some extent, which people do and it was may be an exaggeration of what the organisation actually stood for, but people do that when they want to boaster their own organisation. If the state's argument is correct that the Tembisa Civic Association is no more than a very small group of people, who have no support and so on, then that actually means that they could not - there is less of a chance that they would have given rise to the violence in the area because of the(30) fact/...

fact that they are indeed such a small grouping of people. My submission is that that in fact was against the state rather than for it.

Dealing with the criticism of these witnesses, my submission is that regardless of these criticisms the evidence of these witnesses ought to be accepted as being at least reasonably possibly true. As far as the aspect of the methods of the organisation are concerned and the question of the Tembisa Civic Association having made a statement saying it was non-violent, that must be accepted as proof (10) and my submission is that everything else that happened in the area or did not happen in the area must be assessed in the light of that.

Now I wish to turn to the school situation. I have already remarked that this evidence must be assessed in the light of the fact that the scholar who gave evidence before your lordship was only sixteen. I come to deal at a later stage with some of the criticism made by the state as far as this witness is concerned but my submission will be that a lot of those criticisms would fall away if you regard (20) is given to the fact that he was sixteen years old at the time and that a long time has elapsed between the time of the events which he testified about. He says that the school boycott began in July. Before that he testified that during February 1984 there was in fact a problem at his school arising out of the fact that the scholars had complaints. He says that there was a meeting in February 1984 about SRC's, corporal punishment, scarcity of books and so on, but the point about this evidence is that no violence ensued. They went on a short boycott. The next point I (30) want/...

want to emphasise about this evidence is that they at that stage talked about the student representative council and talked about then as a go between between teachers and scholars. He says that eight scholars were chosen to see the principal. This evidence is found at page 22 590 line 23 to page 22 592 line 18. This evidence has not been challenged. He then says that on 19 July 1984 the boycott started, not at his school where there had been a boycott during February but on 19 July 1984 a boycott started at the Butimalong(?) school. This is in fact common cause, that(10) the boycott started there. It has not been disputed at all. That the scholars discussed the matter and decided to identify themselves with the people at the other schools and decided to boycott the school as well. He makes it quite plain. Pupils from other schools were present when this decision was taken. This evidence is found at page 22 594 line 19 to page 22 596 line 3.

The importance of this evidence is that it is evidence in a sense of the absence of organisations, because if there was organisations and if a boycott was to come about and (20) if local issues had little to do with it, one must firstly expect the boycott to start in July at the school where it started in February, school to school differences and so on, had nothing to do with it and if it was a question of manipulation and organisation, or secondly one would have expected troubles at both schools to have started together, but it is common cause that they actually started at more or less the same time. He says that he was present at a discussion at which it was decided to have this particular boycott. He makes it quite clear that there was no COSAS(30)

at/...

at the school as at the middle of July 1984. He says that he read about COSAS in the newspaper. He heard about COSAS in Tembisa only after the boycott had started in July and this evidence is to be found at 21 596 line 4 to page 21 598 line 3.

The reason why this evidence is emphasised -I will give you two reasons. The one reason is and I will give your lordship the reference when I get to that section of the argument. The state says things to criticise him and seems to summarise his evidence to say his evidence is to - he (10) suggests that COSAS started in July and criticising him for saying later that COSAS - he heard of COSAS in Tembisa in late July or early August. My submission is that that is not a contradiction. He made it quite plain in the section to which I have referred your lordship now that COSAS started after the boycott and not simply in July, but the second reason why I emphasise this is this, that the evidence about COSAS is actually quite interesting. May be I should deal with this in detail at this stage. I have already referred your lordship to Mr Ngobisi's evidence where he says that(20) as early as May 1984 a letter was received from COSAS with some representations, which were included in the objection as representing the views of COSAS. Then your lordship has the evidence that the scholar did not know about COSAS during July, because this is all long before the trouble started but he did not know about COSAS in Tembisa in July and that he became aware of COSAS in Tembisa only at the end of July. Really no one can testify as to whether COSAS existed or not. The key is that everyone can say he only became aware of it. Ngobisi became aware of COSAS in April/May when he received(30) some/...

some representations from them.

