

1. We have given thought to what Your Lordship put to us on Monday in regard to the choices open to us concerning time and procedures for the application for leave to Appeal. It is not really practical to wait or your return from long leave; nor is it practical to put a record of over 27 000 pages before another Judge. The time and cost involved in such an undertaking make it an unrealistic choice. We think that the only practical course to follow is the one suggested by Your Lordship. You will realise that it is not feasible in the circumstances to address detailed argument to you on the issues relevant to leave to Appeal. Of necessity we have to deal with the issues in a generalised and unspecific way and we trust that you will appreciate and make due allowance for that in dealing with our application.

+ exhibit

2. As far as the areas are concerned we consider it of the greatest importance that the leave to appeal should include a right on the part of the Accused to challenge the findings that you made in relation to their areas. There are a number of reasons for that:

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2.1 If the Accused are denied that right, the appeal against the findings made in relation to the UDF will not be a full appeal. It will be a partial appeal in which the Accused will labour under the disability of an adverse finding in relation to an important aspect of the case: A finding which could influence materially inferences to be drawn from the other evidence. This is acknowledged in the Judgement where at page 508 it is said: "The actions, public statements and documents of the United Democratic Front, its Office Bearers and its Officials have to be evaluated against the background of the existing situation in our country. The period of violence which falls within the period covered by the Indictment runs from July 1984 to July 1985."

Where started and investigated? found not to be responsible.

Not isolated? cant be isolated?

2.2 The finding that the UDF and/or its affiliates were responsible for violence in certain areas is a crucial finding upon which the guilt or innocence of the Accused could depend. To deny the Accused the right of appealing against that finding, would be denying them the right to appeal against an essential part of the Judgement.

2.3 This is no ordinary case. The findings made in regard to the UDF and the convictions of their three senior Office Bearers is a matter of National importance. There should be no doubt at the end of the day concerning their guilt and the findings made in regard to the UDF. It is, therefore, preeminently the sort of case in which a full appeal and not a partial appeal should take place.

*to everybody
is entitled
but it*

2.4 There are also in our submission issues of difficulty and importance which can only properly be resolved if the areas are included in the appeal. The linkages between the UDF and its affiliates, and between affiliates and individuals, cannot properly be evaluated unless the evidences^{as} to the violence which occurred is seen in its context. The Accused ~~shall~~^{should} be free to undertake that task without being hampered by adverse findings which they may wish to challenge.

*No direct evidence.
Inferential reasoning
On occasions, docs
used.*

2.5 A factor which is relevant is that the Court heard very limited oral argument in relation to the areas. This part of the case was dealt with almost entirely in writing as a result of the ruling made by Your Lordship.

That is contrary to normal procedure, contrary in our submission to the statutory right of the Accused to address oral argument of the Court with the opportunity to debate issues and respond to difficulties raised by the Court during argument.

2.6 There is room for such debate. Take for example the finding in relation to Somerset East which included a finding that the UDF can be directly linked to the violence in Somerset East. That finding was based on the evidence of Sargeant Mguba. He was found to be a witness whose evidence was open to criticism and in regard to other meetings ^{with} which he dealt ~~with~~, the Court found itself unable to make any definite findings. His evidence was not sufficiently reliable for that purpose. Yet in regard to the disputed issue of incitement by "Mamma General" a firm finding was made on the basis of his evidence alone, notwithstanding the fact that it was disputed by Defence witnesses. Apart from the contradictory evidence which was rejected by the Court, there are two inherent improbabilities in Mguba's evidence which are not dealt with in the Judgement:

(a) That on a public occasion and in a crowded Church a speaker would say that "She was a member of the ANC and had been on Robben Island", and then proceed to incite the crowd to attack Beerhalls and Municipal Offices.

(b) Mguba does not try to head off incident

(c) ~~(b)~~ That no explanation has been given by the State as to why Mamma General was not prosecuted before this alleged incitement.

2.7 Other issues which may have an impact on the case are:

(a) The finding that Banzana was in close contact with the UDF. The only evidence of this is that he had a diary with the telephone numbers of UDF leaders and patrons. There is no evidence of actual contact. Since it is not known how frequently, if at all, he made use of these telephone numbers or what took place on such occasions, no inference adverse to the UDF can be drawn therefrom. In any event, Banzana was shown on the evidence to be a person who wherever he was able to do so avoided conflict with the Police. There are accounts of his having persuaded crowds to disperse in order to avoid such confrontation. There is nothing to show that he was responsible for any of the violence in Somerset East. All that one can say is that such violence occurred despite his apparent efforts on other occasions to prevent it.

