

THE STATE CASE ON THE UDF

The state case is set out in an indictment which consists of some 364 pages. It is amplified by further particulars and better further particulars. The total is more than 560 pages. It would lead to confusion and needless repetition should we deal with it extensively. We will set out the gist of the state case only. Of necessity in the summary a lot of detail will be lost. We will abbreviate phrases often used by the state by utilising the word "et cetera".

The indictment commences with certain introductory factual allegations: The aim of the African National Congress (ANC) and South African Communist Party (SACP) is the unlawful overthrow and/or endangerment of the South African government by violence, threats of violence or other means which include the use of force.

The ANC, its members and/or active supporters know and proclaim that this can only be attained if the masses, especially the Black masses in the Republic of South Africa, can be involved and persuaded to participate in a violent revolution and especially since January 1983 they organise and call upon:

- 1) its members and active supporters to mobilise, politically incite and indoctrinate condition and/or activate especially the Black masses to unite in organisations or bodies in all levels of society in the Republic of South Africa;
- 2) its members, active supporters and organisations and/or bodies that exist and/or come into being among the Black masses to work together and organise and bring about a United Democratic Front amongst the Black masses and so-called democratic people of colour (anders-kleuriges);
- 3) its members, active supporters and/or persons in control of such United Democratic Front to organise, mobilise, condition, politicise, inflame, indoctrinate, co-ordinate and/or activate the Black masses to participate in activities, deeds, projects and/or violence whereby the Republic of South Africa is made ungovernable and which situation must develop in a violent revolution by the Black masses;
- 4) its members, active supporters and/or persons actively supporting or connected with such United Democratic Front to use propaganda attacks on the Government to

activate, etc the Black masses for the purpose set out above.

In 1983 there was organised and on 20 August 1983 the United Democratic Front (UDF) was created as a broad front organisation with affiliates who undertake to adopt and execute the policy, resolutions and activities of the UDF.

The UDF functions through persons elected or appointed as its management and officials, plus representatives of organisations affiliated.

The aims of the UDF are the unlawful overthrow and/or endangerment of the lawful government by violence and/or threats of violence and/or by other means which include or intend violence.

The UDF, its members and/or affiliates and/or supporting bodies and/or persons forming part of the management structure and officials know, accept and declare:

- 1) that this aim of the UDF can only be attained by extra parliamentary methods;

- 2) that the UDF must undertake this task which can only be successful if the Black masses can be united and persuaded to participate in a so-called freedom fight;
- 3) and that the UDF must unite, organise, mobilise, politically incite, condition and/or activate the Black masses to participate in acts and/or violence whereby the Republic of South Africa is made ungovernable and which situation must develop in a violent revolution by the Black masses;
- 4) that to attain this goal inter alia propaganda attacks be used.

The state further alleges that the members of the management structure and officials of the UDF and others including the accused conspired under the name of UDF to carry out and/or to further the aims of the ANC, SACP or UDF aforementioned.

The state alleges that the accused are guilty of:

treason; alternatively

terrorism under three sub-sections of section 54(1) of the Internal Security Act No 74 of 1982; alternatively

subversion under two sub-sections of section 54(2) of the same Act; alternatively

furthering the objects of the ANC or SACP in contravention of section 13(1)(a)(v) of the said Act; alternatively

five counts of murder.

The terrorism charges are based on sections 54(1)(i), (ii) and (iv). In terms of section 54(1)(i) of the said Act any person who with intent to

- (a) overthrow or endanger the State authority
- (b) achieve or promote any constitutional, political, industrial, social or economic aim or change in the Republic of South Africa
- (c) induce the government to do or abstain from doing any act or to adopt or abandon a particular standpoint
- (d) put in fear or demoralise the general public, a particular population group or the inhabitancy of a particular area or to induce them to do or abstain from doing any act

commits an act of violence or threatens or attempts to do so is guilty of an offence.

In terms of section 54(1)(ii) any person who with the intent stated above performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence or attempts, consents or takes any steps to perform such an act is guilty of an offence.

In terms of section 54(1)(iv) any person who with the said intent incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act of violence is guilty of an offence.

The subversion charges are based on section 54(2)(a) and (e) of the said Act.

