

In re: VAAL TRIANGLE TREASON TRIAL

THE STATE v PATRICK MABUYA BALEKA AND OTHERS

PRELIMINARY ANALYSIS OF STRUCTURE OF INDICTMENT

1. The following is a preliminary analysis of the structure of the indictment. The exercise at this stage has been confined to an attempt to categorise the various allegations, particularly those set out in the annexure to the indictment.
2. All the accused are charged with all the offences set out in the indictment. These are:
  - (a) The main charge is one of treason;
  - (b) The first alternative group of charges comprises three counts of terrorism, spanning three different groups of provisions as set in Section 54(1) of the Internal Security Act;
  - (c) The further alternative group of charges comprises two counts of statutory subversion, as set out in different groups of provisions in Section 54(2) of the Internal Security Act, together with five separate charges of murder. All five counts of murder relate to events which

2.

took place on 3 September 1984, in the course of a stayaway, during which five Community Councillors were killed and various acts of violence are alleged.

3. To a minor extent, some of the accused are coupled with direct allegations which in themselves may support on or other of the alternative counts. At the same time it is clear that the indictment is heavily founded upon a complex conspiracy and/or common purpose, the latter being of greater moment in relation to the alternative counts.

As will become clearer from the remarks that follow as well as the schedule of the particular points where accused are referred to by name in the indictment, there is a considerable disparity in the extent, manner and places in which the various accused are (referred) to have done things pursuant to this conspiracy. At least on a superficial analysis, it would appear that important issue in this matter will be the extent to which membership and/or active support of an organisation can found liability for the totality of the acts of that organisation and its affiliates.

4. Structure of the Indictment

The departure point for the conspiracy allegation is that the ANC and SACP are associated for the purpose inter alia of the violent overthrow of the government of the Republic of South Africa. This will be realised only if the masses, particularly the black masses in the Republic, can be persuaded to participate in violent revolution.

Hence there has been a call to,

- (a) unite the black masses and organisations at all levels in the Republic;
- (b) bring about a united democratic front;
- (c) organise the black masses in such a way that the Republic becomes ungovernable and hence this leads to a violent revolution;
- (d) in the process of this organisation, use must be made of propaganda attacks on the government, its policy and structure.

- 5. In order to give effect to this, the United Democratic Front was organised and founded on 20 August 1983, with an affiliate structure of various organisations as its members.

4.

Such affiliates then bind themselves to UDF policy and undertake to carry it out. The UDF itself functions through its officials and its object is again the violent overthrow of the government of the Republic.

6. In the course of the preamble section of the indictment, it is worth remarking that there is a progressive extension of the categories of organisations, bodies and individuals who are alleged to become party to the ANC/SACP conspiracy and/or the UDF conspiracy. Ultimately the net is cast so widely that supporters of the affiliate bodies of the UDF are alleged to be parties to and responsible for the results of the aforesaid conspiracies.
7. All the accused are alleged to be members of the conspiracy, in that they are either members of the UDF executive and/or of the executive of bodies affiliated to the UDF and/or are active supporters of those bodies. In furtherance of this conspiracy the various acts set out in the annexure to the indictment are alleged to have been performed.
8. Structure of the Annexure  
The acts alleged in the annexure can be broken down into a series of quasi-discrete categories of activities, as per the following analysis.

(a) Paragraphs 1 - 3

They deal with the formation on 20 August 1983 of the UDF, being in furtherance of the aforementioned conspiracies and/or objectives. It is alleged that at this founding meeting, broad guidelines were adopted for a programme of action designed to make the Republic ungovernable and hence leading to violent revolution.

Pursuant thereto a number of individual campaigns were identified, which were to form the subject matter of the programme for action.

Pursuant thereto, a structure of regional councils was instituted and certain regional councils - being for the Transvaal, Natal and Western Cape - were immediately instituted.

(b) Paragraphs 4 - 9

These paragraphs comprise a chronological detailing of meetings of the National Executive Council of the UDF on various dates and at various places through the country. Each paragraph in the annexure deals with a separate meeting of the NEC, as follows:

6.

- (i) 10-11 September 1983 at Durban;
- (ii) 5-6 November 1983 at Lenasia;
- (iii) 21-22 January 1984 at Pretoria;
- (iv) 1-2 June 1984 at Rondebosch;
- (v) 21-22 July 1984 at Bloemfontein;
- (vi) 10-11 November 1984 at Johannesburg.

It seems clear that at least the primary source for the allegations contained in these paragraphs is the set of minutes or similar records kept by the NEC itself; in any event, the allegations take the form of such minutes.

In summary, this material comprises the adoption of reports from various of the officials, including some of the accused, as submitted from time to time and dealing a variety of topics. Such topics include discussion on strategic and tactical issues, the need for links with other organisations and bodies and reports from time to time on the progressive establishment of such links, discussion and decisions relating to campaigns, the plan of action, training sessions, self-evaluation, the origins of and purpose for the UDF and so forth.

