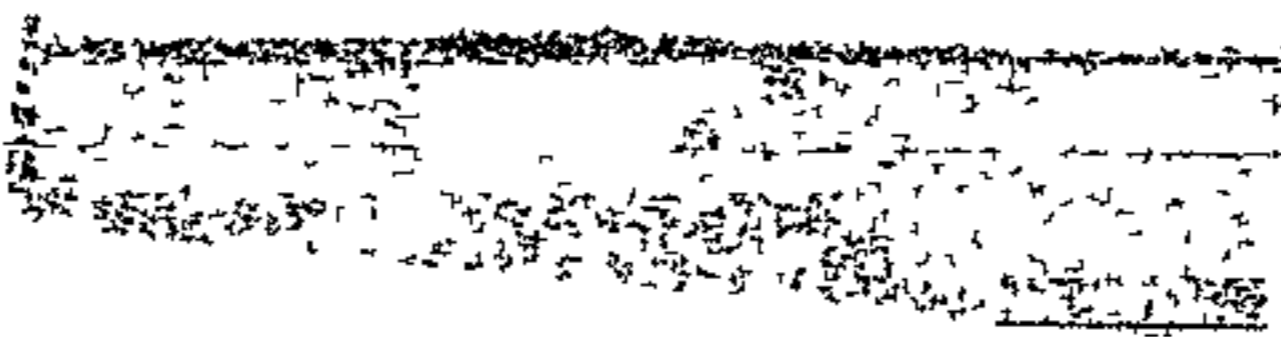


PUBLIC SECTOR GOVT. JUSTICE

1991

JANUARY — MARCH



2 beaten for 'theft'

By DANIEL SIMON

TWO men were viciously flogged and kicked by a large crowd attending an impromptu people's court in Nyanga earlier this week — after they were found "guilty" of stealing a pair of shoes, according to police.

Sedition charges against four people arrested in connection with the latest incident were being investigated.

The two "suspects", aged 27 and 28, were rescued by police on Wednesday morning after police saw one of them fleeing his punishers.

His friend, who may not be identified for fear of reprisals, said they were confronted by a crowd and accused of stealing a pair of shoes.

They were taken to an old creche, and beaten and kicked.

He added that he was rescued from his ordeal only when his friend escaped.

JOHANNESBURG — The central question in the defamation trial launched by police forensic laboratory head Lieutenant-General Lothar Neethling against two weekly newspapers was whether the statements made were true or not, Mr Justice J C Kriegler said yesterday in the Rand Supreme Court.

The judge is handing down judgment in a R1,5-million civil action launched by the general against Vrye Weekblad, which published reports on November 17 and December 1, 1989, and against the Weekly Mail, which published an in-depth analysis in November 1989.

In all three, former police captain Mr Dirk Coetzee said General Neethling supplied poison to be used to kill ANC members.

At the start of the judgment, Mr Justice Kriegler said his findings would be split into eight sections. It is expected the judgment will last more than a day.

Judge finds newspapers' articles defamatory

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OFT TIPS
18/1/91

One of the first findings was that all three articles were defamatory.

The judge said that though there was no direct link between the allegations in the first article and General Neethling, the average reader would have believed the general was responsible for the poisoning of two men.

Mr Coetzee claimed two unco-operative ANC members were first poisoned, and when that did not work, later shot. He claimed everyone spoke about "Lothar's poison" — Sapa



Vrye Weekblad editor Max du Preez, left, and police forensics chief Lt-Gen Lothar Neethling arrive at the Rand Supreme Court yesterday. Picture: ROBERT BOTHA

Coetzee is unattractive character, says judge

BIDam 18/11/91

SUSAN RUSSELL

IF FORMER police captain Dirk Coetzee had done only half the things he claimed to have done as a member of a covert police hit squad, he was a gangster (*rampokker*) of Olympian proportions, Mr Justice Kriegler said in the Rand Supreme Court yesterday.

The judge was speaking on the first day of his judgment in the R1,5m defamation claim brought by police forensics expert Lt-Gen Lothar Neethling against Vrye Weekblad and Weekly Mail.

Neethling's claim arises out of two reports published by Vrye Weekblad in November-December 1989 and a third article which appeared at the same time in the Weekly Mail.

The reports contained allegations by Coetzee that, while a member of a police hit squad, he had been given poison by Neethling to murder members of the ANC.

Neethling denies that he knew Coetzee or that he ever supplied poison to him or anyone else.

The newspapers have defended the action against them on the basis that Coetzee's claims were true and published in the public interest.

Coetzee has claimed he was involved in covert police activities which included murder, attempted murder, a failed poison

attempt and an attempted kidnapping. Mr Justice Kriegler said the central question was whether the allegations contained in the Vrye Weekblad and Weekly Mail reports were true.

Coetzee's evidence also formed the basis of the newspapers' defence, he said.

It was, too, fundamental to Neethling's case that Coetzee's version of police activities was simply unthinkable.

The central question was whether Coetzee or Neethling should be believed, the judge added.

Mr Justice Kriegler described Coetzee as an unattractive character with limited background and training who had turned his back on his country and "volk", left his elderly mother and children and walked over to the enemy.

Neethling, he said, was a man of forceful, if not overpowering, character who had proved himself an outstanding policeman and scientist.

Mr Justice Kriegler said if the case had to be decided on these two characters, it would have been a simple matter.

But unfortunately, said the judge, it was not that easy.

Judgment continues today.

JUDGING THE JUDGES

A LEADING JURIST CONSIDERS APPOINTMENTS TO THE BENCH

In an article — "Questions of Life and Death" (FM December 23 1988) — I attempted to deal with three matters. Firstly I commented in some length on the unusually strong criticism by the Appeal Court of a decision by Mr Justice Lategan (the trial judge) sitting with two assessors in the case of the State vs Albert Petersen. Petersen had been convicted of murder with extenuating circumstances. For the murder he was sentenced to 10 years' imprisonment and for the robbery, death.

The trial judge gave leave to appeal against the conviction and sentence for murder and against the death sentence for robbery. The Appellate Division set aside the conviction for murder and the death sentence for robbery, and substituted a three-year sentence for that crime. It is not necessary for present purposes to refer to the facts of that case or to the finding of the Appeal Court that the trial judge had grossly misdirected himself.

The second matter in my article was the question of the death sentence as an appropriate punishment; and the third was there was no automatic right of appeal in cases where the death sentence had been imposed, despite the efforts of the Bar over many years for that right to be given.

Amendments to the Criminal Law Proce-

dure Act, recently introduced by Act 107 of 1990, have brought about substantial changes in the law. There is now an automatic right of appeal by any person who has been sentenced to death. Even if he has not noted an appeal or if, having noted it, has not prosecuted it, the Chief Justice or any other judge of the Appellate Division designated by the Chief Justice is obliged to appoint counsel to submit a written address to the Appellate Division on behalf of the accused. Counsel is obliged to argue the correctness of the conviction and the propriety of the sentence of death. Also, the Attorney-General is entitled to submit a written address regarding the correctness of the conviction and the propriety of the sentence of death. The matter is then considered by the two judges of the Appellate Division and, if they do not agree, the case is to be reviewed by the Chief Justice or by any other judge of the Appellate Division to whom it has been referred by the Chief Justice.

If, in considering whether the death sentence should be imposed, the Appellate Division is of the opinion that it would not itself have imposed the sentence of death, it may set aside the sentence and impose such punishment as it considers to be proper. This power is, of course, much wider than the power which the Appellate Division had

prior to this enactment.

The Appeal Court formerly could interfere, putting the matter as shortly as I can, only with a sentence of death imposed by a trial court if, for example, there was a misdirection or if it could be shown for example that the trial court had not applied its mind adequately to all the facts of the case.