In terms of section 54(2)(a) any person who with the objects set out in section 54(1)(a) to (d) (that is those which we have already mentioned) causes or promotes general dislocation or disorder at any place or attempts to do so is guilty of an offence.

In terms of sub-section 54(2)(e) of the said Act any person who with the said objects prevents or hampers or deters any person from assisting in the maintenance of law and order at any place or attempts to do so is guilty of an offence.

In terms of section 13(1)(a)(v) it is an offence to advocate, advise, defend or encourage the achievement of any of the objects of an unlawful organisation or objects similar to the objects of such organisation or perform any other act of whatever nature which is calculated to further the achievement of any such object.

Several other sections of the Internal Security Act are relevant.

Section 54(8) states that for the purposes of section 54 "government of the Republic" includes a provincial administration or any institution or body contemplated by section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No 32 of 1961). The last-mentioned sub-section refers to:

- 1) municipal institutions, divisional councils and other local institutions of a similar nature;
- 2) any institutions or bodies other than such institutions as are referred to in sub-paragraph (1) which have in respect of any one or more areas whether contiguous or not situated outside the area of jurisdiction of any such institution as is referred to in sub-paragraph (1) authority and functions similar to the authority and

functions of such institutions as are referred to in the said sub-paragraph or authority and functions in respect of the preservation of public health in any such area or areas.

Section 69(1) of the Internal Security Act creates a presumption that a person is a member or active supporter of an organisation if he attended a meeting or encouraged the promotion of its purposes or distributed its documents.

Section 69(4) of the said Act contains various provisions relating to the admissibility of documents.

Section 69(5) creates the presumption in proceedings in terms of section 54(1) or 54(2) that an accused who has committed an act alleged in the charge which act resulted or was likely to have resulted in the achievement of any of the objects specified in section 54(1)(a) to (d) inclusive committed that act with intent to achieve that object.

The main charge of treason (which is a common law crime) is that the accused acting with common purpose to execute or further the alleged conspiracy unlawfully with hostile intent towards the Republic of South Africa and with intent to overthrow the government or to endanger it committed one or more of the acts set out in the annexure and/or had knowledge thereof and failed to report it to the authorities.

The first charge of terrorism alleges that the accused with the intent set out in section 54(1)(a) to (d) in the execution and furtherance of the said conspiracy or the aims of the ANC, SACP or UDF committed the acts of violence set out in paragraphs 30 to 77 of the annexure to the indictment.

The second terrorism charge alleges that the accused with the alleged intent in the Republic of South Africa or elsewhere committed acts aimed to cause violence or threats of violence or promote or contribute to such or attempted, agreed to or took steps to act as aforesaid as set out in one or more or all of the paragraphs of the annexure to the indictment.

The third charge of terrorism alleges that the accused with the said intent elicited, incited, ordered, helped, advised, encouraged or obtained the Black inhabitants of inter alia Evaton, Boipatong, Sharpeville, Sebokeng and Bophelong to commit violence as set out in the annexure.

In the first subversion charge the state alleges that the accused with others in the furtherance of the said conspiracy and/or aims of the ANC, SACP and UDF with the intent set out in section 54(1)(a) to (d) caused, promoted or attempted general disruption or disorder in especially the Black residential areas Evaton, Sharpeville, Bophelong, Boipatong and Sebokeng by the acts set out in paragraphs 1 to 77 of the annexure.

In the second subversion charge the state alleges that the accused in furtherance, etc with the intent, etc prevented or impeded the maintenance of law and order or deterred the people of these Black residential areas from rendering assistance therewith. Reference is made to paragraphs 1 to 77 of the annexure.

In the charge of furthering the objects of the ANC or SACP the state, after setting out the proclamations in terms of which these organisations were declared unlawful, refers to their aims set out in the introductory part of the indictment and sets out that they in addition had one or more of the following objects:

- (1) to wage a campaign against the government's policy in respect of the new constitution and Tri-cameral parliamentary system;
- (2) to wage campaigns against the government's policy and legislation in respect of:

- (a) Black local authorities and the so-called Koornhoff bills;
- (b) removals and relocation of population groups and also group areas;
- (c) housing for people of colour (anderskleuriges);
- (d) labour matters for people of colour;
- (e) general sales tax and the escalation of the cost of living;
- (f) Black education;
- (g) separate development, Black homelands and events in, for example, the Ciskei;
- (h) military action, the South African Defence Force and conscription;
- (i) military action and South West Africa/Namibia;
- (j) detentions under security legislation, political prisoners and political refugees.