The next bit of evidence in relation to COSAS is that this witness became aware of COSAS at the end of July/August and then of course he went to COSAS offices in January of the next year, but we will come to that evidence. Then there is the evidence of the witness Mokwebo and that evidence is to the effect that he became aware of COSAS only in 1985 and that he did not hear about COSAS actually in 1984 and he gave your lordship that evidence - he told your lordship that at the stage when he was cross-examined. I will give the (10) reference in a moment.

Then of course there is AB46 which indicates that - on the face of it at any rate - COSAS was sufficiently well organised in October - in November 1984 to print a program in relation to a funeral. The way I put my last proposition in a sense foreshadows the point I want to make. The question is not simply whether COSAS existed or not. The question is what sort of COSAS existed? What were they able to do? How many people knew about it? And it seems quite clear from all the evidence that the presence of COSAS was (20) very limited as at April 1984, that it was limited also during July in the sense that the scholars did not know about it, did not know about its existence, that COSAS then becomes known in Tembisa towards the end of July/August and establishes - plays a role in the funeral to the extent of printing a program and in fact becomes established in January. My submission is that COSAS probably existed but one does not know what it is. They may well have been a committee of some sort which became more active and less active, depending on the exigencies of the situation from (30) time/...

time to time, but there is no evidence that COSAS existed in Tembisa and had the organisational infra structure necessary to bring about the violence which in fact occurred in this particular area, nor is there evidence that COSAS in this particular area Tembisa had the necessary relationship with the UDF to make the provisions of paragraph 66 applicable to the relationship. My submission is that there is very little evidence about the existence of COSAS. There was the slogan as well and while I am dealing with COSAS, let us deal with Manuel's evidence. (10)

I find it difficult to understand why this evidence was actually led because there was no allegation that any violence came after that funeral. The difficulty is that Mazibuko is referred to in the evidence. Maggie Mazibuko and another Mazibuko who came and spoke to the lady about the matter and told her that her daughter had been claimed by someone else and was now being called a Mazibuko. I do not know - I have checked the list of co-conspirators and I have not been able to find any Mazibuko names there and it seems that something happened in relation to the Mazibuko's and there is (20) some relationship between the Mazibuko's and Manuel in terms of which the photograph of this girl appeared in ABA46 in the way in which it appeared. I do not know whether she was a little girl. I think she was older, but in the way the photograph appeared and I have not been able to make any connection - the state summarises this evidence but does not give a convincing idea of the connection between this evidence and the rest, but may I return then to the education issue.

We have reached the stage where we had said that he (30)
heard/...

heard about COSAS in Tembisa after the boycott had started in July. Of course, after the boycott started it seems quite clear that the department closed the schools on 31 July and he gives evidence of how the police asked them to leave and how they left the school on that particular day.

The criticism here if one looks at this evidence and at many other places in the thirty-one areas and may be I should deal with it at this stage, because this is the sort of argument which is difficult to put down in writing. The criticism is not generally speaking that the police acted (10) technically correctly in all the circumstances at the various schools and so on. The question to be answered is not who is wrong and who is right in terms of any moral sense of that word or in terms of any legal sense of that word in adjudicating what was happening in the particular area. The true question is this that there were problems and this is what the evidence actually reveals. Your lordship has heard many young people give their evidence. Some of them were immature, some of them - but a lot of them felt the grievances rather strongly to the extent where when one asks questions about (20) it, either by the state, by your lordship sometimes and even by us, if one coldly and clinically examines their complaints in a very logical fashion, one actually came to the conclusion that there was some problem with the way in which they were articulating their complaints. That they were actually not being quite fair, but fairness is not a matter of fairness and logic only. People feel things and that was one of the things which - I think we tried to show your lordship in terms of the evidence that we led that people act in terms of the environment in which they find themselves, people act in (30) terms/...

terms of their emotions, people do not act always thinking rationally and thinking clearly. This brings me to the point about the police conduct.