An Attorney-General may now appeal against the sentence imposed on an accused in a criminal case in a lower court to a provincial or local division, and in one imposed in any superior court, to the Appellate Division.

The now much-criticised sentence of Justice J J Strydom in the Northern Circuit Court at Louis Trichardt in the case of the State vs Jacobus Vorster and Another resulted in a motion of censure being moved by Helen Suzman in parliament in May last year. In the course of the debate the minister of justice answered in the affirmative a question addressed to him by Harry Schwarz as to whether he would have appealed against the sentence imposed in Vorster's case if he had the power.

It is a matter of some regret that one has again to refer to a decision of Justice Lategan, again sitting with two assessors, in the case of the State vs James Jochems and Mark Abrahams which was heard and de-

cided in the Cape Provincial Division in September 1989. In that case the two persons mentioned were charged with murder and attempted murder, the allegation being that on October 8 1987 one Denzil Ronald Abrahams had been murdered by being shot dead, and secondly that an attempt was made to murder one Gert Lewis, also by means of a firearm.

Both the accused pleaded not guilty and the second accused, Abrahams, was acquitted. The first accused, Jochems, who was alleged to have fired the shots, was found guilty of murder without extenuating circumstances and consequently sentenced to death on that count. He was also found guilty of attempted murder and was sentenced to three years' imprisonment on that count.

An application for leave to appeal was made, as was then necessary, against the convictions on both counts and the sentence of death. The learned judge said that the application for leave to appeal against conviction had no merit at all. In his opinion no other court could reasonably come to a different conclusion. However, he gave leave to appeal on the question of sentence.

The Appellate Division gave leave to appeal against the convictions on both counts. The appeal was heard on November 20 last year and the judgment was given on November 28 by Justice Milne, with whom the two



Maisels merit and character should be criteria

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other members of the court concurred. The Appeal Court upheld the appeal and set aside the convictions of the trial court.

I do not know when the appellant Jochems was arrested, but it is clear that he sat in the death cell for 14 months, between the time of his convictions and their setting aside by the Court of Appeal. Put as shortly as possible,

the State relied for the conviction on the evidence given by two witnesses called Rustin and September, who stated that they witnessed the two accused pursuing two persons, both of whom were shot by Jochems, causing the death of the deceased and the wounding of his companion.

It was on their evidence that the trial court convicted Jochems but acquitted his co-accused, Mark Abrahams. The defence was an alibi on the part of both the accused but, as stated above, the appellant's co-accused was acquitted.

This is an aspect which is dealt with more fully in the course of the judgment of Justice Milne, to which I refer below. That one person was killed and another wounded was clear. The question was whether the evidence of Rustin and September as to the identity of the killer or killers was acceptable. The danger of mistaken identification, as is pointed out by Justice Milne, is one to which judicial officers are, or should certainly be, alive.

Both Rustin and September were standing on the landing of an external flight of stairs between the two blocks of a building known as Soetwaterhof at third-storey level at about 21h00 or 22h00, when they saw a taxi without its lights on coming down the road towards Soetwaterhof. The taxi disappeared from sight behind some buildings and at that stage there were two people standing near one of the corners or one of the blocks of

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Soetwaterhof

Two other people whom neither Rustin nor September could at that stage identify, but who are referred to as "the pursuers," then came around the corner and chased the front couple. One of the pursuers had a firearm in his hand and shots were fired.

After the shots had been fired, the pursuers walked or ran, through or between the two blocks of Soetwaterhof and below the stairs on which Rustin and September were standing. They then apparently identified the pursuers as the appellant and the second accused.

The pursuers then walked off in the direction of a nearby block of flats. Rustin and September then went down the stairs and found the deceased lying on the ground at a place not far away from another building known as Solant Court. They also found Gert Lewis, who was injured.

No identification parade was held. The police plan was unsatisfactory and apparently a vain attempt was made to get a proper description of the stairs from the witness September. The judge then said to counsel appearing for the second accused that after 10 minutes of tiring cross-examination, the court remained in the dark as to "how it (presumably the stairs) appeared on the plan," but if counsel wished to make a point he proposed that counsel himself should go and look at the scene and possibly thereafter present evidence about it.

This appeared to the Appeal Court to be a strange suggestion. If it was desired to dispel the lack of clarity which was apparent, the solution was to be sought not in a visit by counsel to the place where the shooting occurred, but an inspection *in loco* by the court. This apparently was not considered by the court and was not suggested either by the State or by counsel who appeared for the accused.

After an exhaustive analysis of the evidence by Justice Milne, the learned judge stated " . . . it is apparent that the evidence of September and Rustin identifying the appellant and accused No 2 as the pursuers was unreliable and it may well be deliberately dishonest. The evidence of Prinsloo and Lewis having been rejected, there was no other evidence implicating the appellant and it follows that he should have been acquitted on both counts."

Thus it may be said so far from there being no merit in the application for leave to appeal against the convictions as found by the Trial Court, there was no merit in the judgment of that court convicting the appellant, let alone refusing leave to appeal.

The defence of both the accused was that of an alibi. It is an elementary principle of our law that no burden of proof rests upon an accused person to prove the truth of an alibi.

The prosecution must establish to the satisfaction of the court that the alibi is false before it can be said that the guilt of the accused has been established beyond reasonable doubt, as is required by our law. The trial court came to the conclusion that the

evidence given by the second accused, supported by a witness called by him, might reasonably be true and, consequently, as it was obliged to do, acquitted him.

That being so, it would seem therefore, as is pointed out by Justice Milne, that it necessarily followed from the evidence of Rustin and September that the second accused and the appellant were the persons who chased the deceased and Lewis might be wrong.

Nonetheless, the trial court convicted the appellant on the evidence of Rustin and September, saying that he (Rustin) and September supported each other in all material respects and that the two persons who ran after the deceased and Lewis were indeed the appellant and the second accused. The Court of Appeal found it difficult to understand this finding of the trial court and the logic of the conviction of the appellant in the light of the acquittal of the second accused because, as stated above, his evidence as to an alibi might reasonably be true.

Not surprisingly, Justice Lategan came under criticism in the press following the judgment of the Court of Appeal. The *Cape Times*, in particular, pointed out that this was the seventh murder conviction and death sentence imposed by him to have been set aside and that it was also the second time in three months that a death sentence imposed by the judge had met that fate.

For myself, I do not consider relevant the fact that a number of death sentences imposed by Justice Lategan have been set aside on appeal, or that a number have been confirmed. One does not keep a log in these matters.

But it should be borne in mind that at the time when Justice Lategan was appointed to the Bench, the General Council of the Bar expressed its opposition to it. He had been a civil servant and an attorney-general and as far as one is able to ascertain, he had had no experience in any civil matters.

Apart from his having served a year or so before his appointment to the Bench as a member of the well-known Erasmus Commission, appointed by State President P W Botha, the whole of Justice Lategan's legal experience would seem to have been on the prosecuting side of the criminal law.

In the article in the *Cape Times*, it was suggested by Professor Dennis Davis of the University of Cape Town that the Judge-President of the Cape should consider re-allocating Judge Lategan to civil trials. In view of his pre-judicial history, the logic of this suggestion is not apparent to me.

I am far from saying and I must not be construed as suggesting, that Judge Lategan is not independent or that he is not impartial, but it should be accepted that mere independence and the likelihood of impartiality are not the only qualifications for appointment to the Bench.

Justice Lategan was appointed to the Bench in SA under the provisions of the Supreme Court Act by the State President, acting presumably on the advice of his ministers. With constitutional reform in the air, as

it now is, it might be useful to consider our system of appointing judges.