- (3) That campaigns be waged against the so-called imperialism of countries like America, England and Israel;
- (4) the political isolation of the Republic of South Africa;
- (5) that campaigns be waged in the Republic of South Africa:
 - (a) against the government, the White population, the courts and other security forces on the basis of so-called harassment and repression;
 - (b) to popularise the Freedom Charter with the Black masses;
 - (c) to popularise the ANC in the Republic of South Africa with the Black masses;
 - (d) to popularise the leaders of the ANC, political refugees and political prisoners with the Black masses in the Republic of South Africa.

It is further stated that it was an object of the said organisations to popularise under the Black masses terrorism, violence and revolution in the Republic of South Africa, the so-called heroes of the ANC and SACP and a so-called national convention in the Republic of South Africa.

The state alleges that the accused by acting as set out in paragraphs 1 to 77 of the annexure to the indictment in the execution of their common purpose and/or in furtherance and/or execution of the aforementioned conspiracies unlawfully advocated, advised, defended or encouraged the achievement of any of the objects aforesaid or objects similar to those objects or performed any other acts of whatever nature which were calculated to further the achievement of any such object.

The five murder charges have a common base. It is the allegation that the accused at mass meetings referred to in paragraphs 30 to 49 and 67 to 77 of the annexure to the indictment organised, mobilised, incited, indoctrinated, intimidated, instigated, conditioned and/or obtained the masses in the execution and/or furtherance of the aforesaid conspiracies and aims of the ANC, SACP or UDF and/or in the execution and/or furtherance of the ANC, SACP and/or UDF campaign around Black local authorities and the so-called Koornhoff bills to participate in and go over to riot activities of violence and/or murder aimed inter alia against state institutions, state property and especially members of the Black local authorities in Black residential areas and in the districts of Vereeniging and Vanderbijlpark.

It is alleged that the accused did this well-knowing and foreseeing the possible consequences and that the Black masses on or about 3 September 1984 in the district of Vanderbijlpark gathered and proceeded to various acts of riot, violence and murder.

This led to the deaths of councillor Ceasar Motjeane, Mr Phineas Matibidi, councillor Philemon Tiphoko, councillor Jacob Chikane and councillor Khuzwayo Jacob Dlamini. Hence the five murder charges.

The annexure to the indictment refers in its first nine paragraphs to meetings of the general council and national executive council of the UDF over the period 20 August 1983 to 11 November 1984. The state alleges that at the inaugural meeting of the UDF on 20 August 1983 in furtherance of the object to activate the masses on day-to-day issues thirteen campaigns were identified and accepted for execution. These overlap to a large extent with those already mentioned by us previously and we will not repeat them here. It is also alleged that the UDF laid down certain broad guide-lines for a programme of action to make the Republic of South Africa ungovernable and lead to violent revolution and that agitating around daily issues was part thereof.

These paragraphs further set out the proceedings at various national executive committee meetings which are alleged to have been in furtherance of the stated objects.

Paragraphs 10 to 17 deal with the meetings of the general council of the Transvaal Region of the UDF over the period 17 September 1983 to 14 July 1984 where the proceedings are alleged to have been in furtherance of the said conspiracy.

In paragraph 18 the state alleges that during the period 20 August 1983 to the end of April 1985 the executive committee of the Transvaal Region of the UDF including accused Nos 19, 20 and 21 in furtherance of the said conspiracy and/or the aims of the ANC, SACP or UDF executed and co-ordinated the policy, instructions, resolutions, planning, projects and campaigns laid down by the aforementioned bodies. In paragraph 19 similar allegations are made in respect of the same accused relating to the national secretariat or secretaries of the various regions of the UDF.

Paragraphs 20 to 29 allege that various training courses were held for activists by the UDF (and one by FEDSAW) for training in propaganda, to popularise the Freedom Charter, against Black local authorities, on the organisation of women, against conscription, on past and future campaigns, on present and future strategy, on mass campaigns, to streamline the top structure of the UDF and for the creation of future organisations.