The criticism - and it does not help your lordship to determine who was right and who was wrong. Quite obviously evidence was given by scholars and evidence was given to some extent by the police. The question is that there was a problem. My submission is that it occurs again and again that in all the circumstances, the problem could have been resolved in a more sensitive way. We can debate that, but (10) it really does not help, because this is a sort of point where one agrees or one does not agree and there is no point in looking at each of the circumstances and examining them clinically, because that is not the sort of point I am making. Let me say that the situation could have been handled more sensitively, particularly in the school situation if one readst the evidence. There were children there. The situation in my submission could have been handled more sensitively and that is the sort of complaint which is in fact made and while I am dealing with police conduct, I want to (20) deal and I should deal with it early because my time to talk would be over. The point made by the state ... (Court intervenes)

COURT : I am not limiting your time. You will be limiting yourself and cutting into somebody else's.

MR YACOOB : We will have to have a very urgent meeting, but can I carry on quickly?

COURT : Yes. Take it easy. You still have a full week to go. One can speak a lot of things in a full week.

MR YACOOB : What the state has said in the argument in (30) relation/...

relation to Duduza, I will come to that and may be it is an appropriate stage to deal with it, because I am dealing with Tembisa now. They say and this is their last submission in relation to Duduza. I have not got the page number, but what they say is that we used every available opportunity - I think the words used are "elke denkbare". I do not know what the word for opportunity was that was used, to malign the police in a way and show police mis-conduct. My submission is that is an unfair criticism of the defence and an unfair criticism of the accused. (10)

In Tembisa for example there was no indication of any misconduct of the police, either at the meeting of August - of October or at the meeting of November. There was no - even the scholars' account of what the police did on that particular day is not - there it not an exaggerated account on any basis. Sometimes there is an indication of teargas being used at some funerals. Sometimes there is none. Sometimes teargas is used and rubber bullets. Sometimes teargas, sjamboks and rubber bullets. The situation has differed from area to area and my submission is that that point is (20) in fact not a valid one.

I am at the point where I am saying he gives this account of how the children had to jump over the fence and how they had to run away home and so on and this evidence is found at page 22 599 line 9 to page 22 600 line 28.

This sort of evidence is not led to establish a cause in effect and that is still in relation to the evidence in relation to grievances and all that. I am not saying that because the people are dissatisfied in this way, they in fact went over to violence, because there is not enough (30)

to/...

to establish that sort of link. There is not enough to establish the sort of link that the state is trying to make out. What they are doing is saying that these are all factors which must be put into the scale and it cannot be denied that there are all possible causes. It is not in circumstances where we do not know the cause. The problem is that there are a large number of possible causes and it is impossible to determine precisely what the call is and that is the basis on which this evidence was put up.

Then he says that before the police had intervened the (10) need for good behaviour was emphasised. He says that he later joined a group outside the premises where the school situation was discussed. He says he attended a meeting at the Matlole cinema some time after that. This evidence is to be found in 22 600 line 28 to page 22 603 line 8.

He says he heard about the parents committee, but of course he heard about it after Mr Mokwebo became part of it and therefore to take that story further we should perhaps return to Mr Mokwebo from Tembisa on the interim parents committee before we come back to the evidence of this witness. (20) ness.

Mr Mokwebo says that he became part of the parents interim committee and he gives the following background. He says the boycott started in July 1984. He attended a meeting at the Tembisa High School and called to try and solve the problems arising out of the boycott at the end of July 1984. He says that more than three hundred people were present. Scholars motivated their problems. He said what their troubles were. The majority of the people there supported the children. That evidence is at 21 798 line 5 to 21 802 (30)

line/...

line 4.

On the next day he goes on to say that the committee called the parents interim committee was formed, was elected, with the witness being included as part of it, with the job of trying to solve the problems of the scholars. They also had to go to the police station and ask the police to leave the school. Apparently they actually succeeded in this objective. Again I want to make the point that where the police have been reasonable, where they have acceded to a demand made by a committee, this evidence has been led. (10)
This evidence was led in chief. Page 21 803 line 12 to 21 804 line 27.

