

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA  
(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-08-22

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21  
ANDER

VOOR:

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

NAMENS DIE STAAT:

ADV. P.B. JACOBS  
ADV. P. FICK  
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON  
ADV. G. BIZOS  
ADV. K. TIP  
ADV. Z.M. YACOOB  
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

THE COURT RESUMES ON 22 AUGUST 1988

MR TIP: May it please the court. All the accused are present in court. May I just mention that we are trying to assemble for your lordship a copy of the translated indictment. Unfortunately several of the volumes have been annotated but we will procure one as soon as possible for your lordship's use.

COURT: It might even be that the annotations are helpful.

MR TIP: Sometimes they are more interesting than the indictment, m'lord. Your lordship will recall that we had reached the position in respect of Bophelong on Friday at the adjournment of beginning with the meeting of 29 August. And we begin with a submission to your lordship that the approach of the state in its argument in respect of this meeting which your lordship will find beginning with page 343 is in our view somewhat undirected. Your lordship will see that it consists of..

COURT: Just give me the page of the "betoog".

MR TIP: 343, m'lord.

COURT: Thank you.

MR TIP: Your lordship will see that the structure there is that a selective account has been given drawn from the evidence of some of the councillors and it then sets out seriatum various puttings made by the defence to the councillors. Then it reviews the defence witnesses in relation to those and says well, this is supportive, this is not supportive, this is contradicted. Now..

COURT: Is puttings correct English? One can also say puttees?

MR TIP: Puttees (Laughs). "Stelling" is in fact a more precise word. In any event what we submit is that the state does not really come to a <sup>5</sup>crips conclusion once it has reviewed all (30

that / ..

that material and that what it selects as its approach of a tack really for the large part consists of what we respectfully submit a trivia. Your lordship will find the first matter put by the defence is at page 345, the manner in which Makhotsi introduced herself and the next point is whether or not she said that she went around making enquiries about how people felt about the rent and so on. Now we are going to try to adopt a slightly different approach and we do that because we submit that there really is a mainstream picture that emerges from the evidence as a whole concerning this (10 meeting. We will try to put that before your lordship as rapidly as possible. It does not mean that if we gloss over the criticism by the state that we accept them but ultimately they are of no great moment.

Now of the five councillors who testified for the state three remained outside the meeting hall and those your lordship will recall is Pete Mokoena, Jogosela and Simon Mofokeng. Your lordship will find that they give a somewhat different account of what happened at the end of the meeting and I just highlight one aspect, m'lord. Mokoena says that the lights (20 went out while a speech was being given and that after this the police went in and then everybody fled. That is in volume 44 page 2 148 lines 22 to 31. Jogosela testifies that he only noticed two police officers going in..

COURT: Well now let us just see where this is leading. How important is this meeting? Is it not common cause that the meeting was held by the councillors and that it was broken up by somebody, never mind who? And that there is no evidence who broke it up?

MR TIP: It is in effect, yes.

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COURT / ..

COURT: Now where does it lead us even if you have a great mix-up between all these witnesses, where are we when we have had it all?

MR TIP: I will be guided by your lordship and I accept the position. I was going to submit merely that discrepancies of that sort are of no moment and that one should weigh that sort of set of discrepancies when looking at the other matters. Now in respect of the matters inside the meeting there were two councillors who testified. The one was the mayor Mahlatsi and the other was councillor Mgcina. Now they give very (10 different accounts and the state has relied only on the evidence of Mahlatsi, Mgcina has been dropped entirely and we say with good cause because he is on a limb. Just for reference sake your lordship will find his evidence in volume 46 page 2 296 lines 1 to 30. Mahlatsi's evidence is summarised in the "betoog" and I am not going to repeat it but I would like to draw your lordship's attention to certain aspects of it with the introductory of preliminary remarks that they have not taken account of the matters that arise in the course of cross-examination. Your lordship will find that (20 the overall sequence of events given by Mahlatsi is the same as that of the three defence witnesses, Mcetya, Phale and Mahotsi. There are a few differences in content and we will look at those very briefly. Now what is clear from these accounts, from all four accounts, Mahlatsi and the three defence witnesses is that the many members of the Bophelong community who attended this meeting were very unhappy with the state of affairs concerning the increases and the councillors. Very summarily your lordship will find that there is a difference between Mahlatsi and the three defence (30 witnesses / ..

witnesses. Mahlatsi says that the uproar arose after Mrs Mahotsi spoke. He says that inter alia she referred to councillors as a "klomp skelms". The three defence witnesses say that the uproar really arose after an unsatisfactory answer by councillor Ramakgule. There is some differences concerning that amongst the defence witnesses but materially they all correspond. Now we submit to your lordship that the weight of the evidence is in favour of the defence version but again, for the purposes of this case it does not really matter because what is clear from Mahlatsi's own account is that (10 the audience which he says had overflowed the hall, there were people who could not get in; the audience was tense and agitated even before a single word was uttered at this meeting Your lordship will find that at volume 60 page 3 116 and perhaps I might just read two of the lines there from Mahlatsi. He says:

"Onmiddellik na die gebed kon ek duidelik sien dat die atmosfeer in hierdie saal nie so goed was nie."

and he goes on:

"Onmiddellik na die gebed het ek opgemerk dat in die (20 gehoor baie mense hulle hande hoog gehou het. Dit het vir my toe duidelik geword dat die mense onmiddellik wou praat, dit is die gehoor wou onmiddellik gepraat het."

and this is clear that this is a result of the previous meeting which had taken place. When Mrs Mahotsi spoke about the councillors as being a "klomp skelms" and they should not be accepted, mayor Mahlatsi says:

"Toe daardie persoon dit gesê het, het die hele gehoor dit beaam, dit wil sê die hele saal het dit beaam."

I draw the court's attention to that only to indicate the (30

level of feeling that was amongst these people of Bophelong concerning what had happened in that community. And what we submit is that those feelings of anger were running high because of the imposition of the various increases, the failure of the councillors in Bophelong to explain them to the community and also the failure of the councillors to attend the meeting of 28 August when some 300 or 400 people waited for them in vain. And the corollary of that submission is that we say that those feelings had no connection whatsoever with the VCA or with the UDF or with any campaign against the black local authorities or any campaign at all for that matter. Even if the uproar at this meeting did arise from Mrs Mahotsi's remarks then what are the consequences for these accused? Mrs Mahotsi is not cited as a co-conspirator; Mrs Mahotsi is as far as we know not a member of any organisation in the Vaal, certainly in her evidence that she is connected in any way with the VCA and in fact she testifies to that effect m'lord that before the troubles of 3 September 1984 she knew nothing of the VCA in Bophelong. Your lordship will find that in volume 350 page 20 002 (10 lines 1 to 4. (20

Now the second difference in the account given between Mahlatsi and the defence witnesses I should like to raise with the court this morning, is that in chief the mayor Mahlatsi says that in the midst of the pandemonium he heard someone call from the back of the hall: "Laat hulle dood-gemaak word". That is in volume 60, page 3 117 lines 13 to 17. Now as far as I could read the evidence Mcetya and Phale both deny this. Your lordship will find the references in volume 335 page 19 105 lines 16 to 17 and in respect of (30

Phale volume 344 page 19 680 lines 25 to 27. I could not find a reference in the evidence of Mrs Mahotsi. She seems not to have been asked that question directly, but what Mahlatsi says in cross-examination reflects a different position. There he says that at the time that the police came into the hall there had been no threats at all. He says that although it was tense he, Mahlatsi, could find no reason for their presence in the meeting. Their presence was not justified he told your lordship. And that is at volume 63 page 3 329 line 16 to page 3 330 line 1. Your lordship will remember (10 that it was Mahlatsi who ordered the police out and we submit that if there had been such a threat immediately before the police came in that he would not have been so fast to order them out again. And we submit that the reason for doing that is that the police after an initial probably somewhat stunned silence, that their presence aggravated the feelings of the people there. And that picture is conveyed in the evidence of Mahlatsi in volume 63 page 3 330 lines 2 to 18 and all three defence witnesses testified to remarks uttered by people in the audience which reflects their resentment at (20 the fact that the police had come into this community meeting. Your lordship will find that in volume 335 page 19 104 lines 17 to 25, volume 344 page 19 680 lines 3 to 9 and volume 350 page 20 004 lines 2 to 6.