It cannot, I think, be denied that in SA certain appointments to the Bench have been made on considerations apart from merit. This was particularly so in the early days of the coming to power of the NP in 1948, but it had happened occasionally under other governments. Nothing that I say must be construed as criticism of the merits of recent appointments to the Bench.

In order to remove any suggestion that judges can be appointed on grounds other than merit, the Constitution of Namibia provides that all appointments of judges of the Supreme Court and the High Court shall be made by the president on the recommendation of the Judicial Service Commission.

That commission is to consist of the Chief Justice, a judge appointed by the president, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.

Similarly the constitution in Botswana as long ago as 1966 provided that the Chief Justice of the High Court and the President of the Court of Appeal, unless that office is held *ex officio* by the Chief Justice, shall be appointed by the president. However, with regard to the appointment of other judges, whether to the High Court or to the Court of Appeal, they are to be appointed by the president acting in accordance with the advice of the Judicial Service Commission.

The Judicial Service Commission in Botswana consists of the Chief Justice as chairman, the chairman of the Public Service Commission or another member of the commission who may be designated on that behalf by the chairman of the Public Service Commission and one other member who shall be appointed by the Chief Justice and the chairman of the Public Service Commission acting together.

The third member to whom I have referred may be removed from office by the Chief Justice and the chairman of the Public Service Commission acting together only for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour. It is furthermore provided that the Judicial Service Commission is not to be subject to the direction or control of any other person or authority in the exercise of its functions under the constitution.

It is obvious that the provisions made in the Constitution of Namibia and that of Botswana are designed to ensure that appointments to the Bench should not be made on political or other unsatisfactory or unwise grounds, but as far as is possible, in the opinion of independent persons, on merit and, of course, character alone. I would suggest that consideration be given to similar provisions to those to which I have referred in the constitution of the new SA which is apparently envisaged.

I A (Issy) Malsels

Civil law to be revamped — Coetsee

16/11/81
OUDTSHOORN — A new system of civil law procedure in the lower courts is to be introduced and a model for the procedure would be introduced next year Justice Minister Kobie Coetsee has said.

Opening a magistrates' court in Oudtshoorn this week, he said he had discussed a new system with senior magistrates who had welcomed the proposed changes.

Some of the innovations were

- The housing of civil courts in buildings separate from the criminal ones;
- The division of the lower civil courts into junior and senior and magistrates,
- The jurisdictions of the various civil lower courts would be reviewed, and,

- Improved training for civil legal practitioners

He had recognised a need to reform the legal system and this would be done with the assistance of the Law Commission

"Our aim is to review and upgrade the private law and the criminal law and the laws of evidence over the next few years so as to comply fully with the needs of the country and its people."

He said the administration of justice in SA was a continuing process and this had not been more evident than at present

"It is therefore of the utmost importance to maintain a strong judiciary capable of dealing with the challenges of the present and the future," Coetsee said. — Sapa

Stories on Neethling defamatory - judge

Sowetan 18/11/91

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THE central question in the defamation trial launched by SAP forensic laboratory head General Lothar Neethling against two newspapers was whether the statements made were true or not, Mr Justice JC Kriegler said yesterday in the Rand Supreme Court

The judge is handing down judgment in a civil action launched by the general against *Vrye Weekblad*, which published reports on November 17 and December 1 1989, and against the *Weekly Mail* which published an in-depth analysis in November 1989

In all three, former police captain, Dirk Coetzee, said General Neethling supplied poison to be used to kill ANC members

Mr Justice Kriegler said his findings would be split into eight sections. It was expected the judgment would last more than a day.

One of the first find-

SOWETAN Correspondent

ings was that all three articles were defamatory.

Although the two newspapers share the same legal team, their defences were slightly different. *Vrye Weekblad* denied defaming Neethling in the first report

Decision

Mr Justice Kriegler said it was ironic that in determining the case, he had to go through the stories, line by line and even punctuation mark by punctuation mark, subject it all to a legal microscope and then reach a decision based on what the reasonable reader "the person on the Westdene bus" would think

The judge said although there was no direct link between the allegations in the first article and Neethling, the average reader would have believed that even if Neethling had not played a personal role, he was

responsible for the poisoning of two men

Coetzee claimed two non-cooperative ANC members were first poisoned, and when that did not work, later shot. He claimed everyone spoke about "Lothar's poison"

The judge referred to the headline "SAP blood trail" (*bloedspoor*) and a picture of Neethling with his name under it, and said they were a strong link to the alleged murders

Report

In the second report, Neethling was named directly and there were no subtle inferences, the judge said

One of the issues which the judge has touched upon, and will decide later, is whether the press would be justified in publishing an accusation with only a small amount of corroboration in order to ensure a public debate

(Proceeding)

Death squads

● FROM PAGE 1.

examination.

The judge itemised the descriptions of the interior of General Neethling's office and his house and ticked off those which were correct. Even those which were not completely on target were not far wrong.

Turning to General Neethling's credibility, the judge said "the sorry conclusion I am forced to" was that General Neethling had failed to pierce the web of evidence which was drawn around him. An honest answer would have pierced the web easily, the judge said, and an honest man would have relied on the truth.

The general deliberately misread part of the Harms Commission's record during the trial in an attempt to cover up a contradiction, he said.

Among the factual findings made by Mr Justice Kriegler were:

- Captain Coetzee had visited General Neethling's house.
- He had also spent more than a few moments in General Neethling's office.
- Captain Coetzee had General Neethling's unlisted telephone num-

ber in his notebook.

- Captain Coetzee had taken part in cross-border raids, acting on official instructions.

Captain Coetzee had said his superior, Brigadier W F Schoon, had sent him to General Neethling because they wanted to "eliminate" two ANC members who were of no more use to the police.

During argument it had been suggested that if Captain Coetzee wanted to poison the two ANC men, he could have obtained poison from any pharmacy.

"The idea of walking into a pharmacy and asking for a colourless, odourless, tasteless and untraceable poison belongs in a Monty Python skit rather than in a court of law," the judge said.

WEBSTER WATCH

TODAY 623 days will have passed since university lecturer and human rights activist Dr David Webster was assassinated outside his Troyeville home.

Mr Justice Louis Harms, who headed the Harms Commission into political killings, recently concluded there was no evidence that the Civil Co-operation Bureau (CCB) murdered Dr Webster on May 1 1989. Justice Harms could not reach a decision on who killed Dr Webster.

No one has been arrested or charged for Dr Webster's assassination. A reward of R20 000 still stands for information leading to the jailing of Dr Webster's killers.

19/11/91
Stu

LAWYERS and human rights activists welcomed yesterday's Supreme Court judgment against Lt-Gen Lothar Neethling, saying it throws the Harms Commission findings in strong doubt.

They have also called for investigations to be re-launched into the evidence of the Harms Commission.

Professor John Dugard, of the Centre for Applied Legal Studies at the University of the Witwatersrand, said the judgment "clearly places the credibility of the Harms Commission report in question" "It suggests there has been a police cover up of the activities of hit squads. It also begs the question as to why the so-called independent prosecutors in the Harms Commission did not probe police irregularities more fully," he said.

Raymond Louw, chairman of the Campaign for Open Media and editor and publisher of The Southern Africa Report, said yesterday's judgment seriously discredits the findings of the Harms Commission.

"It is indeed cause for the

Government to throw open the whole investigation into police death squads and the operations of the Civil Co-operation Bureau," he said, adding there should now be a full-scale inquiry with more than a single judge involved. Mr Louw said yesterday's judgment also implied that Law and Order Minister Adriaan Vlok should resign.

"He (Vlok) is ultimately responsible for the conduct of the police," said Mr Louw.