He takes the story further. He says that he attended one meeting of the committee. That the committee went to visit - see officials in Pretoria. That they said that they would have to see someone else in higher authority and come back to the committee. There was another meeting. In the final analysis the negotiations failed. The parents reported back to the scholars and the scholars obviously were very disappointed. This evidence is a summary of 21 804 to 21 807. (20)
It is 804 line 28 to 807 line 1.

The committee stopped working. The boycott continued and there was much violence. We do not know exactly when these negotiations were held. We know that the committee was formed at the end of July. There is no serious dispute of this evidence, but it could have been August/September somewhere there, certainly closer to the time when the violence became great than when the boycott actually started. It is closer to February - and certainly much closer than when there was the first boycott at the school during (30)

February/...

February 1984 and this again was put up simply at the level of the possibility, but we have reached the situation where the parents committee came back and reported and of course the witness said that there was violence after that, but let us go to Mr Modise again, because he then takes this evidence somewhat further in relation to scholars having heard about the fact that the parents were unsuccessful in these negotiations.

He says that the interim committee in fact reported failure. He says he heard about this committee, he heard (10) about this parents committee and there was a discussion amongst the scholars that they were actually going to Pretoria and the parents committee reported its failure and they said that the schools were not going to be reopened and the scholars felt that the committee did not help them. This is found at volume 391 page 22 603 line 10 to page 22 605 line 7.

It seems quite clear also that the scholars did not go back to school during that year and from the cross-examination which I will refer your lordship to in another (20) context later, it seems clear that by January the scholars were actually not yet back at school.

Against that sort of overall background it is necessary - I am sorry, before I make an overall analysis. I need to deal first with some of the criticisms which the state levelled against this witness Modise, because my submission is that he was actually not a bad witness. He may have seemed a little evasive on the record from time to time, but may be the best way to deal with the credibility of this witness is to look at what the state said about him. (30)

Again/...

Again there is an example of a slightly incorrect rendering and I will tell your lordship why I draw specific attention to this. There are lots of them. I have chosen some specific ones for specific reasons to draw your lordship's attention to. The first one is contained at page 991 of the "betoog" , paragraph 2.15.17 "Dan sal die owerheid dalk luister na hulle klagtes."

The evidence in fact is not that, that he believed that his problems would be listened to and this evidence is found at volume 390 page 22 595 line 1 to 9. I actually made a (10) mistake it seems. The reference is actually quite wrong. The page is page 989 volume 7 paragraph 2.15.17.

COURT : But is your page number correct?

MR YACOOB : My page number is right. It is 2.15.7 and not 17. That makes it right.

The complaint about this is this and if we get to this volume the reference to which I have referred your lordship, what he actually says is this and therefore it was advisable to unite with them and may be the authorities may understand our problems. There is a big difference between "Luister (20) na hulle klagtes" and "understand our problems". The reason why I draw attention to this is that that is essentially the difference between the state and us I think because the scholars had problems. What they wanted was understanding. "Luister na hulle klagtes." Put it somewhat differently. What you are saying is that the scholars wanted people to listen to them and "Luister na hulle klagtes" could mean more than just listen in the sense of passive listening. It could mean listen and do what they say, but what he really said was understand their problems. My submission is that that sort(30)

of distinction must be borne in mind quite clearly. It very often happens that the language employed by scholars in various documents and even in court and I draw your lordship's attention to some of that, becomes somewhat strident and one gets the impression that they are making demands and so on and in fact this is not so.

Then on page 989 still 2.15.8, the point which I have already referred your lordship to, heard about COSAS in July 1984. It is actually not so. He said he heard about COSAS after the boycott in July. It could well have been (10) early in August.

Then there is another inaccurate rendering in my submission depending on how one understands it, but I thought I would rather clarify it at page 990 of the "betoog". That is paragraph 2.15.13. Here the summary of the evidence concerns what the scholars did at the time after they started not going to classes until the police calls their dispersal from the school. What the state says they did according to the evidence is "Hulle het vergader, bespreking gehou en liedere gesing." (20)

The way that is put - the complaint about that is that it implies a measure of formality not justified by the evidence at all. It implies that they met there in the sense of having had a meeting. It implies that they had discussions in the sense of having had formal and proper discussions. It implies that "die liedere gesing was" on a more or less continuous basis because it is not qualified at all.