7.

Scrutiny of the various allegations in these paragraphs does not reveal any overt expression of connection with or support for the ANC/SACP.

(c) Paragraph 10 - 17

In a rather similar way to the foregoing, these paragraphs deal with the minutes or similar records kept by the General Council of the Transvaal Region of the UDF at its meetings. These meetings were all held at Johannesburg and on the following days:

- (i) 17 September 1983;
- (ii) 15 October 1983;
- (iii) 12 November 1983;
- (iv) 10 December 1983;
- (v) 14 January 1984;
- (vi) 14 April 1984;
- (vii) 30 June 1984;
- (viii) 14 July 1984.

Again, these allegations do not include overt and unambiguous expressions of connection with or support for the ANC/SACP. They tend also to reflect a greater concern with immediate organisational questions and project than does the NEC meetings, where greater matters of strategy tended to be discussed.

8.

A number of various organisations are recorded as having attended such General Council meetings. The drift of the indictment is that such attendance, together with the meetings themselves, all form part of the pursuit of the principal conspiracies and/objectives.

(d) Paragraph 18 and 19

These allegations span the period 20 August 1983 to the end of April 1985, and are to the effect that during such period:

- (i) The executive committee of the Transvaal Regional Council co-ordinated and handled activities in such region, pursuant to the conspiracies and/or objectives;
- (ii) The National Secretariat of the UDF liaised and controlled such activities as carried out by the various bodies affiliated to it or, more generally, concerned with the execution of its objects, which were pursuant to the conspiracies and/or objectives set out earlier.

(e) Paragraphs 20 - 29

These paragraphs are devoted to a series of different training projects, courses or programmes during the period 21 January 1984 to 22 December 1984. It is alleged that all these training sessions were conducted with the objective of being pursuant to the aforesaid conspiracy etc. The following is a schedule of the different courses run:

- (i) 21-22 January 1984 - Media Commission Training Programme;
- (ii) 20 January 1984 at Johannesburg - Freedom Charter Popularisation Training Programme;
- (iii) 27-29 April 1984 - General Training Programme at Daleside, particularly concerned with civil associations;
- (iv) 23-24 June 1984 - FEDSAW Training Programme;
- (v) 15 July 1984 at Johannesburg - Training Programme concerned with conscription and military issues;

- (vi) Date and place unknown - Evaluation session run by Western Cape Region;
- (vii) 21 October 1984 and at Kimberley - General Training Programme run by Northern Cape.
- (viii) 4 November 1984 at Johannesburg - General training and evaluation session;
- (ix) 18 November 1984 at Dube - General training programme;
- (x) 22 December 1984 at Kagiso - General training programme.

There is some detailing in the indictment of the various organisations which participated in these training programmes, save for this, there is little detail about precisely who attended or participated in such sessions or what the precise subject matter thereof was.

(f) Paragraph 30 - 49

Each one of these paragraphs deals with a separate meeting held by or under the auspices of the the UDF. These meetings were held on the following dates and at the following places:

11.

- (i) Founding meeting in Cape Town on 20 August 1983;
- (ii) Mass meeting at Khotso House on 22 September 1983;
- (iii) Mass meeting at Khotso House on 29 October 1983;
- (iv) Mass meeting at Alexandra 29 October 1983;
- (v) Meeting at Durban during 1983
- (vi) Mass meeting on 26 November 1984 at Cape Town;
- (vii) Commemoration meeting for Krish Rabilal on 5 February 1984 at Durban;
- (viii) Mass meeting at Port Elizabeth on 25 August 1984;
- (ix) TIC mass meeting at Lenasia on 28 February 1984;
- (x) Mass meeting in Soweto on 16 June 1984;

- (xi) Mass meeting in Soweto on 28-29 June 1984;
- (xii) Mass meeting at Vryburg on 1 July 1984;
- (xiii) Mass meeting in Soweto on 8 July 1984;
- (xiv) Mass meeting in Johannesburg on 18 July 1984;
- (xv) Mass youth rally at Lenasia on 26 July 1984;
- (xvi) Mass meeting at Kimberley on 28 July 1984;
- (xvii) Mass meeting at Ladysmith on 1 August 1984;
- (xviii) Mass meeting at Johannesburg on 19 August 1984;
- (xix) Mass rally at Lenasia on 29-30 October 1984;
- (xx) Mass meeting in Durban on 14 November 1984.

There is by and large a typical to the allegations contained in these paragraphs concerning each meeting. There is some variance

but the main pattern tends to be duplicated.

Each meeting is of course alleged to have been held and conducted pursuant to the conspiracies and/or objectives of the various organisations. A number of individuals are named, being either the accused other persons, who are either on the platform or present at the meeting or who gave speeches at the meeting. In general, the speeches are allegedly designed to have the effect of inciting those who attend them. Most of these paragraphs contain precis of the subject matter canvassed in the course of the speeches.