Your lordship will recall and I rely again or I cite the evidence of Mahlatsi at volume 63 page 3 328 line 13 to page 3 329 line 10. He describes the entry of the police. It was not a matter of a few police officers walking into this hall to see what the commotion was, why voices were raised. Some eight to ten policemen came and back to back (30

porting / ..

porting fire-arms and took their position at the stage. Now it is something of a quasi-military operation the entry of the police there and that the evidence that there were expressions of resentment from the community is not surprising in those circumstances. Now what is also common cause and we should like to highlight this aspect is that any possibility of order being returned to this meeting with some chance of a positive outcome ended as abruptly as the switching off of the lights and again Mahlatsi's evidence gives the information to your lordship. This happened (10 immediately when police left through the door. Volume 63 page 3 330 lines 19 to 22. Whether it was an indignant policeman or not it does not affect the outcome of this meeting because what followed was, and your lordship will find it in Mahlatsi's evidence, there was the firing of guns, stones were thrown; the defence witnesses talk of teargas and it was clearly an ugly end to this particular meeting. I am going to condense some of the further submissions. Your lordship will remember there was some debate about how different defence witnesses saw the firearm on the right- (20 hand side of councillor Mokoena. There is no inherent improbability that he was warned. Mathlatsi himself testifies that he was armed at this meeting. It is an indication again of the relationship that he had - your lordship will find that in volume 63 page 3 320 lines 9 to 12. Now given the fact then that this meeting comes to an abrupt and ugly end, the question is of course what is the significance for any of these accused before your lordship and we say that the evidence positively establishes that there is none. That the evidence disproves any connection and it is appropriate to remind (30

your / ..



your lordship that in respect of this meeting the only accused person who is alleged to have performed a role there was accused no.3 and he is there alleged to have led unknown activists who disrupted the meeting by shouts of "Amandla ga Wethu", threatening to kill councillors and by switching off the lights. Your lordship will find that in the case pleaded in the further particulars paragraph 29.4.1-3 and that is page 90 of the further particulars. So the case pleaded was that all the sins were attributed to a group under the leadership of accused no.3. Now not one of the eight persons and I (10 leave out of account Mr Letsele of the defence, not one of the eight persons who testified suggested in the remotest way that accused no.3 was present at all and we submit that the question can fairly be asked through what process did accused no.3 come to be sighted in regard to this meeting at all.

I am going to make remark about Letsele. Your lordship will see that page 354 of the "betoog" the state roundly declares him a liar because he spoke of people outside the hall with teargas being fired by the police when there was no meeting in progress. The possibility emerged in re- (20 examination that he had really seen the place after the meeting that he had no real basis for concluding that it was before the meeting. Your lordship will find that re-examination in volume 423 page 24 769 line 1 to page 24 770 line 23. We do not submit that his evidence concerning his observations was good but we do submit that it does not warrant the declaration of him as a deliberate liar. Having submitted that the events at this meeting of 29 August cannot be connected in any way with the accused or with the organisational conspiracies alleged by the state, we are going to review very (30

briefly / ..

briefly the events between 29 August and 2 September in Bophelong. This reference in the "betoog" on page 357 of the fact that councillor Mgcina's house was attacked that same night. Now at page 357 in paragraph 2.2 the state has said that the defence tried to show that the events of 3 September 1984 and thereafter were caused by mindless police violence in Bophelong from 29 August to 3 September. Now we have never believed that the explanation for the events on 3 September are that simple and with respect the state has somewhat misconceived the direction of the defence in this (10) regard. Your lordship will recall having been addressed at some length on grievances held by members of the community about their economic situation, their living conditions and the administration of the township; all those factors are of great weight we submit. We also do not ask your lordship to make a finding in regard to police conduct in Bophelong because again the most germane aspect of what was happening is simply that the situation there remained as it were on the simmer for those three or four days until the serious eruption of violence on 2 September, on the night of 2 (20) September when buildings were burned and there was loss of life in consequence of police action. I am not going to detail the references but in the evidence of Mcetya, Phale and Mahotse there is some description of those days. What is common to them is that there was a large police presence in the Bophelong township. Some saw youths being chased by the police but in none of those events were they able to say what led to that and that is why we do not begin to ask your lordship to find, to make a finding of what gave rise to incidents of that sort. (30)

Now on page 357 of the betoog in paragraph 2.3 and it goes on for some pages, there is an account given by the state of the evidence of some of the officials who testified about the events of 2 September. I am not going to repeat any of it but I want to supplement it with some additional references and some additional details and the first is in relation to the evidence of Warrant Officer Coetzee. He also told your lordship that whilst he and his group were investigating the looting of a liquor store they were attacked on the evening of 2 September. In response they fired into the dark with (10 teargas and rubber bullets. One person was fatally wounded and your lordship will find that in volume 68 page 3 570 line 30 to page 3 573 line 10. At about 01h00 in the morning there was another attack and again teargas and rubber bullets were fired. Volume 68 page 3 573 line 31 to page 3 574 line 20. Warrant Officer Bruyns reacted similarly, firing rubber bullets and teargas into the dark.

ASSESSOR: Warrant Officer? Bruyns?

MR TIP: Bruyns, into the direction from where stones were thrown. Volume 68 page 3 612 line 26 to page 3 613 line (20 17. Schlebusch talked about an attack but he also at about 22h00 on that night fired six shots from his pistol and a person was killed. Volume 70 page 3 706 lines 6 to 20. Your lordship will remember that Brig Viljoen, colonel then, one of the first things that he did when he arrived at Sebokeng was to go to Bophelong. That was about 23h30 that night and he did so because some private people had brought in a black man with a gun shot wound to the Sebokeng mortuary. Your lordship will find that in volume 63 page 3 358.

ASSESSOR: Was it 23h30 you said?

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MR TIP / ..

MR TIP: 23h30, m'lord. I would like to extract one or two details from the evidence of the defence witnesses to complete the picture as it is. In the record before your lordship, Mcetya at about 18h00 saw what was described as children being chased from the shopping centre. At about 20h00 she heard shots and between 20h00 and 21h00 she saw two groups of people with caps pulled down and wearing balaclavas. They were saying somewhat cryptically they have found Pilane's son but those that have found him, we are also going to find them. Volume 335 page 19 107 line 5 to page 19 109 line 17. (10  
17. The witness Phale at about 23h00 heard shots and saw that the beer hall was on fire. Volume 344 page 19 682 lines 13 to 16. And Mahotse also described flames. Your lordship will find that in volume 350 page 20 007 line 20 to page 20 008 line 7. The witness Letsele says that between 22h00 and 22h30 he saw people running in the street and police firing teargas. He does not know what gave rise to it and he goes on to describe how his companion Reuben Twala was shot and mortally injured. Volume 422 page 24 738 line 19 to page 24 739 line 13, and also page 24 740 lines 8 to 19. (20  
Your lordship will recall that he went on to testify about how he was driven around in a police landrover and at a later stage how they came across burning tyres and groups of youths who were saying Twala is dead, we are going to get them. Volume 423 page 24 748 line 27 to page 24 749 line 11.  
Although the state has said that Letsele is a liar it is common cause that Twala was shot. It was put by the state that it in fact happened when Twala was throwing stones at a police patrol and again whichever version is correct does not really alter the position. Your lordship will remember that (30

Twala was well-known as the captain of the soccer team. That is at volume 423 page 24 766 lines 13 to 30. Now I am going to conclude my function in relation to these events, which has been to refresh your lordship in regard to the evidence. In the course of the submissions that will be made subsequently by my learned leader Mr Bizos the various strands will be pulled together and the implication of these events in Bophelong will be taken up by him at that stage.