The evidence to which I would like to refer your lordship is the evidence at page 22 600 line 28 to 22 601 line 22. (30)

It/...

It is clear from the passage as a whole, the question is asked "What did you do when you assembled at the school during this period?" Had they meant "What did you do when you met at the school?" What it meant was "What did you do when you congregated at the school?" The word "assembled" was used and he says "sometimes during the course of the day we would sing" and there was some discussion amongst the scholars themselves pertaining to the problems they were experiencing at the school. Sometimes they would sing and there was some discussion. So, it is quite clear, it was (10) a fairly informal thing. They were at the school on a daily basis. Sometimes they do something and sometimes they do something else. I imagine at most of the times they did nothing meaningful at all. So, the rendering "vergader, bespreking gehou en liedere gesing" in my submission creates certainly an incorrect impression of that period and gives it too much formality. Our whole case is that there was spontaneity and there was not as much formality as all that in the situation.

Then page 990 paragraph 2.15.14. Again the problem (20) concerns the degree of formality that one attaches to what happened. "n Paar dae na die skoliere uit die perseel verjaag was, het hulle weer - was hy weer saam met 'n groep skoliere wat naby die skool vergader om die boikot te bespreek." What this implies, what this actually means if one interprets it strictly is that he was again with a group of scholars who had met to discuss the boycott. In other words, there was a meeting to discuss the boycott and the scholar was present at the meeting. With respect, that is not the evidence. It ascribes too much formality as that the scholars (30) got/...

got together and had a meeting in one group. Volume 391 page 22 601 line 23 to page 22 602 line 9.

The evidence actually is that a few days later he went to a point near the school "where I found some students in groups. I joined them. They were talking. This was in the form of small groups in which the scholars were discussing amongst themselves in these particular groups. The boycott situation was being discussed." So, again - the difference is obvious between the two. It may or may not be particularly significant, but I thought I should draw it to your (10) lordship's attention.

Now we get to the criticisms which are made of this particular witness. Paragraph 2.15.18 page 991. He says - the state says there, criticises this witness on the basis that he held back information about COSAS. He said that he attended a meeting of COSAS, but really that is not so, because in terms of the evidence he went to the office to find out during January. During January he went to an office of COSAS to find out exactly what was happening and whether to talk about as to whether he should go back to school or (20) not, but certainly the evidence was not that he went there to attend that meeting. If he went there specifically to attend a COSAS meeting at the COSAS office, then the criticisms might have some justification. If it goes there, then it is ridiculous for him after having specifically gone to a meeting presumably out of his interest in relation to these matters, after having specifically gone to this meeting to come back and say to your lordship "Look, I do not know exactly who was there" and the reference - he went to COSAS at the beginning of January 1985 to check whether the (30) scholars/...

scholars should go back to school. He found a meeting in progress, two unknown people were at the table. He says he does not know who these people were. He also told your lordship that he did not know who the members of the committee were. He said that he did not know what COSAS stood for. He was not particularly interested. I have read the evidence - I was not in court, but having read the evidence fairly quickly, it sounds to me that he was the sort of student that was not really interesting in what was happening. Page 22 607 line 10 to 22 612 is that reference. (10)

He did not specifically go to a meeting as is contended by the state. The basis of the criticism in my submission falls away because I am inclined to concede that if that was correct, then he ought to have known something more, but the state goes further and says "Hy wil nie vir die hof sê wie van die mense hy daar geken het nie, veral nie die twee mense wat voor by die tafel sou gesit het nie." The point is this.- He did not tell your lordship that he was not prepared to tell your lordship who it was. He told your lordship that he did not know. My submission is that (20) there is nothing unusual about his not knowing, especially when one bears in mind that he was sixteen at the time. Especially when one bears in mind the purpose for which he went to that particular meeting. He is not the sort of witness who exaggerates at all in the witness-box.