Virtually every paragraph is to the effect that the speeches were calculated to besmirch the government, the white minority and the various forces of law and order. This is coupled with allegations of (express) popularisation of the ANC and/or its leaders and/or persons who commit acts of terror in its name and so forth. Most paragraph also contain allegations as to incidents which took place in the course of the meeting, being typically the singing of ANC-connected "freedom songs", the shouting of ANC-slogans, the displaying of ANC colours and

14.

even, at one meeting, the waving of an ANC flag tied to an AK-47 rifle

In short, these paragraphs contain allegations calculated to establish overt expressions of connection with, support for and popularisation of the ANC/SACP and its objectives.

(g) Paragraph 50 - 66

Whereas the previous paragraphs dealt with events which generally were specified as to time and place, the paragraphs now under consideration are of a "fanatic" sort. Each paragraph concerns itself with the period 20 August 1983 to the end of April 1985. They are all of a similar format, namely that the UDF, its members, its affiliates and their members and supporters, etc., acting pursuant to the principal conspiracies and objectives, carried out propaganda campaigns through the medium of publications and pamphlets etc., designed to incite people and to promote a situation where the Republic is no longer governable and where violent revolution will arise, in relation to the particular "campaign issues":

15.

- (i) Resettlement;
- (ii) Housing, etc;
- (iii) Labour issues;
- (iv) GST and Cost of Living;
- (v) Education and the role of the ANC;
- (vi) The Ciskei;
- (vii) Military training and conscription;
- (viii) South West Africa/Namibia;
- (ix) Homelands and separate development;
- (x) Women;
- (xi) Imperialism of USA, UK and Israel;
- (xii) Detention and allied issues in the course of which the ANC is popularised;
- (xiii) The Freedom Charter which is coupled with the ANC;
- (xiv) The besmirching of the government, whites, the police, the courts, the army, etc;
- (xv) The Inkatha/government connection;
- (xvi) The new Constitution;
- (xvii) Black Local Authorities and the Koornhof Bills, etc.

From time to time but relatively infrequently, particular are cited as having played a prominent role in regard to some of the above campaigns.

(h) Paragraph 67 - 77

These paragraphs deal specifically with the promotion of the various committees in the Vaal and in particular the formation of the Vaal Civic Association. Within this category of allegations, there are general averments as to role played by UDF and UDF-connected activists in promoting the formation of the various committees and bodies. Separate paragraphs are then devoted to the various area-based committees formed in the course of this process. Meeting of these committees are then traced through time, which activities then culminate in the joint exercises and meetings leading up to the stayaway and events of 3 September 1984.

In general, there are more individuals identified by name and coupled with particular acts in these paragraphs than is the case with the preceding paragraphs. It would appear to be clear that the information on which these averments have been made is of an eye-witness type rather than of a documentary sort. A number of meetings are referred to, the content of which frequently has to do with:

17.

- (i) Calls for the resignation of Councillors and attacks on the system, with at least one reference to "stoning";
- (ii) Popularisation of the ANC through reference to its leaders and activities in speeches as well as in the course of the conduct of the meetings themselves.

The particular concerns of the individual paragraphs in this part of the annexure may be summarised as follows:

- (i) During the period 20 August 1983 to the end of April 1985 and in pursuance of the main conspiracy etc, the UDF devoted much propaganda and energy to the Black Local Authorities and Koornhof Bills. This led to the formation of the Vaal Civic Association, which decided to affiliate to the UDF.
- (ii) During the period 9 October 1983 to end April 1985, the VCA and its activists then set about inciting persons in the Vaal Triangle to violence in relation to Black Local Authorities, the Koornhof Bills and the elections.

- (iii) Pursuant to this, during December 1983 to April 1985 in Area 7 there were meetings and discussions, etc;
- (iv) Certain activists were sent to a training programme on 27-29 April 1984 conducted by the UDF;
- (v) During October 1983 to April 1985 and in Sebokeng, various meetings were held, culminating in a joint meeting between Zones 3 and 7 on 24 August 1984;
- (vi) During the period October 1983 to September 1984 and at Boiphatong, various meetings were held culminating in the adoption of the stayaway plan for 3 September 1984;
- (vii) During March 1983 to September 1984 and at Sharpeville, various meetings were held, leading to the adoption of the stayaway plan for 3 September 1984;
- (viii) During May 1984 to September 1984 and at Zone 7, Sebokeng, various meetings were held leading to plans for a mass meeting on 26 August 1984;

- (ix) During June to September 1985 and in Zone 13, Sebokeng, various meetings were held leading to the adoption of a stayaway for 3 September 1984;
- (x) Mass meeting was held on 26 August 1984 at Evaton at which the stayaway for 3 September 1984 was propagated and in the course of which people said "Let's kill them" in respect of Councillors;
- (xi) On 3 September 1984 and at Boiphatong and Evaton the stayaway took place, violence took place as planned, and in the result there was a march, a great deal of violence and a number of persons killed as framed in the murder counts in the indictment.