

That is correct, but as I stated when dealing with Objection 6 the possibility is not excluded that the accused themselves personally liaised with the ANC or did the acts alleged in the sub-paragraph.

In the circumstances, fairness dictates that if that is the State case, the accused be apprised thereof. The State is directed to clarify the words "veral" and "onder andere" in paragraph 9.3.(xiii) of the further particulars and in so far as it is alleged that any of the accused were personally involved in the matters set out in this paragraph, the State (10) is directed to reply to their request for further and better particulars to this paragraph.

Objection 9: The indictment alleges that the UDF and/or its affiliated organisations and/or a number of others realised, accepted and declared that the aim of the UDF aforesaid can only be attained (1) by extra-parliamentary methods and (2) by uniting the masses to participate in the freedom struggle; (3) by inter alia politicising them and activating them to violence, leading to the country becoming ungovernable and falling into violent revolution and (4) that to activate the masses, (20) propaganda attacks should be utilised. The Defence asked in paragraph 10 of its request, particulars of when, where and in what manner this was accepted and declared by each body in respect of each of the four methods set out. The State furnished particulars in respect of each of the four methods. These particulars fill more than six pages. They are however introduced by the introductory paragraph 10.1 which widens the scope of the answers appreciably. It reads: "Dit blyk uit die totaliteit van die getuienis soos beliggaam in dokumentasie, toesprake en geskrifte van UDF aktiviste dat hulle in die (30) naam/...

naam van UDF daarna streef of werk om die genoemde doel te bereik deur veral die Swart massas te mobiliseer en te aktiveer tot deelname aan die stryd om hul sogenaamde vryheid te verkry ten alle koste en in die besonder." And then the particulars to which I have referred are set out. Where the State deals with method (3), it states at page 43 ad paragraph (3) "die besonderhede verskaf ten opsigte van sub-paragraawe (1) en (2) supra is ook ten opsigte van sub-paragraaf (3) toepaslik plus die volgende enkele verdere besonderhede soos bekom uit publikasies. 1. In publikasies, geskrifte, besluite en (10) toesprake deur aktiviste van UDF word beklemtoon dat die massas, veral die Swart massas in die RSA, self deur verenigde massastryd 'n sogenaamde demokratiese regering van die massas tot stand sal moet bring aangesien die bestaande gesag in die RSA en sogenaamde Blanke minderheid nie vrywillig daartoe sal instem nie." There are eleven paragraphs containing the essence of what the State has extracted from the publications. This paragraph that I have quoted is the first thereof. It will be noted that there is no reference to the documents, speeches, etcetera, by code number and we are not told whether this is (20) to be found in the documents and transcripts already before Court or in other documents and transcripts. The field of research for the Defence team is virtually unlimited. All this work has been done by the State as appears from the detailed particulars of what the State says the gist of the documents and speeches is. Mr Jacobs countered this objection by referring to the fact that this is evidence which is sought and that the State has furnished a magnitude of particulars of the execution of the aims in the annexure to the indictment and the essentials of the documents and speeches in the further particulars. If (30)

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by this argument it is intended to say that the State rests its case on the allegations in the annexure to the indictment and that it will prove these allegations by producing documents in support thereof then there can be no complaint. But then I do not understand the wide reference to "dokumentasie, toespraken en geskifte" in paragraph 10.1 of the further particulars. As it stands, the State case is that the acceptance and declaration of the four methods mentioned appears from the totality of unnamed, unnumbered, undated documents and speeches of which some, possibly a small fraction, are referred to and of which (10) the State's interpretation is set out, which documents may, or may not be before Court.

I hold that fairness to the accused demands that the State be ordered to furnish particulars. If this places a burden upon the State which it is not prepared to shoulder, it is at liberty to redraft its further particulars.

I direct that the State inform the accused by reference to their alphabetical and numerical coding of the particular documents and writings referred to in paragraph 10.1 and the specific passages in such documents that are relied upon. (20) If the speeches are not contained in such documents then the State is directed to identify the speeches relied upon, indicating when, where and by whom they were made and the contents thereof.

Objection 10: The indictment alleges that the accused and others acted jointly or individually as part of the alleged conspiracy and/or in their personal capacity in committing one or more of the acts set out. The State was requested in paragraph 11.2 of the request, which request was repeated elsewhere in the request for further particulars as follows: "Is (30)

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it intended to allege by the inclusion of the phrase "persoonlike hoedanigheid" that the accused are liable in their "persoonlike hoedanigheid" for all the acts set out in the charges even if such acts were not performed as part of either or both of the said conspiracies." Question 11.3 - "If so, on what basis is it sought to hold the accused liable for acts which they did not perform themselves?" Question 11.4 - "If not, what is intended by the averment that the acts were committed in "persoonlike hoedanigheid"?" The State answered that " ... die akte van beskuldiging is duidelik". (10)

Mr Jacobs argued that what is intended to be said is that should the State not prove participation in a conspiracy each accused would be held liable for his own acts. If that is intended, it should be so stated. The indictment does not state this clearly.

The State is directed to answer questions 11.2, 11.3, 11.4, 13.3, 14.2 and 15.2 of the request for further particulars.

Objection 11: Upon the main charge, treason, the Defence requests in paragraph 12.1 "Does the State intend to rely upon the doctrine of common purpose as distinct from the conspiracies alleged by it?" Paragraph 12.2 "If so, full particulars are required of all the facts from which the State seeks to infer such common purpose, together with particulars of the precise difference between the terms of the conspiracies on the one hand, and the common purpose on the other as well as the manner in which such difference affects the liability of each of the accused. The answer to these paragraphs is as follows: "12.1 Die Staat is van voorneme om uit die toepassing van die regsbeginself wat betrekking het op sameswering en gemeenskaplike opset te steun om die beskuldigdes se (20)

regsaanspreeklikheid/...

regsaanspreeklikheid to bepaal. 12.2 Aangesien die verdediging van die Staat vereis om 'n uitleg van regsbeginsels te gee is die vraag onverstaanbaar en vaag en verwarrend." I do not think that this is a proper answer. An accused can conceivably be held liable for an act not committed by him personally where he was a conspirator and the act was committed in furtherance of the conspiracy or where he was not a conspirator but had a common purpose with the person who acted. It might be argued that there is an overall treasonable purpose and that to have that in common, would make one part of the conspiracy, but (10) the matter becomes more complicated as this question and answer are mutatis mutandis repeated in respect of each alternative count, including the counts of murder. It is conceivable that a person is murdered by X, that Y has common purpose with him, and that Z is part of the alleged conspiracy which uses X as a pawn. It is therefore necessary for the accused to be apprised of the State's case against each of them.

The State is directed to furnish the accused with the particulars requested in paragraphs 12, 13.4, 14.3 and 15.3 of the request for further particulars. (20)

Objection 12: The Defence sought particulars on the counts of murder. The State alleged that the accused "die een, die ander of almal" foresaw that the incited masses could commit murder. The State says it does not by the use of the phrase intend to imply that all the accused can be held liable, not because of their own knowledge, foresight or appreciation but because of the knowledge, foresight or appreciation of others. In the light of this answer, questions 15.6 and 15.7 become superfluous.

I make no order on this objection.

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OBJECTION/...

OBJECTION 13: The annexure to the indictment refers to various meetings and speeches made thereat. The texts of these speeches have been given. The State alleges in paragraph 25.1 of the further particulars that it relies on the whole of each speech. That was repeated during argument for the State. In view of this allegation, the accused cannot require the State to refer to particular passages.

I make no order on Objection 13.

OBJECTION 14: This objection was abandoned during argument by Mr Chaskalson and no order is made thereon. (10)

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