Then at paragraph 2.15.20 the witness is criticised for not knowing about what happened at the meeting at the Matlole cinema because he was afraid of the police who were outside. I concede that the reason which he gave for not remembering the meeting, does not sound a good one, but we (30)

all/...

all know that young people quite often forget a thing and they would like to provide - it quite often happens to me in my home with children, they like to provide a false reason for forgetting instead of simply admitting that they actually have a bad memory. My submission is that this was a man who gave this reason for forgetting because he had in fact forgotten and it is difficult for some people, especially young people to say "I clean forgot". My submission is that that is not a sufficient criticism on the evidence.

Then at 2.15.21 the point is made that his evidence (10) concerning the spontaneity of the boycott and the absence of COSAS at the time should be rejected. There is a problem with that because there is no clear evidence about the fact that there was COSAS at the time and it was there at the school and even if he was a bad witness and even if one rejects it, it does not help because your lordship cannot find that COSAS was there, but the other point I want to make is that because of the way in which the submission is put, a lot of his evidence should become a cause about when the boycott started, the fact that he went to the COSAS (20) office in January and that sort of thing and that the boycott was still going on and I intend to rely on a lot of that evidence.

The next point is another inaccuracy. It might actually be a typographical error but I do not know. It is at page 991 paragraph 2.15.19. "Modise weet net dat n gedeelte van sy skool in 1984 gebrand is." He says that many window-panes were broken. The evidence and your lordship can go back to the reference which the state referred your lordship to. It is quite clear from the evidence in context that he says (30)

he/...

he did not know about the burning of the school, but he knew that the window-panes had been broken. My submission is that that is a fair reading of the entire passage.

Those then, my lord, are the criticisms of the evidence of this particular witness, but it is common cause, there is a dispute on his evidence in regard to whether the boycott started spontaneously or not. My submission is that his evidence came across clearly as well and I told your lordship why I would submit that your lordship should find that there was a spontaneous boycott situation. There was a certain (10) local flavour to the evidence given by this little person and it is going to be my submission in relation to all the areas that your lordship should pay particular regard to the local flavour and the local differences which would show the absence of a conspiracy, but at another level now we have seen evidence in relation to two organisations. In the Tembisa Civic Association which did its work mainly between January and July too far removed from the situation when the October violence took place and the work was done in such a way and the nature of their work was such that (20) - and the success of their work was such because the rents did not go up, the success of their work was such but that was not an issue around which this violence could have arisen.

The school boycotts actually started in July and they were still on in January of the following year. The trouble was that the violence is situated somewhere in the middle of that period, it actually does not coincide with the boycott situation. I accept that the isolated acts of violence referred to by the witness which I told your lordship about which occurred during August 1984, may be of some (30) proximity/...

proximity in time to the commencement of the boycott on 23 July, but that is not the violence - removed that violence. It seems that there were isolated acts around which there was no particular pattern, but the real trouble was between 19 October and 23 November. It was slap-bang in the middle. On all the evidence it could be put at the stage when the parents reported back to say they were not able to achieve any success, but there is no evidence that anything was organised in connection with this particular situation. The violence stopped around 23 November but the boycott (10) went on to beyond that period and it seems on the evidence to beyond January. So, on a broad sort of basis it is not possible if one takes a broad view of all the evidence to ascribe what happened to any call. There is no real evidence of police mis-conduct or anything of the sort put up by the defence in this area either. One cannot actually rely upon that and my submission is that there is not a basis - there is no real basis on which one can find that it is so.

As far as the UDF pamphlet, ABA47 is concerned which was found by the witness, the trouble is that one does not (20) know exactly when it was found during this period and it seems to - one have to have to sort of place it - I have scanned the record quite carefully to try and establish around when it was so that one can place it in relation to other things and it seems that it was around the point when the Vaal apparently occupied - the Vaal townships were apparently occupied by the army. There is a meeting which actually deals with this, which actually talks about the issue of pamphlets and so on.

COURT : It seems to have been written roundabout (30)

September/...