(b) Is there evidence that he arranged the funeral of Namesi?

(c) Is there evidence that Goniwe was the main speaker at the funeral?

(d) The action of Banzana Ntshudu and Njenge show an attempt to avoid confrontation, not to promote it.

Ntshudu's assocn with COSAS in dispute.

Proccs - Labuschagne

Findings of Cosas attack derived from fact that

Wanted to get hall (convinced by Dupisani).

Something happened at hall & that led to conflict

(Also:

(e) The presence at the funeral of Goniwe and Calata show that leaders in that region were present at the funeral. That they were given important offices to perform is consistent with their position of leadership. He doesn't show that the UDF organised the funeral.

Non-Banjana Randed over H.C to Calata.

(f) Was the funeral procession led to the deceased's house by Goniwe?

Du Pucani said he led the procession but not seen through. No evidence that But had to attend was present left at time alleged incident of Mamma General. (5403. (Ver 100)) Hguba does not suggest to was there

(g) What is the actual evidence about banners at the funeral?

Seyor, Sera & CBSas banners. Hguba Not dispund because no insms at HRC. Since Sera only formed in April 85, must be wrong.

(h) Even if the Defence evidence concerning the sneeze machine is rejected, this does not prove that Mamma General incited the crowd to violence in the presence of Mathew Goniwe. On contrary evidence is Goniwe had left.

Go to Somerset East - Very depressed area. One banner each means no more than that they associan members to the funeral.

Elizabeth Sibanda

(i) Mamma General is not alleged or shown to be a co-conspirator. The alleged incitement in the presence of an Officer of the UDF, is far too tenuous a link to justify the conclusion that the UDF was responsible for the violence in Somerset East.

Was at house for 15/20 mins according to Hguba before UJ. III P. 5552 Lines 9-24

Mamma Gnl with Goniwe at house before church service. No mention of Goniwe or anybody else speaking in church. No mention of Calata

Only evidence of Goniwe speaking at church comes from Defence witnesses. Rejects Accepts evidence on what G. sd, but NOT on what Mamma Gnl said.

1. What is a Revolutionary court.

No evidence that such a court existed in S.A. Press called, made no such suggestion. No evidence that any breakdown of essential services, anywhere in country.

What is impact of 1001200 Secretaries Meeting, on a community as a whole.

2. Secret dissent — How can that result in un-governability?

May be large secretaries un-governable by secret authorities.

BUT that is not reason.

3. Difficult ques of causation & responsibility in each

area. No direct evidence of planned violence: often ~~no~~ ^{no evidence as to} ~~to~~ ^{to identify} identity of persons who committed violence.
cf. Vass: Full investigation.

NOT such investigation in any of two areas: NOT possible.

Inadequate evidence. NOT responsibility of accid: onus on state to produce evidence.

~~If recall every witness who gave evidence for st~~
Findings as to cases "having a hand in violence" —

Difference between individuals who are members of COSAS & Cosatas organization. No evidence of cosas planning violence. So findings based on inferential reasoning.

4. Daleside conference:

(P.662)

SCA had 18 reps from different branches at Daleside. Got findings did not originate or direct violence.

Same finding in regard to Accid: who was at Daleside.

Thus inferences no reason to draw contrary inferences in regard to other areas

5. Inferences based on assumption that COSAS / UDF received full & accurate reports consistent with evidence given in this case of incidents in each area.

No such evidence & no reason to believe this happened

~~So~~ Much more likely to have been told that, for instance

(i) In SLE nothing was rescued, ^{abuse of} sneeze machine

(ii) In Turahore nothing was rescued & police ordinance etc.

6. These, and many other issues will have to be argued in relation to the cases.

CHAPTER 6

OFFENCES AND PENALTIES

54. Terrorism and related offences, and penalties therefor.—(1) Any person who with intent to—

- (a) overthrow or endanger the State authority in the Republic;
- (b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic;
- (c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint; or
- (d) put in fear or demoralize the general public, a particular population group or the inhabitants of a particular area in the Republic, or to induce the said public or such population group or inhabitants to do or to abstain from doing any act.

in the Republic or elsewhere—

- (i) commits an act of violence or threatens or attempts to do so;
- (ii) 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 act;
- (iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or
- (iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason.