I did want to address one or two remarks to your lordship about the state's submissions concerning the VCA (10 in Bophelong. Your lordship will find in the "betoog" certain submissions which are evidently designed to suggest that the VCA was in fact active. The first one that we deal with is at page 348 and it is paragraph 1.3.1.8 of the "betoog" and there it is submitted to your lordship that it is highly unlikely that the witness Mcetya is being honest when she says that she knew of no VCA meetings in Bophelong because firstly she knows Bonani Martha and lives in the same street as him and because secondly she knows Dorcas Raditsela. In that regard we want to draw the court's attention further (20 to the evidence of this witness, to the effect that she was not friendly with Martha and that there was nothing that she discussed with him. Volume 335 page 19 111 lines 19 to 29. The mere fact that some witness knows a person who it is common cause is the area representative of the VCA in Bophelong by virtue of the fact that he lives in the same street does not imply any degree of political acquaintance, it does not imply at all that Martha would talk to this witness about the VCA and the evidence is direct and to the contrary. Similarly we submit that the passing reference to Dorcas (30

Raditsela also comes to nothing. The Raditselas your lordship will remember lived in zone 7 Sebokeng and we are not aware of any evidence that Dorcas Raditsela ever had anything to do with any VCA activity in Bophelong. In paragraph 1.3.1.9 the submission by the state is that Mcetya's evidence that she does not know whether her brother knew Johnny Motete is unbelievable. I am going to condense the points I was going to make in this regard and simply submit to your lordship that there is no evidence at all to suggest that this witness was ever present together with her brother and (10 Johnny Motete. There is also no evidence that Johnny Motete was ever at her home and so we say this submission is not well-founded. In relation to submissions under paragraph 1.3.2.8(d) and (e) the state submits that Phale's evidence that when they went to the meeting with Louw without demands is said to be unbelievable. The background to this, I am going to deal with it very shortly again, the background is that the meeting with Louw arose because of a circular from Louw asking for people to be appointed as a delegation. That is in the evidence of Phale volume 345 page 19 689 (20 line 21 to page 19 690 line 13. Under those circumstances we say it is entirely credible that they should have gone to hear what Mr Louw had to say to them. Then finally paragraph 1.3.3.8 of the state's betoog, there they contend in respect of the figure of R30 per month, the rental figure which came to be proposed; they said that was deliberately chosen because it was unacceptable and knowing that it was done in order to make the Vaal ungovernable. Now that argument was foreshadowed in precisely those terms and the question to the witness Mahotsi and the essence of her (30

answer is that she understood that there were going to be discussions but the authorities in fact never said that the amount was unacceptable and just in relation to the bona fides of this witness as part of the committee of ten that was elected she has told your lordship that there were three meetings with Louw and that the question of the R30 rent a month was put forward on the second one. Volume 350 page 20 017 line 9 to page 20 019 line 1. And we say that that fact supports the witness that as far as the understanding that negotiations would follow, the fact that there was a (10 meeting after the R30 figure had been put forward supports that. But we say in any event that wherever this figure of R30 may have come from at some point after the events of 3 September we submit that there is no evidence to connect this with any of the accused. It does not appear anywhere in the indictment and Mrs Mahotse and her fellow committee members are nowhere alleged to have been co-conspirators.

Now that takes us through the events in Bophelong in regard to which I had to make submissions to your lordship. The state has referred to certain documents in its (20 "betoog" but argument will be addressed to the court in relation to documents and those will be taken up at that time.

I should like with the court's leave now to go on to the events in Boipatong. Now the state case concerning Boipatong does feature in the indictment quite clearly and paragraph 72 at page 314 of the indictment deals squarely with this and we remind your lordship of the terms of the opening preamble that again follows the standard form containing the usual spread of allegations concerning the conspiracies and the attempt to engender violence and (30

ultimately / ..

ultimately violent revolution throughout the country. Again as in respect of other areas the state when requested to was unable to plead a particular decision where such matters were discussed and taken up. Relevant here is paragraph 33.1 of the further particulars and the various paragraphs referred to therein. Now we should like also to draw the court's attention to the fact that the general preamble to paragraph 72 deals with first the period of October 1983 to the end of September 1984, and possibly this is done by the state so that the allegations about Boipatong should be consistent with the allegations generally about the working out of the alleged conspiracy in the Vaal triangle but once the state comes down to pleading events in Boipatong in the substantive paragraphs in paragraph 72 then the date becomes 15 August 1984 and so on the strength of that alone we submit that the state has been unable to point to any activity before 15 August 1984 in Boipatong which might lend support to its overall conspiracy allegations. Your lordship will recall of course that there has been only one witness in respect of the organisational activities in Boipatong, one witness for the state Mr Peter Mohapi and his evidence begins in August 1984. There is nothing from him concerning the state of affairs in Boipatong earlier. Now we submit that it is of value to your lordship just to put the meetings of August 1984 in context to be reminded very, very shortly of the ebb and flow of organisational efforts in Boipatong before then, as outlined by accused no.11. He is the only witness who has set out these matters for the court. And the first matter that we draw the court's attention to is that accused no.11 in October 1983 and after learning of



the activities of the Bophelong youth association formed the view that a youth organisation in Boipatong would be beneficial to the youth and he has told your lordship that his understanding of the position was that these were people between the ages of 18 and 30 who were no longer at school and in the main unemployed. Your lordship will find all that in volume 212 page 11 225 line 1 to page 11 226 line 9 and again at page 11 227 line 24 to page 11 228 line 2.

Now I am going to try as I go through the events in Boipatong to incorporate at the same time our responses (10 to various of the state's submissions and we deal with the first one here at page 318 paragraph 1.1...I beg your pardon 1.2.1. The state says that accused no.11 confirms that Johnny Motete was also a member of the Bophelong Youth Association. We submit that that is a misreading of the evidence, m'lord, and that properly read the evidence goes no further than that Johnny Motete introduced accused no.11 to members of the Bophelong Youth Association. Your lordship will find that on page 11 225 lines 3 to 14. The matters that accused no.11 was concerned to take up in respect of (20 the youth in Boipatong were those relating to problems amongst the youth about increasing tsotsi-ism and liquor consumption and the idea was to encourage youth to take part in sports and also to discuss the problems being experienced in the community. Volume 212 page 11 228 line 3 to page 11 229 line 3. That was altered in the formation of an interim committee of the Boipatong Youth Organisation at a meeting in January 1984 and accused no.11 sets that out in volume 213 page 11 230 line 20 to page 11 231 line 10. But as it happens no permanent committee for this organisation (30

was ever elected. The launch of that organisation never materialised. Members lost interest and it did not become an established and viable organisation and accused no.11 has told your lordship that by May 1984 it had entirely ceased to exist. Your lordship will remember, we will deal with it, that early in May there was a meeting of the four organisations from Bophelong and Boipatong and that was the last occasion on which this youth organisation comes to be recorded at all. The demise of the organisation is set out in volume 213 page 11 232 line 3 to page 11 233 line 18. (10 In paragraph 1.2.2 of the "betoog" your lordship was told that this evidence that the youth organisation in Boipatong did not become an established and viable organisation is said to be false. It is a strong submission. It does not say the evidence is imprecise or overstated, your lordship is told that it is false and the only grounds that are set out in support of this submission by the state is that the Bophelong youth organisation BOYO for short was one of the four bodies which met in relation to the education issue which led to the production of EXHIBIT AN.9 in February 1984 and (20 secondly the issue of the banning of meetings in churches which led to the production of EXHIBIT AN.10 in the beginning of May 1984. Your lordship will remember that those were documents which were signed by Vanderbijl Park joint committee consisting of the - the signatories were detailed. The Bophelong civic association, the Bophelong youth association, the Boipatong civic association and the Boipatong youth organisation. Now to meet this contention that the evidence of accused no.11 in this regard is false we would begin by reminding your lordship of the basis for that evidence in (30