"The people who were in charge of South African Police at the time — and that would include General Geldenhuys — should be subpoenaed to give evidence." Mr Louw said it would be "admirable at this time" for the Government to use Section 205 of the Criminal Procedures Act — "which they have used against journalists" — to extract information from the police.

He said there are also questions to be asked of the State President, because it was he (F W de Klerk) who set the terms of reference for the Harms Commission. "The State President set the terms which, to a large extent, handicapped Judge Harms in his attempts to find out what took place."

Max Coleman, of the Human Rights Commission, said the judgment "would also have implications for the former Minister of Law and Order, Louis le Grange. "It's a very encouraging judgment which is both courageous and honest — it certainly gives cause to re-open the whole Harms Commission enquiry," Mr Coleman said.

He demanded that those implicated by Mr Justice Kriegler's findings — including General Neethling — be charged with murder by the Attorney-General.

Law and Order Minister Adriaan Vlok should also resign and a special investigation into the dealings of the police's forensic laboratory in Pretoria should be established.

Weekly Mail journalist Gavin Evans — whose article was the centre of the case against his employer — said the judgment contradicted the Harms Commission and the Attorney-General should consider charging General Neethling, Brigadier Schoon and others with murder.

General to bear millions in costs if his appeal fails

**BRENDAN TEMPLETON
AND CATHY STAGG**

General Neethling will have to bear both sides' legal costs — running into millions of rands — if his appeal on March 2 against Mr Justice Kriegler's ruling fails.

His counsel, Willie Oshry, explained during the hearing last year that the State Attorney agreed to pay the general's costs on condition that he not be linked to any irregularities.

The visibly shaken general refused to discuss the issue after the finding, but an equally upset former-police commissioner General Mike Geldenhuys declared General Geldenhuys would have to pay the amount running into millions.

"The general will pay. Why do you ask such stupid questions? Why don't you ask other questions?" he demanded.

Vrye Weekblad editor Max du Preez said the newspaper's bill alone came to about R1 million.

A calm, but clearly relieved, Mr du Preez called for an end to the State's paying for public officials involved in defamation cases because this was often abused to intimidate journalists from writing.

The African National Congress has also welcomed the judgment, saying it has re-opened the whole death squad issue. "We would like the government to look at the judgment seriously, given Judge Kriegler's seniority," ANC spokesman Jacob Abba Omar said.

A spokesperson for the Five Freedoms Forum (FFF) said the judgment confirms the FFF view that the Harms Commission was "at best a failure, at worst a whitewash".

The FFF spokesperson said the FFF believed the Harms Commission should be re-opened to hear the new evidence that emerged during the Vrye Weekblad/Neethling case.

"The Commission should be re-opened to reconsider the evidence of Captain Dirk Coetzee, evidence which was ruled out by the Harms Commission but which has now been judged valid and which substantially affects the findings of the Commission." The FFF spokesperson said there was also a need for more investigations into the activities of the forensic department headed by General Neethling and its connection to police death squad activities.

Asked to comment on the implications which yesterday's judgment held for press freedom, Mr Raymond Louw said "The judgment has removed many of the fears of defamation from newspapers and it has opened up new avenues for them to explore. It will make it far easier for newspapers to expose maladministration in public service because they will be able to do it with less fear of retribution."

The ANC's Mr Abba Omar said the judgment was a "significant extension" of press freedom, particularly in the area of investigating the actions of public servants.

Neethling's judgment

STAFF REPORTERS

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Welcomed

We want your resignation, Louis Le Grange'

Y DESMOND BLOW and apa

PEAKER in Parliament says Le Grange must resign because he was Law and Order Minister at the time Lt-General Lothar Neethling, SAP forensics chief, had allegedly supplied poisons for assassination purposes, the Law-ers for Human Rights (LHR) organisation said yesterday.

Alleged "irregularities" while Le Grange was Minister were highlighted during a sensational court case recently in which

Neethling sued two newspapers for defamation.

The lawyers also said Law and Order Minister Adrian Vlok must appoint an ombudsman "with teeth" and special officers to investigate SAP laboratories.

This followed the judgment by Judge Johan Kriegler this week that *Vrye Weekblad* and the *Weekly Mail* were not guilty of defaming Neethling by reporting he had supplied sophisticated poisons to kill people. LHR's Ahmed Motala

said Neethling was the second-highest ranking policeman in the SAP and the fact he had been discredited meant public confidence in the police was further eroded.

Judge Kriegler scored the biggest victory for Press freedom in decades when he ruled in favour of the two newspapers.

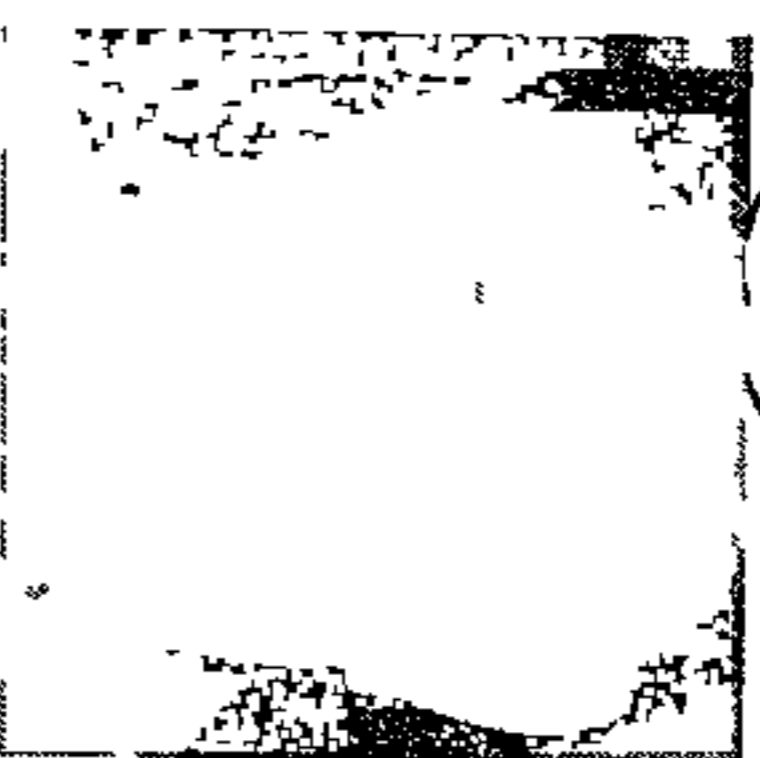
The judge said Neethling had "mislaid the Harms commission of inquiry (into CCB hit squads) and had tried to mislead this court". His judgment has "once

again opened up the can of worms surrounding the Harms Commission", said the LHR.

Judge Harms had accepted the evidence of Neethling and rejected that of former police captain Dirk Coetzee.

Judge Kriegler, who was one of the top advocates in South Africa before his appointment to the Bench, found exactly the opposite.

Vrye Weekblad editor Max du Preez also called for the Attorney-General to prosecute all those



The SAP's Lt-General Lothar Neethling.

Judge Kriegler found to have lied to the court.

Neethling was ordered to pay all legal costs but it is not known who will ac-

tually foot the bill.

According to his counsel, Willie Oshry SC, the State attorney agreed to pay Neethling's costs on condition he was not found guilty of any irregularities.

And General Mike Geldenhuys, former commissioner of police who gave evidence on behalf of Neethling and was in court throughout the trial to support Neethling, told *City Press*: "Thank God we have an Appeal Court."

Ombudsman vital - journal

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South Africa needs a classical ombudsman, without further delay, to protect citizens against injustice as a result of maladministration, says the legal journal *De Rebus* in its latest edition.

The legal profession was gravely disappointed with the Advocate-General Amendment Bill published in July last year, it says, criticising the Government's alleged "revamping of the

Advocate-General's office" towards ombudsmanship as a "regurgitation of the original draft with minor, mainly editorial, amendments".