Paragraphs 30 to 49 deal with various mass meetings of the UDF where allegedly inter alia the masses were incited to violence, hatred was caused against the government of the White minority, the ANC was popularised, as were terrorists, political fugitives, the Freedom Charter and the history of the ANC. The masses were incited to mobilise in the freedom struggle, freedom songs were sung, popularising terrorists and terror, ANC slogans and signs were used, the UDF's campaigns were popularised and propagated and the masses were called upon to become active, violence was preached and the youth was inspired to participate in violent resistance against the government, the masses were indoctrinated to identify with Umkhonto we Sizwe the military wing of the ANC, the government was called terrorists, saboteurs and guilty of treason, the masses were urged to move from the defensive to the attack and fight for the total destruction of the constitution and make the country ungovernable and fight for the total destruction of the whole system. It is alleged that accused No 19 and accused No 20 spoke at some of these meetings.

Paragraphs 50 to 65 deal with various propaganda campaigns of the UDF from 20 August 1983 to the end of April 1985, allegedly in furtherance of the said conspiracy and the aims of the ANC, SACP and UDF which we have mentioned.

Paragraph 66 alleges that the campaign of the UDF against the Koornhoff legislation, that is Black local authorities and legislation controlling Blacks in the Republic of South Africa, was waged on day-to-day issues to cause hostility to Black local authorities, councillors were labelled sell-outs and marionettes, dishonest traitors, impoverishing the masses to live in luxury, exploiters, tyrants and money grabbers. It is alleged that activists in the UDF's controlling body or its officials including accused Nos 19, 20 and 21 lay down the principle that all organisations affiliated to the UDF should support its campaigns and that this campaign should be held by activists in control of civic organisations to unite the masses on day-to-day issues. It is stated that this campaign was co-ordinated by activists of the various regional councils of the UDF and that it was waged country-wide by especially civic organisations affiliated to the UDF in Black townships supported by youth, women and student organisations. It is further alleged that the campaign succeeded in inciting the masses to violence and/or intimidation and that as a result thereof the property of Black councillors was destroyed, they were intimidated and resigned or fled and were attacked, state property was destroyed, there was general disruption, disorder and unrest culminating in

confrontation between the Black masses and the South African police, people were murdered, the maintenance of law and order was impeded, free movement of traffic in Black residential areas was hampered and animosity between various population groups was caused.

Counsel for the defence made a number of submissions on the effect of the indictment as formulated. We deal with them seriatim. They all relate to the main charge of treason.

Firstly it was submitted that the treason alleged and set out in the indictment contains the element of violence or threats thereof as a means to overthrow the state and that to find non-violent treason is not permissible as the state is to be strictly held to its indictment.

The first part of this submission is correct. The state clearly nailed its indictment to the mast of violence. We set out elsewhere in this judgment that violence is not a necessary element of treason (though it is of some of the alternative charges under the Internal Security Act). That being the case the allegation of violence or the threat thereof can as far as the elements of the crime of treason are concerned be regarded as surplusage. In such a case the state will be held strictly to its indictment if the accused would otherwise be

prejudiced. R v Kroukamp 1927 TPD 412; R v Bruins 1944 AD 131, 135; S v Mandela & Others 1974 4 SA 878 (A) 882C-E; R v Kassim 1950 4 SA 522 (A) 531/2.

Where the evidence proves the crime alleged but does not encompass the whole case made out in the indictment the accused have no cause for complaint unless they were prejudiced in the preparation and conduct of their case by the wider scope of the indictment. As will be seen this aspect does not arise here.

It was further submitted that the indictment alleges that the parties to the treason are members of the management and officials of the UDF and its affiliates and its supporting organisations - all conspiring under the name of UDF - and that therefore non-members of any organisation are excluded as conspirators.

We omit reference to the ANC and SACP as co-conspirators as that is not material to this argument.

From this submission flow the subsidiary submissions that certain of the accused are alleged to be conspirators as members of the management of AZAPO Vaal and that they can only be linked by proof of an agreement of co-operation between the UDF and AZAPO. The other accused (apart from accused Nos 19, 20 and 21) are only linked to the conspiracy through their alleged membership of management

structures of the affiliates ERPA (in the case of accused No 6) and the Vaal Civic Association (in the case of the others).