the first place. Your lordship will find in volume 213 page 11 230 line 20 to page 11 231 line 2 the evidence of accused no.11 that the first introductory meeting was not well attended. The actual launch never materialised and BOYA remained no more than an organisation led by an interim committee. Page 11 232 lines 5 to 17. The interim committee had set itself the task of producing a constitution - that was never done. Volume 213 page 11 232 lines 18 to 27 and as I have already referred your lordship to, as time went on members lost interest and the interim committee no longer met after May 1984 and the organisation ceased to exist. Now we submit that it cannot be described as false to summarise that organisational history as being one of the organisations which in fact did not become established and viable. We submit also that the very grounds relied on by the state, documents AN.9 and AN.10 in fact represent the sum total of the efforts of this organisation involved with the other three. Now it is of some importance to note that when those issues arose the education, the problem at the school and the question of the meetings being banned, no public meeting was held. Volume 213 page 11 245 lines 3 to 9. On each occasion nothing more happened than that a handful of people got together. They produced a single letter in each instance addressed to a single addressee and on the strength of that we submit that the state is entirely mis-directed in saying the evidence is false and that we say it is entirely acceptable. (10 (20

Now on the question of the youth, m'lord, perhaps I should try to dispose of it early on. In paragraph 1.2.3 of the "betoog" your lordship is again told that the evidence / .. (30

evidence of accused no.11 relating to the youth seminar held in Wilgespruit is utterly unbelievable and there is no motivation at all for that conclusion. Your lordship is simply told this is "uiters ongeloofwaardig" and then the state after referring your lordship to five pages in the record, it says "sien ook volume 214 bladsy 11 296 tot 11 381", a matter of some 86 pages. Now it is a startlingly bland submission in our respectful view to put an argument before your lordship or rather a submission before your lordship which invites your lordship to look at some, in all, some (10 90 pages without any direction at all. Now we believe that we are entitled to submit equally blandly that the evidence is perfectly credible. We simply cannot meet an argument framed in those terms. In any event we submit further that being part of a youth organisation does not form part of the indictment against accused no.11. We say also that the evidence clearly shows that apart from the fact that the organisation was a limping one from the start, that in the course of May 1984 it falls off the Boipatong arena entirely:

COURT: Never does anything fall off the arena, he is (20 carried out of the arena.

MR TIP: Carried out of the arena. I am grateful to your lordship. I was going to say it fell off the agenda but seemed not to be a correct way to put it. Your lordship will find at page 335 of the "betoog" in paragraph 4.4 similarly in our view unformed submissions. There is no specific charge to meet, there is no evidence from the state to meet and finally we submit in the "betoog" we are not given a properly motivated argument to meet. Your lordship will find in that paragraph 4.4 of the betoog amongst others the (30 allegation / ..

allegation that accused no.11 was concealing things about this youth seminar. Now I have not been able to find that having been put squarely to accused no.11. Your lordship in paragraph 4.4.5 is similarly told in connection with EXHIBIT AT.9 that no.11, accused no.11, Mr Mokoena, just clearly being dishonest in concealing things from the court because he told your lordship that the six people who met on that occasion, 18 January 1984, met at Khotso House and they did so without first booking a meeting place. Now it may seem strange to the state, it clearly does, that people should go along (10 to Khotso House before phoning beforehand, but we submit that there is no foundation for that and that the evidence shows what happened in volume 215 page 11 371 lines 5 to 20. Accused no.11 has told your lordship that whilst the venue was discussed, whilst the meeting place - one of the persons said that there was a hall there which was usually used at Khotso House and that was accepted and that is in fact how it worked out, that they went there and they met in this room. Now if accused no.11 had come into the witness-box intent on concealing things about Khotso House and the UDF then (20 he would have told his lies right at the beginning instead of testifying in the first place that that is where the meeting was held. Your lordship will find that in volume 213 page 11 238 line 7 to 15. In regard to the possible involvement in this meeting of youth in respect of any organisation in Khotso House, the question was put directly to accused no.11 and he answered that this was not so. Volume 215 page 11 372 lines 16 to 20. And we submit that this direct evidence must prevail. It does not help in the absence of any evidence by the state on this question for it to (30

protest / ..

protest and speculate about falsity in this manner. In the same paragraphs of the "betoog" your lordship will find similarly phrased submissions in regard to the document AT.10; that is in paragraphs 4.4.6 and 4.4.7. To begin..

COURT: Will this be a convenient time to adjourn?

MR TIP: Perhaps I may just round..

COURT: Is AT.10 a short matter?

MR TIP: I will make it even shorter, m'lord, in view of tea coming. We make the same submission there that an explanation is given about it. He has told your lordship (10 what the business was when he and others met on 21 January and that once again where there is no evidence from the state it is not open to it to say that the evidence given by no.11 is false. That concludes that point.

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR TIP: As the court pleases. The other organisations in Boipatong which I want very briefly to consider is the Boipatong civic association. Now accused no.11 has testified that as at February 1984 there was a VCA committee called the Boipatong civic association. He has told your lordship (20 also that he knows of no meetings called by it, that he came together with that body on two occasions and that was under the Vanderbijl Park joint committee, the umbrella title of that committee, and that is in volume 213 page 11 242 line 4 to page 11 245 line 19. Now perhaps I could address a few additional remarks concerning the two documents penned under the aegis of this committee, AN.9 and AN.10. These remarks were addressed to the question of whether or not the conspiracy alleged by the state is supported by these documents. The foundation of the state case is that the (30

people / ..

people in the Vaal triangle would take up issues in order to mobilise, in order to organise the masses, in order of course ultimately for the purpose of violence. Now here one has the two bodies, the youth association, the youth organisation of Boipatong and the civic association in Boipatong and the corresponding bodies in Bophelong. They do no more than send a letter. The first, AN.9, is a letter to the school principal at which school complaints arose about re-admission difficulties. Your lordship will recall that that letter AN.9 contained the phrase "drastic (10 action". It says if you do not attend to this drastic action would be taken against you. Now as it happens accused no.11 has told the court what was contemplated under the phrase of "drastic action" which is that a petition might be drawn up calling for the principal's removal. Your lordship will find that in volume 216, page 11 404 lines 16 to 24. But regardless of how the phrase may be interpreted, m'lord, regardless of what conclusions the court may come to about that, the fact remains that the letter is addressed entirely independently of any attempt to involve the public at large, the masses. (20 They send a letter to the principal in an effort to solve that problem and if they are successful then it means that they have effectively removed an issue and of course once they have removed an issue it is no longer there for any attempt to be made to use this in order to mobilise the masses. The same picture emerges in respect of EXHIBIT AN.10 which is a letter addressed to the administration board superintendent. Your lordship will recall that that letter even includes a request to the Vaal administration board that it should withdraw its ban on meetings in churches. And in (30

cross-examination accused no.11 is asked directly, did any copies of that letter go to the press and the answer is no and similarly was this brought in any way to the attention of the residents of Bophelong and Boipatong and again the answer is no. And your lordship will find that in volume 216 page 11 421 line 27 to 11 422 line 22. And again the effect of it is the same. There is an attempt to resolve an issue without any recourse to the public at large and without any attempt to use it for the conspiratorial objects alleged by the state. Now I am to move on now to the question of (10 the rent increases, having looked briefly at the two organisations, the civic and the youth bodies.