(2) Any person who with intent to achieve any of the objects specified in paragraphs (a) to (d), inclusive, of subsection (1)—

- (a) causes or promotes general dislocation or disorder at any place in the Republic, or attempts to do so;
- (b) cripples, prejudices or interrupts at any place in the Republic any industry or undertaking, or industries or undertakings generally, or the production, supply or distribution of commodities or foodstuffs, or attempts to do so;
- (c) interrupts, impedes or endangers at any place in the Republic the manufacture, storage, generation, distribution, rendering or supply of fuel, petroleum products, energy, light, power or water or of sanitary, medical, health, educational, police, fire-fighting, ambulance, postal or telecommunication services or radio or television transmitting, broadcasting or receiving services or any other public service, or attempts to do so;
- (d) endangers, damages, destroys, renders useless or unserviceable or puts out of action at any place in the Republic any installation for the rendering or supply of any service referred to in paragraph (c), any prohibited place or any public building, or attempts to do so;
- (e) prevents or hampers, or deters any person from assisting in, the maintenance of law and order at any place in the Republic, or attempts to do so;
- (f) impedes or endangers at any place in the Republic the free movement of any traffic on land, at sea or in the air, or attempts to do so;
- (g) causes, encourages or foments feelings of hostility between different population groups or parts of population groups of the Republic, or attempts to do so;

"this Act" includes any regulation made under any provision thereof;

"unlawful organization" means an organization—

- (a) which, before the commencement of this Act, was by or under any law repealed by section 73 declared to be an unlawful organization for the purposes of the repealed law in question, and which immediately prior to the said commencement is such an unlawful organization; or
- (b) which, under section 4, is at any time after the said commencement declared to be an unlawful organization, and includes any branch, section or committee of any such organization and any local, regional or subsidiary body forming part of any such organization;

"violence" includes the inflicting of bodily harm upon or killing of, or the endangering of the safety of, any person, or the damaging, destruction or endangering of property.

CHAPTER 1

DIRECTOR OF SECURITY LEGISLATION

2. Appointment and functions of Director of Security Legislation.—(1) The Minister of Justice shall, subject to the provisions of subsection (2), appoint an officer, to be known as the Director of Security Legislation, who shall, subject to the control and directions of the Minister, perform the functions assigned to the Director by this Act as well as such other functions as the Minister may assign to him from time to time.

(2) The Minister of Justice shall, subject to the laws governing the public service and with the concurrence of the Minister, appoint to the office of Director of Security Legislation a person holding a degree or diploma in law.

(3) The Minister of Justice may appoint, subject to the laws governing the public service and with the concurrence of the Minister, one or more Deputy Directors of Security Legislation or one or more Assistant Directors of Security Legislation or one or more such Deputy Directors and one or more such Assistant Directors, who shall respectively have the power to perform, subject to the control and directions of the Director, any of the functions of the Director.

(4) Whenever it becomes necessary to appoint an acting Director, the Minister may appoint a Deputy Director referred to in subsection (3) or, in the absence of such a Deputy Director, an Assistant Director referred to in that subsection to act as Director for the period for which such appointment is necessary.

3. Secretarial work.—The secretarial work incidental to the performance of the functions of the Director shall be performed by such persons in the service of the State as the Minister of Justice may with the concurrence of the Minister designate for that purpose.

CHAPTER 2

MEASURES IN RESPECT OF CERTAIN ORGANIZATIONS AND CERTAIN PUBLICATIONS

4. Declaration of certain organizations as unlawful.—(1) If the Minister is satisfied—

(a) that any organization engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of law and order;

(b) that—

- (i) any organization professes, by its name or otherwise, to be an organization for propagating the principles or promoting the spread of communism;

- (h) destroys, pollutes or contaminates any water supply which is intended for public use in the Republic, or attempts to do so;
- (i) in the Republic or elsewhere performs any act or attempts, consents or takes any steps to perform any act which results in or could have resulted in or promotes or could have promoted the commission of any of the acts or the bringing about of any of the results contemplated in paragraphs (a) to (h), inclusive;
- (j) conspires with any other person to commit, bring about or perform any of the acts or results contemplated in paragraphs (a) to (h), inclusive, or any act contemplated in paragraph (i), or to aid in the commission, bringing about or performance thereof; or
- (k) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or result.