The journal points out that pressure is inevitable for a future South African constitution to make provision for an ombudsman, and that his urgent appointment would be better dealt with now rather than be subjected to the political

"rough and tumble of possibly protracted constitutional negotiations"

De Rebus calls on legislators to make the necessary amendments to the Bill before it becomes law at the next parliamentary session.

It also calls for the appointment of a further specialist ombudsman to intercede on behalf of taxpayers in dealings with the Receiver of Revenue — Sapa.

Neethling: police response awaited

Star 21/1/91

Staff Reporter

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Police have yet to respond to Friday's Rand Supreme Court judgment against SAP forensics department head Lieutenant-General Lothar Neethling.

Asked yesterday to comment on Mr Justice J C Kriegler's verdict, Law and Order Ministry spokesman Captain Craig Kotze said police would not respond "until such time as we have an opportunity to study the judgment".

General Neethling lost the R1,5 million defamation case he had launched against Vrye Weekblad and the Weekly Mail — but he intends fighting on.

After Friday's judgment in the Rand Supreme Court he demanded that his legal team inform the judge immediately that he wanted to appeal. The matter is expected to return to court on April 2.

Mr Justice Kriegler said in his judgment that General Neethling had lied when giving evidence during the Harms Commission — and had lied during this trial.

Instead of dealing with the allegations that he supplied poison to kill ANC activists, General Neethling had given long, evasive answers in an attempt to divert attention away from core issues, the judge said.

Referring to former police captain Dirk Coetzee, the judge said he had treated him as a single witness and as one would treat an accomplice in a criminal trial. The evidence had been weighed very carefully, but there was not a single example to show he had lied during this trial.

Turning to General Neethling's credibility, the judge said

the policeman had failed to pierce the web of evidence that was drawn around him. An honest answer would have pierced the web easily, the judge said, and an honest man would have relied on the truth.

The general had deliberately misread part of the Harms Commission's record during the trial in an attempt to cover up a contradiction, the judge said.

Mr Justice Kriegler found that Mr Coetzee had visited General Neethling's house, had spent more than a few moments in the general's office, had the general's unlisted telephone number in his notebook and had taken part in cross-border raids, acting on official instructions.

The unusually long judgment, which lasted almost two full days, treated the two newspapers differently.

Poisoned

Vrye Weekblad, which published news reports on November 17 and December 1 1989, relied on a defence of truth and public benefit, which succeeded because the judge accepted Mr Coetzee's evidence.

On the other hand, the Weekly Mail's article, by Gavin Evans — described by the judge as a "carefully constructed in-depth analysis" — contained a reference to poisoned alcohol which was not proved to be true.

Although the Weekly Mail had printed something defamatory without first ensuring it was true, the judge found that General Neethling's reputation was less important than the public's right to know.

"In making this finding I am not setting a dangerous precedent, because the circumstances

were so unusual that I hope they will not be repeated."

Even if the judgment had gone in favour of General Neethling, the judge said, damages would have been nowhere near the amount claimed.

A prominent human rights lawyer said at the weekend that the judgment cast doubt over the findings of the Harms Commission into alleged police death squads and called for a reinvestigation of the evidence before the commission.

Professor John Dugard of the Centre for Applied Legal Studies at the University of the Witwatersrand said he doubted whether the judgment would lead to a re-opening of police investigations.

"I believe I can predict with absolute accuracy what is likely to happen. General Neethling is going to appeal and the police will say .. the matter is sub judice."

"Nothing will happen until the appeal is heard in 18 months, by which time the question of alleged police hit squads will have lost a lot of impetus."

However, President de Klerk "might be persuaded to do something if public demand is sufficient," he said.

After the judgment, Mr Coetzee said from London that he intended returning to South Africa "regardless of the cost" after 16 months in exile.

If he were brought to trial he would not be "the only one in the dock", he added.

Asked yesterday whether police would prosecute their former captain should he return, Major Reg Crewe of the SAP's public relations division in Pretoria said he would establish today whether charges had been laid against Mr Coetzee.

Judge rejects findings of Harms probe

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Sowetan 21/1/91

FINDINGS of the Harms Commission were turned on their head in the Rand Supreme Court on Friday where the overwhelming mass of rebel police captain Dirk Coetzee's allegations of death squads was found to be true.

Mr Justice J C Kriegler said in the R1,5 million defamation case against the *Vrye Weekblad* and the *Weekly Mail* that Lieutenant-General Lothar Neethling had lied when giving evidence before his fellow-judge during the commission - and had lied during this case.

Instead of dealing with the allegations that he supplied poison to kill ANC activists, Neethling gave long, evasive answers in an attempt to divert attention away from core issues, the judge said.

Referring to former police captain Dirk Coetzee, the judge said he had treated him as a single witness and as one would treat an accomplice in a

criminal trial.

The evidence was weighed very carefully - but there was not one example to show he had lied during this case.

The judge had not seen him in the witness box because after the shock disclosures made by death row prisoner and former policeman Almond Nofomela last year, alleging the existence of police death squads, he had fled the country.

Discharged

At that stage, he had been discharged from the police force.

In an interview with *Vrye Weekblad* reporter Jacques Pauw on Mauritius, he told the story which formed the basis of

BY SAPA

the articles which led to the trial.

His evidence for this trial was given in London.

The judge noted the evidence was mostly self-incriminating and that there were six records.

The judge weighed up the tape of the interview with Jaques Pauw, a TV video, extracts from the Harms Commission evidence, documentary evidence, evidence given by freelance journalist Martin Welz and evidence the former policeman gave in London.

There was no contradiction, the judge found, despite extensive cross examination.

Meanwhile, the Campaign for a Judicial Inquiry into Hit Squads said on Saturday that the judgment confirmed that

President FW de Klerk was busy with a cover-up on hit squads and that the Harms Commission was a farce.

In a statement released in Cape Town the Campaign challenged De Klerk to a public debate on the issue.

"The judgment confirms our view that President FW de Klerk is busy with a cover up on the hit squad issue and that the Harms Commission was a farce.

"We trust that President de Klerk will now be prepared to participate with us in a public debate on this issue.

"The public is entitled to know the truth about internal as well as external operations - especially in the light of recent allegations that clandestine operations are still taking place," the statement said.

Calls to re-open the Harms probe

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 Susan Russell

VRYE Weekblad editor Max du Preez, and lawyers representing the Afrikaans weekly have called for the re-opening of the Harms Commission

This follows the Rand Supreme Court's acceptance on Friday of claims by former police captain Dirk Coetzee about a secret police hit squad of which he was a member

The Harms Commission found Coetzee had lied about the existence of the covert unit, his own involvement and his claims that he was given poison by police forensics expert Lt-Gen Lothar Neethling to murder ANC members

Disbelieved

After Mr Justice Kriegler dismissed Neethling's R1,5m defamation claim against Vrye Weekblad and Weekly Mail on Friday, attorney David Hoffe said the court had believed Coetzee

"Everything that Harms disbelieved has been believed," Hoffe said

Du Preez said he was extremely happy about the judge's finding that the newspapers had had a public duty to publish the hit squad stories

Another important aspect, he said, was that the judgment should frighten public figures away from using the threat to sue as a means of intimidating journalists into not publishing stories of this nature

Du Preez said he also hoped the outcome

of the case would mean an end to the "bizarre" practice of civil servants bringing such defamation cases being financed by the state

He also called for the re-opening of the Harms Commission

"The Harms Commission has obviously been discredited," he said.