September 1984 because it speaks of only one year the UDF has grown.

MR YACOOB : That is why I spent a lot of time looking further because you see when one leaves it on that sort of general basis it is too close to October for my liking. I looked a little bit more carefully ... (Court intervenes)

COURT : Why does October trouble you?

MR YACOOB : Because the violence got very bad on 19 Oktober and carried on very bad until 23. I am trying to avoid - not avoid wrongly, of course I searched the record and the (10) documents extensively to try and find out whether in fact it was so or not to help the court and obviously in the interest of my client I have been trying to put proper submissions forward as well, but it is S17 the document which I wrongly referred your lordship to the last time. It is a meeting - I am sorry. Again ... (Court intervenes)

COURT : I think the witness said it was found in Tembisa in 1984. So, we get some sort of a time. _ _

MR YACOOB : We can get closer. Oh yes, it is S13. If your lordship will look at S13. A very interesting docu- (20) ment. They are the minutes of an emergency meeting because something has happened in the Vaal. They made all kinds of decisions there. They decided on a press⁴ statement. They decided on a pamphlet to counter the SADF pamphlet. Then they decided on asking churches to make their premises available for night vigils. They wanted a lunch-hour protest. This was 25 October 1984, six days after the trouble started and if your lordship looks at the pamphlet, it talks about the Vaal. It is also another indication - I seem to recall somewhere in the minutes about the slogan that was used on (30)

the/...

the pamphlets as well. This is stealth enough, but the trouble is that some money was allocated for this pamphlet, because there is reason to believe that it was after that.

COURT : Are you saying that the pamphlet referred to in S13 is the pamphlet ABA47 or is your argument going the other way? Which way are you going?

MR YACOOB : I am saying it could well be the pamphlet in ABA47.

COURT : Yes, it could be because it sort of tallies with the one year after the UDF has grown and it is after the (10) so-called invasion of the Vaal. It might be.

MR YACOOB : But it was later than that. I am saying - you see, even if it was after 25 October - the first point I want to make is that in October there was violence in a lot of places. The sort of thing the UDF is doing at that time. That is not controlling and co-ordinating violence, but arranging for things like protests and so on to happen in Johannesburg, but the second point is that the violence started in Tembisa in August sporadically, that it got very bad on 19 October and remained bad until 23 October and (20) I am saying that this pamphlet would have come up after 25 October, some time after and the minute S14 of 1 November ... (Court intervenes)

COURT : Is your submission that the pamphlet did not cause the violence on 19 October?

MR YACOOB : Yes. There is a minute - I think it is the minute of 1 September to which I have referred - 1 November S14 which says in fact that this money which is allocated in respect of this pamphlet was not used. Either that means that the money was used for something else and the pamphlet (30)

was/...

was in fact used or it means that the pamphlet was not printed really the pamphlet, although it was found in the area it was used obviously - if your lordship will bear with me for a moment. If your lordship will look at S12 on 24 - that is a meeting on 24 October 1984 I am told. 22 October. There on the second page 4.2.4 under the heading "People's weekend" your lordship will see a rather familiar slogan in comparison to ABA47.

COURT : Sorry, what page of what document?

MR YACOOB : The document is S12. It is page 2, it is (10) paragraph 4.2.4 and I was just saying that your lordship sees there under the heading "People's weekend". A very familiar slogan is suggested there if seen in the context for the first time. It is very familiar if your lordship has a quick look at ABA47. So, it certainly was after this and it probably ... (Court intervenes)

COURT : But now, how does that help you? I mean "Long live the UDF" and "Ban apartheid", is this the first time this crops up anywhere?

MR YACOOB : I have not found it in any other document (20) anywhere else before and I looked as carefully - the trouble is ... (Court intervenes)

COURT : Can one not go back to approximately August 1983 already for this sort of thing?