Now accused no.11 has told you how he heard about the impending rent increase and that is from Mr Sothso. He says that was approximately at the end of July 1984 and he tells your lordship that Mr Sothso had been a member of the Boipatong civic association but by that time the organisation had ceased to exist. There is to be found in volume 213 page 11 247 line 13 to page 11 248 line 2. Perhaps I might just take up this point. Accused no.11 has told you (20 that the youth association and the civic association both came to an end by the time of the rent increases and that of course is borne out by the fact that when these increases were announced they were not taken up by any existing organisation at Boipatong. That is reflected in the indictment itself in paragraph 72(1) where the allegation is that the committee was formed at the meeting of 15 August 1984. That allegation is common cause, m'lord. It is borne out through the evidence of Mohape, it is borne out through the evidence of accused no.11. (30



ASSESSOR: What was the date again, please?

MR TIP: 15 August 1984. We say that that fact underlines the absence of any community organisation in Boipatong as at August 1984. It is doubtless for that reason that as I have mentioned already, that the substantive part of paragraph 72 begins with this new committee on 15 August 1984. And the corollary of that in turn is that when one looks to determine whether or not that committee was part of any conspiracy then its roots if I may put it this way, are short. One does not have to dig far down to see where this (10 body came from. Now having said that it might be appropriate to go back a little again in order to deal with one of the state's submissions. That relates to the million signature campaign and the putting up of posters for a UDF youth rally. Accused no.11 has told your lordship that he participated in the million signature campaign.

COURT: No.2?

MR TIP: Accused no.11.

COURT: 11?

MR TIP: 11, yes. He has told your lordship also that (20 he did so in his personal capacity and purely because of his own disagreement with the Koornhoff bills and the new tricameral constitutional proposals. He specifically said to your lordship that his participation had nothing to do with any conspiracy or the promoting of any violence. Your lordship will find that in volume 213 page 11 245 line 20 to page 11 247 line 12. Now against that evidence and in the absence again of any evidence for the state its submits at page 319 of the "betoog" in paragraph 1.2.5 that the fact that accused no.11 collected some million signature (30 campaign / ...

campaign signatures proves that the Boipatong residents committee co-operated with the VCA and that it had the same ideology as the UDF. The evidence of accused no.11 within the passage which I have just cited to your lordship makes clear that he collected signatures in the course of April/May 1984. Quite clearly there can be no connection. The Boipatong residents' committee was formed on 15 August 1984 and this submission by the state should be described as a non-starter.

We draw your lordship's attention to this as well (10 that although it is now submitted, this collecting of signatures is submitted to be evidence of co-operation, in the course of cross-examination on this subject the question of the VCA was not raised at all. It was not suggested to accused no.11 that he was doing so on behalf of the VCA. The submission was simply never put to accused no.11. Your lordship will find several pages of cross-examination on this in volume 216 page 11 430 line 20 to page 11 437 line 8. In similar vein in paragraph 1.2.9 of the "betoog" on page 320 your lordship is told that accused no.11 has admitted that (20 he put up posters being EXHIBITS 82 and 83; those are posters advertising the youth rally of the UDF and the million signature campaign respectively. Motubatsi gave him those posters and accused no.11 is on record to the effect that he does not know whether Motubatsi belonged to any organisation. That is in volume 216 page 11 428 lines 1 to 15. And so we submit in that regard that the evidence again does not establish any link in the sense that accused no.11 is doing this on behalf of any organisations in the Vaal, or to promote any conspiracy. What it does show clearly is that accused no.11 is (30

sympathetic/..

sympathetic to the ideals of the UDF, no question about that. He has testified to it, m'lord, but beyond that we say the fact is of no relevance.

In respect of the Boipatong residents' committee and still on the subject of its links with other organisations accused no.11 has told your lordship that this committee did not attend any committee meetings of the VCA or of the UDF. That is in volume 214 page 11 296 lines 10 to 17. I emphasise that reference is made to committee meetings of the VCA. Your lordship has been told by accused no.11 that he was (10 present at the meeting at Small Farms on 2 September in the planning of the march and that he was also present after 3 September at a meeting in Chikane's office, but those are not committee meetings of the VCA. But there is a point that arises out of this and it arises because of the submission made by the state. Your lordship will find it is said that accused no.11 kept the state witness Mohapi in the dark about the VCA. That will be found on page 338 of the "betoog" and the state puts that forward as an introduction to its final submission that accused no.11 also did not disclose (20 the true purpose of the march to Peter Mohapi, something that we will deal with in concluding these submissions, but the immediate point that we would make is that in the evidence of Mohapi himself in volume 39 page 1 811 line 21 to page 1 813 line 1 Mohapi sets sets out quite clearly that accused no.11 in fact did tell him that this Boipatong residents' committee was with the VCA. So we say this submission that Mohapi was kept in the dark ignores the most pertinent evidence on the subject. What that portion gave rise to as well is the question about the UDF.. (30

COURT: No, no, sorry, is it part or is it not part of the VCA according to your submission? The Boipatong residents' committee.

MR TIP: That it did become part of the VCA.

COURT: It was part of the VCA.

MR TIP: It was part of the VCA.

COURT: Thank you.

MR TIP: Subject to this that there is no evidence to indicate clearly to your lordship when this relationship was formalised. Your lordship will recall that at the meeting (10 of 26 August the matter was not discussed. In the view of accused no.11 there was a relationship. It was put quite clearly to the witness Mohapi and the state has not referred to it but I think I should refer your lordship to an admission in EXHIBIT AAS.4, page 20.

COURT: What does that state?

MR BIZOS: It lists the members of the Boipatong residents' committee under a general heading of the area committees of the VCA. Again that admission unfortunately does not make clear when the relationship was formalised and it was not, (20 it simply was not canvassed with accused no.11 either by myself when I led him or by the cross-examiner.

The real dispute with the witness Mohapi was that curious and somewhat confused bit of evidence about when accused no.11 told him about the UDF. Mohapi says that he heard about this after 3 September when they went to Johannesburg to the offices of Ismail Ayob the attorney and he related this to the UDF. In cross-examination he conceded that he could not dispute that the purpose of this visit was to authorise that firm to act for him if he were detained and that (30

is in volume 39 page 1 846 lines 11 to 30 and accused no.11 specifically denies that the purpose of this visit was for proof that they fell under the UDF. That is in volume 214 page 11 295 line 23 to page 11 296 line 9.

COURT: Who paid the bail money?

MR TIP: Mohapi's recollection was that it was that firm.

COURT: Yes, that is rather unusual is it not?

MR TIP: Well, I dare say..

COURT: An attorney's firm does not put up bail money.

MR TIP: That is so, m'lord. (10

COURT: Well, who paid the bail money?

MR TIP: There is no evidence as far as I am aware.

COURT: Thank you.

MR TIP: Now whatever the nature of the formal links were or whenever they arose and as I say it is not clear whether it was before or after 3 September, but whatever the position your lordship has clear evidence as to what in fact was the connection before 3 September and the state has in its submissions made reference to the pamphlet AT.5. That was produced by Raditsela on request from accused no.11 on behalf (20 of this committee. Your lordship will remember that that pamphlet had been headed by Raditsela: Vaal Civic Association. Accused no.11 had not asked him to put that name on it. It was evidently Raditsela's idea but accused no.11 has told you when he saw it he was not unhappy with it. The witness Mohapi has told your lordship that he was given some of these pamphlets. These were to advertise the meeting of 26 August. He was given some and he caused them to be distributed. There was no suggestion from him that he was unhappy with the Vaal civic association and so Raditsela assisted with other (30

pamphlets / ..

pamphlets and he assisted in response to a request to provide a VCA speaker for the meeting of 26 August 1984. Beyond that and beyond the fact that accused no.11 attended the planning meeting on 2 September in connection with the march, there is no evidence of any other relationship. There certainly is no evidence of any meeting between the Boipatong residents' committee and any committee of the VCA before 3 September.