"This judge has found that several people lied and misled Harms"

He also said the Attorney-General should look into matter and that those involved, including Neethling, should be charged

Du Preez said Coetzee should be allowed to return to SA even if he was charged with the others "He has been defamed in SA more than any other individual"

He said the judge's unflattering remarks about Coetzee might be true and were admitted by the former police captain himself "But he should get a bit of credit now for pushing this thing into the open"

Du Preez added he believed Law and Order Minister Adriaan Vlok should resign as a result and an investigation be conducted into the activities at the police forensic laboratory

While Du Preez was surrounded by an excited and emotional group of staff and well-wishers an apparently angry Neethling was seen shouting at his counsel

Neethling is to apply for leave to appeal.

Legal profession hits at revamping of A-G's office

SOUTH Africa needs a classical ombudsman without further delay, to protect citizens against injustice as a result of maladministration, says the legal journal *De Rebus* in its January edition.

Disappointed

The legal profession was gravely disappointed with the Advocate-General Amendment Bill, published in July last year, it said, slamming the Government's alleged "revamping" of the Advocate-General's office towards ombudsmanship as a "regurgitation" of the original draft with minor, mainly editorial amendments.

Sowetan 21/1/91
The journal points out that pressure was inevitable for a future SA constitution to make provision for an ombudsman, and that his urgent appointment would be better dealt with now rather than be subjected to the political "rough and tumble of possibly protracted constitutional negotiations"

It called on legislators to make necessary amendments to the Bill before it becomes law at the next Parliamentary session.

It also called for the appointment of a further specialist ombudsman to intercede on behalf of taxpayers in dealings with the Receiver of Revenue
- Sapa



ROGER SISHI

A COMMISSION of inquiry into last week's soccer disaster begins today

Set up by the National Soccer League, the inquiry will be held at the FNB Stadium under the authority of a judge, according to NSL chairman Mr Roger Sishi.

The Government has said it will set up its own commission of inquiry.

Justice Minister Mr Kobie Coetsee said a judge will also head the government commission

The NSL has welcomed the government move.

Forty-two people died last Sunday at the Vaal Reefs Stadium in Orkney, where the Iwisa

Soccer disaster inquiry begins

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Kaiser Chiefs and the Orlando Pirates faced off in a friendly "winner take all" soccer match.

The game was staged by Mr Chirs Ndaba, a well-known Tembisa businessman and Mr David Thidiela, NSL security chief.

Sishi said the soccer body had gone "all out" to get the necessary information as to what caused the violence.

Senior NSL executives including chief executive Mr Cyril Kobus and deputy chairman Mr Leon Hacker were delegated to investigate the incident.

Sishi said the first people to give evidence will be the two promoters who staged the match.

Police chief Neethling to appeal over ruling

Smullen 22/1/91

SOUTH African Police forensics chief General Lothar Neethling will appeal against a Supreme Court decision in favour of *Vrye Weekblad* and the *Weekly Mail* newspapers, his legal representatives said yesterday.

Mr Justice JC Kriegler on Friday in the Rand Supreme Court rejected Neethling's claim of damages for R1,5 million against the newspapers and ordered Neethling to pay the costs of the action.

Advocate Mammie Witz, who appeared for Neethling, said yesterday the application would be heard by Justice

Kriegler on April 2 on his return from sitting at the Appellate Division in Bloemfontein.

A spokesman for Witwatersrand Attorney-General Klaus von Lieres said yesterday that no application for an appeal had been lodged with his office.

Witz said he was confident there would be grounds for an appeal to be heard by the Appellate Division but this would only be sometime in 1992.

The Ministry of Law and Order said yesterday it would not comment on the judgment until an appeal had been heard.

New public defence system to be launched

8/ev 22/1/91 (252)

Pretoria Correspondent

An experimental public defence system is to be launched in Johannesburg courts in June, the Legal Aid Board has announced.

Chairman Mr Justice C F Eloff said in Pretoria yesterday that 10 public defenders would be appointed from June 1 to represent "indigent accused" appearing in the Johannesburg Magistrate's Courts.

He said the board had set aside R2,5 million to fund the project, which will run over two years. The project would initially be confined to Johannesburg's lower courts.

Unrepresented

"This is an exploratory step and if it is successful, more public defenders may be appointed later," he said.

More than 80 percent of South Africans facing criminal charges appeared in court unrepresented and it was hoped the system would provide more of them with legal representation.

Public defenders would probably represent only peo-

ple charged with serious criminal offences, Mr Justice Eloff said.

Mr Justice Eloff said a steering committee had been set up to establish and monitor the project's progress, and planned to start recruiting "well-qualified" attorneys and advocates.

"This is an excellent opportunity for young lawyers and more experienced people. We want a good service," he said.

While the Legal Aid Board had provided R2,5 million to fund the project, it was hoped that the private sector would "recognise the need to provide legal representation for indigent accused".

He said financing was the biggest obstacle facing the introduction of a public defender system. A second obstacle was to decide who public defenders should represent.

Organisations represented on the steering committee include Lawyers for Human Rights, the National Association for Democratic Lawyers, the Black Lawyers Association, the Legal Resources Centre, the Legal Aid Board, the General Bar Council, the Association of Law Societies, and the Department of Justice.

CMT TAPS 22/1/91

Residents beat two gangsters to death

Own Correspondent

EAST LONDON — Two members of an Mdan-tsane gang, calling themselves the "Beasts", were beaten to death by enraged residents in an area between NU13 and NU14 on Saturday at 6am, after attacking people in the streets

Ciskei police said several gangsters went on a rampage, breaking into houses and attacking people in the streets

A group of residents, presumably on their way to work, confronted the gangsters and chased them to nearby bush. There they beat two of the men, identified as Mr Xolani Ben, 20, and Mr Ndimpwe Lupuwana, 25, both of NU14, to death

A third gangster was injured and taken to hospital, where he was treated and discharged into police custody. He will appear in court soon

Some of the residents received minor injuries

Police said the other gang members escaped. No further arrests were made and police are still investigating

Judgment 'reaffirms public interest' as a defence for media

THE Supreme Court last week reaffirmed "public interest" as a limited defence — an "incredibly significant" development, Vrye Weekblad lawyer Mark Rosin said yesterday.

He said this aspect of Mr Justice J C Kriegler's judgment in the R1,5m defamation claim brought against the newspaper and the Weekly Mail was cause for great celebration and would help protect media freedom.

But he warned the defence remained limited to particular circumstances.

The public interest aspect of the case arose from a report in the Weekly Mail which contained a reference to poisoned alcohol which had not been proved to be true.

The newspaper therefore could not escape liability by means of the conventional and well-established defence that the allegedly defamatory statement was true and in the public interest.

The court found that although the Weekly Mail had printed something defamatory without first ensuring that it was true, in the circumstances the reputation of the applicant, police forensics expert Lt-Gen Lothar Neethling, was less important than the public's

TIM COHEN

right to know.

The judge said in making this finding he was not setting a "dangerous precedent" because the circumstances were so unusual.

The decision means that if sufficient facts are placed before the public which would enable members of the public to make up their own minds, and if the information was of sufficient importance, this could outweigh the possible prejudice to the defamed party.

However Rosin said the judge had been careful to make it clear the defence was limited and it applied only in certain circumstances.

In April Mr Justice Kriegler is expected to hear an application for an appeal against his decision, Neethling's advocate Manne Witz told Sapa.

Meanwhile, DP Houghton MP Tony Leon said yesterday he intended tabling a series of questions during the forthcoming parliamentary session on whether and why the state undertook to pay the costs of Neethling's case.

Leon said he also planned to ask whether the state had also agreed to pay the newspapers' costs.