These submissions are based on pp.7, 9 and 10 of the indictment read with parts of the further particulars and further and better particulars. These particulars contain the names of the alleged co-conspirators.

The portions of the indictment referred to are in the preamble and they support the argument. This approach, however, leaves out of account the main charge at p.12 of the indictment. The main charge sets out that the accused and others connected to the UDF and organisations affiliated thereto and/or persons and organisations actively supporting the UDF with common purpose and in furtherance of the said conspiracy and/or the said aims of the ANC, SACP and/or UDF, acted as set out in the annexure with hostile intent against the state.

The alleged conspiracy is therefore not limited in the main charge to members of the management of organisations but includes persons who are active supporters of the UDF.

In the further and better particulars para 12.1 (p.80), however, the state states that the conspiracy consisted of the persons set out at p.10 of the preamble.

It would seem therefore that the indictment as amplified is to be construed that the plot was hatched by the UDF and its affiliates and supporting organisations and executed by them and not by other active supporters.

The purpose of the defence argument is to exclude ab initio from further consideration those accused who have not been proved to have been members of an organisation. This aim fails.

The case pleaded against each accused must be regarded separately. It is that that accused with hostile intent conspired with other named persons for the overthrow of the state and in furtherance of that object committed certain acts. The fact that it is also alleged that that particular accused was a member of an organisation which had that aim is not an essential element of the charge, though it is a fact which is relevant when we have to determine the intention of that accused. It is not the group of organisations that stands arraigned for treason nor all the named co-conspirators. It is the individual accused. The particulars of the conspiracy are given to enable the accused to prepare his case.

Should the state prove that that accused did conspire with the other named persons to overthrow the state, the absence of proof of his membership of an organisation will not avail the defence.

The further submission was that it is the state case on the indictment that the conspiracy was formed in the period January to 20 August 1983 and that it would not be proper to find that the conspiracy came into existence at a later date. A finding of a conspiracy at a later (unspecified) date would make it impossible to decide which allegedly conspiratorial statements are admissible.

The last submission cannot support the first. The fact that proof of the case in the indictment would become more difficult should a certain interpretation be followed is irrelevant. That is the state's problem. It cannot affect the interpretation.

We do not read the indictment as restricting the state case to a conspiracy formed on or before 20 August 1983. The gravamen of the indictment is that the accused with hostile intent and in furtherance of a conspiracy to overthrow the state committed the acts set out in the annexure to the indictment. The existence of the conspiracy during the period of the indictment is therefore material, its date of formation as such not.

Lastly it was submitted that it is not the state case that a small clique in the UDF conspired. The state case is based on the policy of the UDF.

It is correct that the state case is that the conspiracy in which the accused participated comprised the whole UDF and not only a small clique therein. It is incorrect that the state case is based on the overt policy of the UDF. Its case is that the conspirators had the aim to subvert the state.

The submission that should the state fail to prove that the whole membership of the management structures of the UDF and its affiliates was involved in the alleged conspiracy, it cannot succeed is a startling proposition. It would mean that if an allegation is made in an indictment that there are 100 conspirators and the state proves only 99 the case fails.

The approach underlying the defence submission is a fallacious reading of the indictment. The main thrust of the charge is, as we have stated, the acts done with hostile intent against the state. Though joined together in this case for practical reasons, in fact there are nineteen accused with nineteen indictments and nineteen cases to meet. The case against each accused stands or falls on its own. The conspiracy is secondary and the number of conspirators seen from the point of view of the individual accused against whom the charge is levelled, is not of prime importance.

It is not unusual to join accused who are alleged to have at various times joined a conspiracy which of necessity had a varying

membership as time went by. R v Heyne & Others 1956 3 SA 604 (A) 616; R v Adams & Others 1959 1 SA 646 (Special Criminal Court) 652C. We can see no difference in principle between that case and a case where the state does not prove that all the alleged conspirators in fact conspired. The ultimate test is whether the accused are prejudiced in the conduct of their case.

Even if the state does not prove that all the named conspirators in fact conspired, and only proves that a much smaller group did, an accused has no cause for complaint. The charge against him remains the same.

DELMAS TREASON TRIAL 1985-1989

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