MR YACOOB : No, the slogan - that is the problem - the slogans change from time to time and it is quite clear that this slogan from those minutes was suggested. I looked at minutes and documents going back. I am not saying that I actually looked absolutely exhaustively, because that is impossible in this case, but it seems that that slogan was suggested (30)

at/...

at that particular meeting and it was suggested in respect of the people's weekend and that if one now thinks about it carefully, ABA47 is one of two things. It is either a pamphlet arising out of the meeting of 25 October, an emergency one but it is more likely to be a people's weekend type pamphlet because it refers to much wider issues and all that and carries the slogan which was agreed on at that time. The only point I make is that that pamphlet is after the trouble actually started. One does not know how long either really. It depends on how efficiently the organisation was working(10) at that time bearing in mind that the secretary, publicity secretary and the secretary of the Transvaal region were a bit out of commission.

I can go then - I can close that submission which is to the effect that one cannot make out of this sort of evidence that we have any final finding in relation to how the trouble in fact arose.

Then I would like to very quickly and finally in relation to Tembisa refer to the submissions made by the state at page 1 003. I think it is paragraph 6 and the various sub-(20) paragraphs thereunder. I will go through it very quickly so that we can adjourn on time.

ASSESSOR (MR KRUGEL) : I seem to recall your having said exactly the same about an hour ago.

MR YACOOB : No, no, I did that only to the first paragraph. I used the first paragraph only as a starting point. I was going to say that that has been dealt with except that I have not dealt with the allegation - the submission there, I am sorry, that the evidence of Smith supports any of the contentions that are put up in that paragraph. I have not (30) been/...

been able to find that the evidence of Smith at any point supports the contention that TCA was affiliated to the UDF and that there was contact between them unless of course the fact that slogans "Viva UDF" appear in Tembisa are used as part of that submission, but I have not been able to find anything in Smith, but I thought I would draw it to your lordship's attention.

Then there is a submission that Tembisa conducted a campaign against the councillors as conducted by the UDF as deposed to by Smith and as appears from W2. (10)

Firstly I have already about what Smith said about that. I told your lordship what my criticisms are as far as that evidence is concerned. W2 is a Speak of March 1985. Again it is a newspaper - it had disaffiliated in the middle of June as per S12 and your lordship needs to take that into account. I associate myself with the argument by Mr Chaskalson in relation to this - in relation to the value that can be placed. On the assumption that your lordship rejects that argument, I would like to make a submission about what is put up there. It says that this document confirms that the (20) TCA took up the rent question with the Tembisa Women's Group and that TCA fought the undemocratic community councils. It says that this contradicted by other evidence, but really it is not, because Tembisa did fight against the rent increase.

ASSESSOR (MR KRUGEL) : I am sorry to interrupt. Did you say that Speak disaffiliated in June?

MR YACOOB : June 1984. This is a Speak of March 1985, but the article confirms that the TCA took up the rent question and so on, but really it did take up the rent question.

There is nothing wrong with that. The rent question may (30)

well/...

well have been taken up or the taking up of the rent question in itself could well be regarded by someone writing about something as a fight against the undemocratic community councils. There is' actually no conflict between that. It is perhaps a fair literally rendering of what actually happened according to the evidence of Ngobisi in 1984. The problem is this that if your lordship looks at this particular article it is like twice removed from the truth. If one takes up Mr Chaskalson's submissions and starts by saying this is what SASPU says, then it will get a little (10) worse, because according to the SASPU article this is what TYO says. So, interestingly enough this article is double hearsay. If SASPU says what TYO says about the TCA's campaign and your lordship is quite aware about the difficulties that can arise out of that. I am saying that if the campaign is interpreted as being the sort of campaign conducted by the Tembisa Civic Association, I actually agree with the submission in paragraph 6.2 to some extent but then the words "As conducted by the UDF" is a bit bad, because the UDF - there is no evidence that the UDF conducted that (20) sort of campaign against the councillors.

COURT ADJOURNS UNTIL 30 AUGUST 1988.

DELMAS TREASON TRIAL 1985-1989

PUBLISHER:

Publisher:- Historical Papers, The University of the Witwatersrand

Location:- Johannesburg

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DOCUMENT DETAILS:

Document ID:- **AK2117-K2-2-2-450**

Document Title:- **Vol.450**