BIDEN 22/11/91

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No case for intimidation

81/204
22/11/91 WILSON ZWANE (252)

A SENIOR Soweto prosecutor had decided against prosecuting seven civic leaders for alleged intimidation of Eldorado Park councillors, Soweto police spokesman Capt. Joseph Ngobeni said yesterday.

Ngobeni said the prosecutor at Protea Magistrate's Court decided not to prosecute Klipfontein, Eldorado Park, Klipspruit West Interim Democratic Civic Association members after an intimidation docket had been submitted to him.

Intimidation charges were laid after members of the organisation marched on six Eldorado Park management committee members on December 23 to deliver letters calling for their resignation.

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national strategy by the darity in their fight against
end of June, he said HIV

No case for intimidation

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22/11/91

WILSON ZWANE

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Intimidation charges were laid after members of the organisation marched on six Eldorado Park management committee members on December 23 to deliver letters calling for their resignation

DEAN NITS



ANC to meet on justice in SA's future

A FOUR-DAY conference organised by the ANC will shed further light on the need for an independent judiciary to safeguard constitutional mechanisms such as a Bill of Rights.

The organisation said this yesterday when it announced the meeting scheduled for February 1 to 3 in the Magaliesberg

"There is an urgent need to address the problems facing a future judicial system and to discuss models of legal justice

which would be appropriate for a democratic non-sexist and non-racial South Africa," the ANC said in a statement

Top of the agenda will be discussions on how a judicial system would meet the requirements of legitimacy in a new South Africa.

The conference will also deal with appointments to a constitutional court so that it is truly representative of the country's population

"The interpretation of fundamental rights and liberties, and the exercise

of judicial review, is more than an exercise in literal interpretation. Notwithstanding notable exceptions, the judiciary in South Africa has not shown whether it can meet the challenge of this new role," the ANC said

Among the participants are Mr Justice Crabbe from Ghana, Mr Justice Dumbutshena from Zimbabwe and Mr Justice Ehgawathi from India.

ANC deputy president Nelson Mandela will open the conference on February 1 - *Sapa*

Sowetan 22/1/91

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by troops on the Latvian
23/1/91

Court defence for the poor

PRETORIA — The Legal Aid Board is to appoint 10 public defenders to represent "indigent accused" in the Johannesburg magistrates' courts from June 1 in an experiment in public defence, LAB chairman Mr Justice C F Eloff said yesterday.

He said a steering committee had been established to monitor the R2,5-million experiment which would operate for two years, initially only in Johannesburg's lower courts. More public defenders would be appointed if the scheme was successful. — Sapa

Patrick Laurence looks at the Harms Report through the Kriegler prism

The shifting sands of truth

87w 23/11/91

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LOTHAR Neethling, the police general who was found to be a mendacious witness by Mr Justice Johan Kriegler, was not the first policeman to have lied to a judge in the ongoing "death squad" saga.

No fewer than three policemen, one of them a brigadier, lied to Mr Justice Louis Harms during his investigation into political killings last year.

Mr Justice Harms, however, found that the police did not operate a death squad at Vlakplaas, a farm outside Pretoria, as alleged by three ex-policemen in testimony before him.

Mr Justice Harms remarked in his controversial report, released last November, that the central issue before him was to assess the credibility of the accusers against that of the accused.

The accusers were three ex-policemen, Dirk Coetzee, Almond Nofemela and David Tshikalanga, he accused were upper-echelon police officers in general and policemen at Vlakplaas in particular.

Mr Justice Harms exonerated the police from blame for political

killings. His conclusion contrasted with his finding that the secret military unit, the Civil Co-operation Bureau, "arrogated to itself the powers to try, to sentence and to punish persons".

When the report was released, his exoneration of the police was challenged by political activists on the Left, by friends of murdered activists and by human-rights lawyers.

Mr Justice Kriegler's judgment, in which he rejected a R1,5 million defamation claim by Lieutenant General Neethling against Vrye Weekblad and Weekly Mail, re-focused attention on the policemen who lied to the Harms Commission.

In their testimony before Mr Justice Harms, Mr Coetzee and Mr Nofemela spoke about a police cross-border raid into Botswana in November 1981; they told the commission they were accompanied by Joseph Mamasela, a Soweto man recruited by the police first as an informer and then as a member of the Vlakplaas counter-insurgency unit and/or death squad.

Their evidence was emphatical-

ly denied by three policemen Sergeant Mamasela, Captain Jan Coetzee, who succeeded Dirk Coetzee as commander of the Vlakplaas unit, and Brigadier Willem Schoon, the security police officer who headed C1 or ANC and PAC desk.

As Mr Justice Harms put in his report, police witnesses "denied these allegations to a man".

Sergeant Mamasela insisted he had not met Dirk Coetzee and Mr Nofemela until he was transferred to Vlakplaas in 1982 and that therefore he could not have gone with them on the raid into Botswana.

He was supported by Captain Jan Coetzee and Brigadier Schoon, who told the Harms Commission it was police policy to keep the identities of their informers secret and that they would not have exposed him before he joined the police in 1982.

But Botswana border records were presented to the commission showing that three men crossed the border on November 26 1981, the date on which the raid took place. The men were Dirk Coetzee, Joseph Mamasela and "An-

derson Gunede", the alias used by Almond Nofemela.

A check on their car number, FZR 593, showed it was registered in the name of the South African security police.

The target of the raid was an ANC supporter, Lillian Keagle, a woman staying at her house in Gaborone, Joyce Dipale, told the Botswana police what happened that night.

There was a knock on the door when she opened it she was greeted by a burst of gunfire. She was wounded. She saw that one of the attackers was white and two black. She identified one of the black men as Joseph Mamasela.

Mr Justice Harms found that Sergeant Mamasela and his supporters in the police had lied. As he somewhat discreetly put it, their denials were false.

His finding, however, did not lead him to deduce that the police were involved in a more general cover up or — in the words of Mr Nofemela — that they were implicated in a bigger "well-organised lie".

At the time the Independent Board of Inquiry into Informal

Repression expressed incredulity and outrage at Mr Justice Harms's finding.

"It (the Harms report) avoids the issues and shows a reluctance to pass judgment on senior policemen involved in a conspiracy to cover up the activities of the squad," the board declared.

"If the act of going into a neighbouring independent country to attack a house with intention to kill and injure is not the act of a hit squad then (we are) at a loss to understand what is."

Mr Justice Harms's exoneration of the police was based, in part, on his rejection of Dirk Coetzee's testimony as a whole and, more specifically, in relation to General Neethling.

Mr Coetzee identified General Neethling as the person from whom he obtained poison and "knockout drops," on no fewer than three occasions, to eliminate two captured ANC men, Peter Dhlamini and Vusi Mavuso.

Mr Justice Harms rejected Mr Coetzee's evidence on General Neethling and the Dhlamini and Mavuso murders for two reasons. It was "flatly denied" by the po-

lice and it was "riddled with numerous inherent improbabilities". Last week, however, Mr Justice Kriegler characterised General Neethling as an evasive witness who tried to mislead the Harms Commission and the court over which he, Mr Justice Kriegler, presided and who had failed to pierce the web of evidence drawn around him with the truth.

Where Mr Justice Harms found Mr Coetzee to be a man of "strong psychopathic tendencies" with "deep grudge against, and hatred for, the SAP, Mr Justice Kriegler came to a diametrically opposite conclusion. Mr Coetzee's testimony to the Harms Commission, and his reactions to the grueling cross-examination by police lawyers, were "wholly believable in all aspects."

The question posed by the Kriegler judgment is whether the balance of truth has now shifted away from the accused, the police hierarchy, in favour of their accusers, the trio of ex-policemen. Patrick Laurence is a special writer on The Star and author of the book, "Death Squads, Apartheid's Secret Weapon". □

Man sues for R20 000 for 'kaffir' insult

Soweto
23/11/91
252

A PRETORIA freelance court interpreter has claimed R20 000 in damages from an attorney who allegedly threatened him with assault and called him "a kaffir".