shall be guilty of the offence of subversion and liable on conviction—

- (i) to imprisonment for a period not exceeding twenty years; or
 - (ii) if the act with which the accused had been charged and by virtue of which he was convicted resulted in the commission of violence and the court is of the opinion that in performing the said act the accused should have foreseen the commission of such violence as a reasonable possibility, to imprisonment for a period not exceeding twenty-five years.
- (3) Any person who with intent to—
- (a) endanger the safety, health or interests of the public at any place in the Republic;
 - (b) destroy, pollute or contaminate any water supply in the Republic which is intended for public use;
 - (c) interrupt, impede or endanger at any place in the Republic the manufacture, storage, generation, distribution, rendering or supply of fuel, petroleum products, energy, light, power or water, or of sanitary, medical, health, educational, police, fire-fighting, ambulance, postal or telecommunication services or radio or television transmitting, broadcasting or receiving services or any other public service;
 - (d) endanger, damage, destroy, render useless or unserviceable or put out of action at any place in the Republic any installation for the rendering or supply of any service referred to in paragraph (c), any prohibited place or any public building;
 - (e) cripple, prejudice or interrupt at any place in the Republic any industry or undertaking or industries or undertakings generally or the production, supply or distribution of commodities or foodstuffs; or
 - (f) impede or endanger at any place in the Republic the free movement of any traffic on land, at sea or in the air,

in the Republic or elsewhere—

- (i) commits any act;
- (ii) attempts to commit such act;
- (iii) conspires with any other person to commit such act or to bring about the commission thereof or to aid in the commission or the bringing about of the commission thereof; or
- (iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit such act,

shall be guilty of the offence of sabotage and liable on conviction to imprisonment for a period not exceeding twenty years.

(4) Any person who has reason to suspect that any other person intends to commit or has committed any offence referred to in subsection (1), (2) or (3) and any person who is aware of the presence at any place of any other person who is so suspected of intending to commit or having committed such an offence, and who—

- (a) harbours or conceals that other person;
- (b) directly or indirectly renders any assistance to that other person; or
- (c) fails to report or cause to be reported to any member of the police such presence of that other person at any place,

as the case may be, shall be guilty of an offence and liable on conviction to the penalty to which the person whom he so harboured or concealed or to whom he so rendered assistance or whose presence he so failed to report or to cause to be reported would have been liable on conviction of the offence which the last-mentioned person intended to commit or committed, as the case may be.

(5) No person shall be convicted of an offence in terms of subsection (1), (2) or (3) committed at any place outside the Republic, if such person proves that he is not a South African citizen and has not at any time before or after the commencement of this Act been resident in the Republic and that he has not at any time after 27 June 1962 entered or been in the Republic in contravention of any law.

(6) If the evidence in any prosecution for an offence in terms of—

- (a) subsection (1) does not prove that offence but does prove an offence in terms of subsection (2), (3) or (4);
- (b) subsection (2) does not prove that offence but does prove an offence in terms of subsection (3) or (4),

the accused may be found guilty of the offence so proved.

(7) For the purposes of subsection (1) (ii), and without derogating from the generality of the meaning of the word "act", the undergoing of specific training or the possession of any substance or thing shall be deemed also to constitute the performance of an act.

(8) For the purposes of this section—

"Government of the Republic" includes a provincial administration or any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

"prohibited place" means a prohibited place as defined in section 1 (1) of the Official Secrets Act, 1956 (Act No. 16 of 1956);

"public building" means any building which or part of which is occupied by the State, any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961, or any other body which has been instituted by or under any law and to which local or other governmental functions have been assigned.

55. Offence in connection with communism.—Any person who advocates, advises, defends or encourages the achievement in the Republic of any of the objects of communism or performs any other act of whatever nature calculated to further the achievement thereof in the Republic, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

56. Offences in connection with unlawful organizations and prohibited publications, and by persons subject to certain restrictions, and penalties therefor.—(1) Any person who—

- (a) contravenes any provision of section 13 (1) (a);
- (b) prints, publishes or disseminates any periodical publication or disseminates any other publication in contravention of a notice under section 5 (1);

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