If I might take up the question of the formation of the Boipatong residents' committee in a little more detail. What we submit is that that committee arose as an entirely (10 independent initiative taken by people in Boipatong in response purely to the rent increases. And that there is no basis in the evidence in our submission for coming to the inference that the steps taken to form that committee had anything to do with any conspiracy. One of the pertinent facts in our submission is the evidence that your lordship has heard about how much of a burden the rent increase was going to prove. Accused no.11 has testified to that. He has told your lordship that there was already at that time lots of unemployment amongst the people in Boipatong. At his own home only his mother (20 was working and there were seven children living in the house and he tells your lordship that the rent increase was going to be a heavy burden. That is in volume 213 page 11 248 lines 18 to 24 and page 11 249 lines 11 to 27. Ngwenya the witness called by the defence told your lordship also that the rent increase was going to be very difficult for his family. They were dependent on the income of his pensioned mother. Volume 385 page 22 338 line 14 to page 22 339 line 13. Nonyane, the other defence witness similarly, they were already struggling to pay rent before the increase. Volume(30

386 page 22 373 lines 3 to 9. And the state witness himself, Mr Mohapi has told your lordship of how his family were already in arrears for the month of July 1984 and how when he came home and I think it was 8 August 1984 the house had been locked. The family had been locked out, something that happened to other as well he says. Volume 39 page 1 826 lines 10 to 21 and page 1 828 lines 20 to 26. So out of the four witnesses who testified from Boipatong, all four have told your lordship how great a burden this was. And we say then that it is an entirely reasonable inference that when they (10) decided to meet one need look no further than the problem occasioned by the rent increase. Practically what happened after accused no.11 had heard about the pending rent increase from Sothso they had a discussion and they then concluded that they should hold a public meeting and that a temporary committee should be formed in order to attend to the calling of this meeting with the residents. Volume 213 page 11 248 lines 3 to 17. Now accused no.11 and Mr Sothso takes this initiative together and it may be appropriate to remind your lordship of a contemporaneous indication to this state of mind (20) and the approach to affairs of Mr Sothso and that is to be found in the letter addressed to the editor of The Sowetan by Mr Sothso which is EXHIBIT AT.8. Accused no.11 has told your lordship that he was in agreement with the sentiments there and one of the sentiments set out was the following:

"I therefore appeal to our brothers in BC camp to join forces with all those progressive organisations affiliated to the UDF and fight our common enemy once and for all through peaceful means at our disposal."

Your lordship will find mention of that in the evidence of (30

accused / ..

accused no.11 at volume 214 page 11 276 line 24 to page 11 277 line 23. So the decision then is taken to hold a meeting on 15 August which is where the indictment begins. Some days before that on about 7 or 8 August accused no.11 has a discussion with Mr Mohapi on a street corner at Boipatong and he mentioned the proposed meeting to Mohapi. Now apropos that discussion accused no.11 has told your lordship that he did not mention any meetings in Sharpeville that he may have attended or any resolutions which he had attended - which were taken at any such meeting and that is in volume (10 213 page 11 250 lines 3 to 25. I should draw your attention to somewhat of a simplification in one of the state's submissions in paragraph 1.2.6 on page 320 where the statement is made that the evidence of accused no.11 confirms the evidence of Mohapi in relation to their meeting and thereafter the meeting of 15 August. Now it is one of the disputes between no.11 and Mohapi. There are very few but this is one of them and we submit that the dispute must be resolved in favour of accused no.11 and we say principally for the reason that the account given by the state witness Mohapi on this aspect (20 is manifestly unreliable and I wish to draw the court's attention to some conflicting positions that he adopts. First of all Mohapi testifies that accused no.11 gave him details of the Sharpeville meetings and the decisions on the street corner before the meeting of 15 August. That is in volume 39 page 1 788 line 19 to page 1 789 line 1. This relates inter alia to accused no.11 supposedly saying: Following the suggestion of the meeting in Sharpeville they should make a committee as well in Boipatong. Now that is the one statement. Then secondly still in chief Mohapi testifies (30

that / ..



that at the meeting of 15 August and as a result of what accused no.11 said there in respect of what had been decided at Sharpeville, the committee then decided that if councillors did not reduce the rent they should resign, failing which they were to be boycotted and it is explicitly said in answer to a question from your lordship that accused no.11 said that this is what had been said at the meeting where he had been present in Sharpeville. That is in volume 39 page 1 789 line 29 to page 1 790 line 26. Then he confirms that it was at the meeting of 15 August that no.11 reported about (10 Sharpeville and interestingly in relation to the alleged or what is impliedly now conspiratorial origin. Nothing further is said about Sharpeville at the meeting of 22 August 1984. This is in volume 39 page 1 836 lines 22 to 25. Then under further cross-examination Mohapi change tack entirely and he then testified that accused no.11 had conveyed the Sharpeville resolutions to him alone. So clear was he now that accused no.11 had not told the others in the committee that he inferred that accused no.11 in fact did not want the Boipatong committee to follow the procedures adopted at (20 the meetings of the Sharpeville people. He says it was never discussed at the committee. That is in volume 39 page 1 839 line 23 to page 1 840 line 30.

ASSESSOR: What was the first page reference again, please?

MR TIP: The first page reference?

ASSESSOR: Yes.

MR TIP: 1 839 line 23. Then he takes another decision after that and he says that these things had been mentioned in a meeting but this was the mass meeting which had been held on 26 August 1984. And to compound his position he squarely (30

denies / ...

denies having testified earlier to the effect that the Sharpeville matters had been spoken of by accused no.11 at the committee meeting. Volume 39 page 1 843 lines 8 to 27.

So we submit that the account given by him in respect of this is variant in a material sense and that when accused no.11 denies that he had anything to do with any meetings in Sharpeville, that that evidence should be accepted.

Now some details of what was discussed at the meeting of 15 August 1984 should be brought to your lordship's attention. The decision was to hold a mass meeting on 26 August. (10  
Accused no.11 has told your lordship that that date was chosen because it would afford sufficient time for preparation for the meeting and at the same time the date fell on the day before the increase was to be effective. At that time accused no.11 had no knowledge of any other meetings which were to be held on 26 August elsewhere in the Vaal triangle and he identifies the purposes of this meeting as being simply to discuss the increased rent. It is in volume 213 page 11 251 lines 3 to 28. Now after this meeting and having been referred by Balfour who was elected the chairman of (20  
this committee accused no.11 went to Raditsela's place of work and asked him to arrange a VCA speaker at the meeting of 26 August and accused no.11 also took steps to invite Veronica Mbongo who was identified as someone belonging to the Bophelong civic association. Now that evidence is in volume 213 page 11 252 line 8 to page 11 254 line 1. Now at page 320 in paragraph 1.2.7 of the "betoog" it is said that the fact that Raditsela was asked to arrange a VCA speaker for 26 August was further confirmation of the co-operation between the VCA and what it calls "die sogenaamde Boipatong (30

residents' /...

residents' organisation". Now we submit as at this first approach to Raditsela there had been absolutely no co-operation or relationship whatsoever and we say also that properly construed a step of that sort, an invitation to organise a speaker from the VCA does not amount to organisational co-operation. And it is worth remarking in respect of the position of accused no.11 at that time that he himself did not know Raditsela. In volume 217 page 11 474 lines 1 to 5. It was Mr Balfour's suggestion and Mr Balfour told them where to go. (10

COURT: Yes, Mr Tip?

MR TIP: Sorry, m'lord, I am just trying to make sense of the variety of notes I am working off here. The other recommendation which Mr Balfour made to accused no.11 was that Raditsela should be approached in order to assist with the printing of pamphlets to advertise the meeting of 26 August and accused no.11 has clarified the basis for that request. The suggestion that Raditsela be approached for this was because of Raditsela's trade union connection in consequence of which it was believed that he would have access to (20 printing facilities. Volume 213, page 11 255 lines 5 to 15. What we submit is that that evidence shows that the initiative for Raditsela's involvement came from the Boipatong people and not vice versa and that the allegations concerning the organisation of this meeting have inverted the reality. Your lordship will find that in paragraph 33 point 6, (ad 25.5 of the further particulars where the allegation is made to the effect that the Boipatong meeting of 26 August 1984 was organised by VCA members under the direction of Esau Raditsela). We say the evidence allies that (30

allegation/..

allegation. Accused no.11 in further execution of the mandate given to him at the meeting of 15 August secured the Anglican church in Boipatong as the venue for the mass meeting. He did so after approaching accused no.3 in Sharpeville who, we submit, quite properly referred accused no.11 back to the church warden in Boipatong for the necessary consent. That we find in volume 213 page 11 254 line 5 to page 11 255 line 4. A short report back meeting was held on 25 August 1984 and it was agreed that Balfour would act as chairman of the mass meeting. Volume 213 page 11 257 line 25 to page (10 11 258 line 8. Again in broad terms we submit that in respect of this meeting of 22 August in relation to the place given this in the state's indictment nothing at all is said about using issues or mobilising the masses or a campaign against black local authorities or anything of the sort.

We then come to the meeting of 26 August, the mass meeting and we refer your lordship first of all to the paragraph in the indictment concerning it which is paragraph 72(7). Now the interesting thing, m'lord, this is at page 317 of the indictment, there is again in this sub-paragraph of para- (20 graph 72 a restatement of the general preamble so that the state underlines that this meeting is part of the effort to produce violent revolution in the Republic, but when one looks at the allegation set out thereafter in paragraph 72(7) of what the speakers are alleged to have said there is a notable absence of any concern with violence. None of those allegations in our submission is capable of being fairly construed as being directed towards violence. We will review the evidence of the witness Mohapi but it is worth noting in respect of this meeting that he specifically denied that (30

it was a conspiratorial one or that it was concerned with violence and with exactly the same position accused no.11 squarely denies the allegations about this meeting set out in the indictment. In volume 213 page 11 259 lines 4 to 15. Accused no.11 gives an account of the salient events at this meeting. He explains first of all why it is that he took over the chairmanship and that is because Balfour did not arrive. Volume 213 page 11 258 line 9 to page 11 259 line 3. He gives an account which I abbreviate m'lord of what the first speaker Mr Sothso had to say. He said that council- (10  
lors had failed the trust placed in them because they had promised that rents would not be increased but now they had been. And Mr Sothso then proposed that the increase should not be paid until there had been discussions with those in authority at Houtkop. He further said that residents should call on the councillors to resign, that neither he nor anyone else at that meeting spoke about the boycott of councillors' businesses and he says also that when he had finished his speech Mr Sothso remained at the meeting. That is at volume 213 page 11 259 line 19 to page 11 260 line 11. The (20  
witness Ngwenya was present. He came in whilst Sothso was already busy speaking but he heard them talk about the difficulties in the rent increase; he confirms that there was nothing said about boycotting councillors businesses and confirms also that there was no suggestion in any way that action should be taken against councillors or that any suggestion was made that people should resort to violence. Volume 385 page 22 340 lines 1 to 28. There is a minor difference in the evidence between that of Mohapi and accused no.11 and other witnesses as to whether or not Sothso (30

remained / ..

remained at this meeting or whether as Mohapi testified Sothso had said he is going to a meeting at Bophelong. We say it is of no consequence at all because your lordship has heard evidence concerning the meeting in Bophelong of 26 August 1984 and there is no suggestion whatsoever of Mr Sothso having played any role there. In relation to Sothso's address I should comment shortly on the submission made in the state's "betoog" at page 324 in paragraph 2.2.6. They say that the evidence or rather that Sothso did not explain in his address how councillors were to be asked to resign, (10 or when they were to be asked, or by whom they were to be asked or what would happen if they did not resign, reflects unworthiness of belief. We submit entirely the opposite. We say that that evidence shows the absence of a programme of action into which people were to be directed. That points not to a lack of frankness but to lack of the conspiracy.

Now I am going to leave out some of the incidental details and some of the incidental submissions by the state but the next important aspect of the meeting is that whilst Sothso was busy speaking Raditsela arrived there with Edith (20 Letlhake and Raditsela then introduced Edith Letlhake as the speaker who had been requested. Again it is worth remarking that at that stage accused no.11 had never met Edith Letlhake before. Volume 213 page 11 260 line 27 to page 11 261 line 7. Your lordship will recall that after Sothso's speech accused no.11 briefly summarised and translated it into Sotho and he says that he, accused no.11, at no time read from any book concerning boycotts which I make mention of only to meet the evidence of Mohapi. Volume 213 page 11 268 lines 17 to 28. Now accused no.11 goes on to say that Edith Letlhake (30

was in fact the next speaker. She dealt generally with the burden of increased rent and she spoke also of a meeting which had been held in Sebokeng on the previous day, that would be 25 August, at which it had been resolved that people would not go to work on 3 September 1984 as an indication of their dissatisfaction with the increased rents and she suggested that the present meeting consider resolving the same way. That is in the evidence of accused no.11 volume 213 page 11 261 line 16 to page 11 262 line 15. The witness Ngwenya testified and although he could not remember the person's name (10 he does remember that a lady from Sebokeng spoke and that she had referred to a meeting held the previous day at which people had decided not to go to work on 3 September because of the rent increase. Your lordship will find that corroborating evidence in volume 385 page 22 341 line 20 to page 22 342 line 4.

Now we would direct the court's attention with respect again to the indictment and that is - we say it is a matter of considerable importance m'lord, and that is that at paragraph 72(7)(iii) on page 318 the state particularises (20 what Edith Letlhake has said at this meeting. I won't read it all out but the material portion is that she informed the audience that at a mass protest meeting in zone 12 on the previous day a mass stay-away action had been decided upon for 3 September 1984. Now what is notable about this is that there is no mention of a march and there is no mention of Raditsela having spoken calling for a stay-away and a march. We submit that that allegation is consistent with what accused no.5 has told you about the meeting on 25 August 1984 which is that a stay-away was talked about and not

a march. It is consistent with the fact that he, accused no.5 when making mention of the resolution at the Small Farms meeting on the 26th of August would have spoken only of a stay-away decision. And the averment is consistent also with the account given by accused no.11 of what happened at this meeting at Boipatong and what Edith Letlhake had to say and it is inconsistent with the disputed evidence of the witness Mohapi who testified that it was Esau who at that meeting said there was to be a march on 3 September and of course the averment that Edith Letlhake spoke only of the mass (10 stay-away action is inconsistent with the thesis which the state has sought to develop that Raditsela went around the Vaal triangle on the 26th of August securing decisions inter alia that people would march on 3 September. Now as to the difference between Mohapi and accused no.11 on this score we say again on this ground that the version of accused no.11 is to be preferred. A brief account is given of the address of Veronica Mbungo. Your lordship will find that at volume 213 page 11 262 lines 16 to 28 and in relation to the speakers we might remark the fact that although in the rough pro- (20 gramme drawn up for the meeting provision was made for a student representative to speak none in fact did so. Volume 213 page 11 262 line 29 to page 11 263 line 7. If I might take up one of the state's submissions which is made at page 324 of the "betoog" in paragraph 2.2.5, there it said that the evidence of accused no.11 that Sothso only drew up this programme on the morning of 26 August is not to be believed. What we say about that is although it might be strikingly casual, what it points to is that this is not a meeting put together by professionals or experienced organisers, and (30

that / ..



that it really echos the kind of casualness which emerges from the state witnesses' evidence which is at the meeting of 15 August when this committee was formed, it was just a loose decision that committee members would speak at the meeting of 26 August, that is Mohapi's evidence and accused no.11's. They do not discuss well who precisely is going to speak or in what order are we going to speak. There was no discussion according to Mohapi about what they would say. He simply says well, it was a "bekende feit" that they would talk about rent. In any event in respect to the submission that this evidence is not to be believed the exhibit is there, 86. That is the programme. It was not there on 22 August, it was not there on 15 August, why in those circumstances must it be described as "ongeloofwaardig" when evidence is given that it was drawn up in the morning of the 26h? (10

We react to these submissions not finally because the issues themselves are of great moment but because some response needs to be given to submissions that the evidence is "ongeloofwaardig". Now still on EXHIBIT 86 which has some pages to it. Accused no.11 has testified that at the end of the speeches made by the various speakers he made a note of proposals made by them and at the end of the set of speeches those proposals were then raised before the meeting and discussion followed. (20

COURT: Yes, go ahead. You have remarkably slowed down since you addressed us before the week-end. Did you have a hectic week-end?

MR TIP: On the contrary, m'lord. I am so buried in these papers that my vision has become somewhat short but I will (30

do my best to accelerate again. The discussion of the rent increase was amended that there should be no rent paid at all pending discussion. That is volume 213 page 11 263 line 20 to page 11 264 line 16. And it is clear on the evidence as a whole that what was contemplated at this meeting is that the entire rent issue was to be discussed with the authorities at Houtkop and that is consistent with the allegation made in the indictment which your lordship will find in paragraph 72(7)(iv)(e) to the effect that the elected Boipatong residents committee would act as speakers on behalf of the residents at Houtkop. It was resolved also that councillors should resign and then when the proposal to have a stay-away was discussed which we submit arose out of the address of Edith Letlhake Mr Spokes Mbele made the further suggestion that there should be a protest march to Houtkop to make known the grievances of the people directly there. That is in volume 213 page 11 264 line 27 to page 11 265 line 22. Ngwenya confirms this account in volume 385 page 22 343 line 17 to page 22 344 line 18 and volume 386 page 22 361 lines 16 to 22. And the terms in which Mbele motivated this amendment was that rather than just stay at home doing nothing it would be better to go to Houtkop and show the authorities directly how the people felt about the increase. Now on accused no.11's account it was at the end of these resolutions that Raditsela came into the picture and that was in relation to letters to be written about transport on 3 September. Volume 213 page 11 265 line 23 to page 11 266 line 3. (10)

In respect of songs, accused no.11 has told your lordship that apart from Nkosi sikelele there was a group of people /... (30)

people who started singing a song as the meeting broke up. He himself did not follow the wording of the song, that is in volume 213 page 11 268 lines 2 to 16. Accused no.11 was not in a position to say, to testify with confidence that there was no song which involved mention of Tambo. That was the evidence of Mr Mohapi. Although accused no.11 was not able to say that, we submit that quite clearly the singing of this song did not form part of the meeting proceedings. On Mohapi's account it was at the end of the meeting that these songs were sung and we submit that the allegation (10 in paragraph 72(7)(v) that the people at the meeting sung freedom songs and shouted ANC slogans which popularised and glorified terror ..

COURT: Sorry, which one is it?

MR TIP: 72(7)(v) page 320 of the indictment. It says that terror and terrorist organisations were popularised at this meeting and we submit that that allegation simply is not proved even when Mohapi's evidence that there was a song which mentioned Tambo is accepted.

There will be a few matters that the state has raised (20 in relation to the meeting that I will have to come back to but I would like to leave the meeting and go directly now to the march of 3 September and I am going to leave aside for the present also accused no.11's attendance on 2 September at the meeting at Small Farms. That will be dealt with by Mr Bizos.

Now the first point about the march is that there is a general denial by accused no.11 that the march was organised in furtherance of any conspiracy or to bring about violence. Volume 214 page 11 277 line 24 to page 11 278 line 9. He (30

told / ..

told your lordship that he prepared placards to be used on the march, reading: "Away with high rents" "councillors should resign", and "we have no money". That is detail in volume 214 page 11 279 line 23 to page 11 280 line 5.

Accused no.11 testified also that what was contemplated as the route was once Boipatong had been left was a road along which there were no structures and the idea was that the march would proceed in two columns so that space would be left on the road for vehicles to pass through. Volume 214 page 11 279 lines 10 to 14 and page 11 280 lines 11 to 30. (10

If the police were to stop the march then accused no.11 and the committee members would talk to them. Volume 214 page 11 281 lines 1 to 7. Now on the morning of 3 September accused no.11 and some others were proceeding from his house to the square, it was approximately 07h15. They stopped and they spoke to a group of about ten in connection with some of those persons acting as marshalls and some of them carrying placards. Now this again, this evidence is described by the state as n "ongeloofwaardige weergawe" in paragraph 3.2.3.

They say the fact that the route of the march was only (20 discussed on the morning of the 3rd is unbelievable and again we say it may be casual but not unbelievable. Your lordship has seen the aerial photograph of Boipatong. There are only two roads that can be taken to the main road to Houtkop. It is not a matter that requires long deliberation and the matter simply was not taken up - well, it was referred to but not taken up in those terms in the course of cross-examination.

It was not then suggested to accused no.11 that there was a problem with this version that it was unbelievable. Your lordship will see that in volume 218 page 11 540 lines 26. (30

to 29. The same applies to the discussion about marshalls on the way to the square. It was raised in cross-examination and your lordship will see from the evidence that the court then did not consider it a matter of great relevance nor that the cross-examination was well directed. Volume 218 page 11 538 line 6 to page 11 540 line 25. Now whilst accused no.11 was involved in the discussion with this group he told your lordship that two police landrovers arrived and that they were then sjambokked without any warning or enquiry by the police. Volume 214 page 11 282 lines 11 to 26, accused (10 no.11 himself was struck and Pete Mbongo was injured when he jumped a fence. Page 11 282 line 27 to page 11 283 line 16. The submission by the state in this regard is to be found on page 330 and 331 in paragraph 3.2.6 and whilst the state there concedes that it has not led any evidence to the contrary it nevertheless submits to your lordship that the account given by account no.11 is inherently improbable and unbelievable. And it gives a little edge in our view to the evidence. It says it is improbable that "mense wat stil en rustig in die pad stap" would be sjambokked. This was a group that was (20 standing there. Why should it be inherently improbable? That view is only valid if it is accepted as an article of faith that the police always act in a disciplined and self-contained manner. We submit that your lordship has heard instances of police conduct where that was not the position. I do not want to try to catalogue any of those instances. It is a broad submission and I want to submit also that it is noteworthy that when the incident was touched on in cross-examination of accused no.11 there was no suggestion put to him that there was an inherent improbability or anything (30

of the sort. Similarly the witness Mohapi for the state has testified that when he arrived at the square he heard reports of what had happened. There was no suggestion put to him in re-examination that this was something that was improbable. Your lordship will find his evidence as to hearing it in volume 40 page 1 864 lines 3 to 23.

COURT: Is it a convenient time for the adjournment?

MR TIP: It is, m'lord.

THE COURT ADJOURNS FOR LUNCH

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## **DELMAS TREASON TRIAL 1985-1989**

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