Mr. Lesiba Seema, of Soshanguve, alleges in a letter of demand that the attorney, Mr Peter Kemp, threatened and called him "you k k kaffir" in his

office on October 17 last year.

Seema had gone to Kemp's office to demand money owed to him by the attorney, Seema's lawyers confirmed yesterday

Seema alleges Kemp wrongfully, unlawfully and maliciously said the defamatory words in the presence of Mr Moses Kgapola.

"The statement was made with the intention to defame the plaintiff, to humiliate him and to injure his reputation," Seema's lawyers submitted in the letter of demand

Mr Willie Sebati, Seema's lawyer, yesterday confirmed they had issued summons against Kemp claiming R20 000 in damages

Alexandra group backs legalised people's courts

WILSON ZWANE (252)

THE Alexandra Civic Organisation (Aco) would negotiate with government for the legalisation of people's courts, Aco president Moses Mayekiso said in Johannesburg yesterday.

Mayekiso said the "negative" reaction of Alexandra residents to the "white" judiciary and concerns about the escalation of crime in the township had prompted his organisation to resolve to establish community-oriented courts

He was speaking at a Press conference called to announce Aco's programme of action - Operation Khanyisa. 8/10/91 23/11/91

"These community courts will follow democratic principles and, unlike kangaroo courts which were often constituted at the whim of individuals, will be controlled by a body of adults and follow the rules laid down by the community

"We will negotiate with government for the legalisation of these community courts and we will approach the law faculty at Wits University to help us train people who will be involved in these courts," he said

Alexandra lawyers would also be used in the people's courts, Mayekiso said

Mayekiso also announced negotiations for the joint ownership with Putco of a new bus company, the Alexandra People's Bus Company, were at an advanced stage.

The community, including taxi associations, had undertaken to raise R250 000 towards the joint venture, he said, adding that the new bus company was expected to start operating on March 1.

Vosloorus residents face power cut-off

8/10/91 23/11/91

THEO RAWANA

THE Vosloorus Town Council has threatened to cut off electricity supplies to its residents next Tuesday.

Town Clerk George Prinsloo, who said last week the residents were R23m in arrears, said yesterday consumers had not responded positively to appeals for payment.

"The provision of electricity services in an area will be resumed only when, according to meters read, more than 50% of the residents ... have paid their current accounts for the month concerned," Prinsloo said in a statement.

"Electricity supply to non-payers will then be discontinued on an individual basis," Prinsloo said. Termination or curtailment of other services for which payment had not been received was also being considered.

Prinsloo said last week the township owed Eskom R6.3m. There has been a rent and service charges boycott in the township since July.

Vosloorus Civic Association spokesman Keith Montsisi said he was surprised that Prinsloo had made such an announcement after they had held talks last week and arranged for further talks this morning, which would include the Vos-

loorus town treasurer and management committee

Montsisi said. "It appears that the town clerk speaks with two tongues and is negotiating in bad faith. He arranges a meeting for today and then tries to intimidate the residents into paying through the Press

"When he calls on people to pay, he should tell them how much and what tariffs have been agreed to, because he knows the current tariffs have been rejected by the residents.

"The last mayor and the present one have gone on record to say the meters were running too fast, far in excess of what the people should be paying"

Montsisi said the people insisted that money paid should be monitored by a committee appointed by the civic association and the council

"People want payment to be directly to Eskom for electricity, the Rand Water Board for water and Boksburg Town Council for other services"

The civic association had suggested a flat rate of R50 a month for two months for electricity, water, sewerage and sewage removal

Public defenders to launch 'experiment'

PRETORIA - The Legal Aid Board would appoint 10 public defenders to represent "indigent accused" appearing in the Johannesburg Magistrate's Courts from June 1 in an experiment in public defence, board chairman Mr Justice Eloff said yesterday

He said a steering committee had been set up to monitor the system, which would operate for two years. It would initially be confined to Johannesburg's lower courts (252)

It was hoped the public defender system would help many of the more than 80% of people who now appeared in court undefended

Public defenders would initially appear only for people charged with serious criminal offences. The board has provided R2.5m - Sapa

Part five in

Scheepers said the anti-intimidation programme would include increased police actions together with assistance from the public

He said the police had been given strict instructions to ensure that provisions of the Intimidation Act were "vigorously" enforced and intimidators dealt with in terms of the law

Lashing out at the programme of mass action planned by the ANC, Scheepers said mass action in whatever form often resulted in attacks on police and town councillors and the intimidation of law-abiding citizens.

Acts of mass action "inevitably lead to violent confrontation", he said, adding that the public should not become "entangled in situations which could result in injury or even death"

Scheepers called on the public — particularly victims of intimidation — to assist the police so that the law could take its course

DP constitutional affairs spokesman Denis Worrall said yesterday the DP was

CP

In a statement released in Pretoria, CP Planning and Provincial Affairs spokesman Jan Hoon responded to a remark made by the Civic Association of Southern Transvaal (Cast), stating it would in future exert direct pressure on white councils to force councillors to resign.

Hoon said a proper contingency plan was needed to ensure the safety of white councillors and their families.

Meanwhile, WILSON ZWANE reports that Cast assistant general secretary Cas Coodavia has welcomed a recent decision by a senior Soweto prosecutor not to prosecute seven civic leaders for alleged intimidation of Eldorado Park councillors

Coodavia said he was happy with the prosecutor's decision as "it justifies our statement that our members did not break any law by delivering the letters of demand to the Eldorado Park councillors".

Intimidation charges were laid after the seven civic leaders marched on December 23 to deliver letters to six Eldorado Park management committee members calling for their resignation

Alexandra group backs legalised people's courts

WILSON ZWANE (252)

THE Alexandra Civic Organisation (Aco) would negotiate with government for the legalisation of people's courts, Aco president Moses Mayekiso said in Johannesburg yesterday

Mayekiso said the "negative" reaction of Alexandra residents to the "white" judiciary and concerns about the escalation of crime in the township had prompted his organisation to resolve to establish community-oriented courts

He was speaking at a Press conference called to announce Aco's programme of action — Operation Khanyisa

"These community courts will follow democratic principles and, unlike kangaroo courts which were often constituted at the whim of individuals, will be controlled by a body of adults and follow the rules laid down by the community.

"We will negotiate with government for the legalisation of these community courts and we will approach the law faculty at Wits University to help us train people who will be involved in these courts," he said

Alexandra lawyers would also be used in the people's courts, Mayekiso said

Mayekiso also announced negotiations for the joint ownership with Putco of a new bus company, the Alexandra People's Bus Company, were at an advanced stage.

The community, including taxi associations, had undertaken to raise R250 000 towards the joint venture, he said, adding that the new bus company was expected to start operating on March 1

'East Bloc' doctors to work in SA

ABOUT 90 SA doctors trained in Cuba and the East Bloc are expected to be allowed to practice in SA after changes are made to the SA Medical and Dental Council's rules

SAMDC registrar Nico Prinsloo said yesterday the council's executive committee was considering a proposal by a joint working group consisting of a range of medical organisations to allow the exiled doctors to work locally, although their qualifications are not recognised here

Members of the working group were drawn from the Medical Association of SA (Masa), National Medical and Dental Association

TANIA LEVY

(Namda), the SA Health Workers Congress and the Overseas Medical Graduates Association (Omega) — the first time all of these organisations have co-operated at such a level

Namda publicity officer Dr Fazel Randera said the working group had proposed temporary registration and a year's evaluation period for the doctors

Randera said other doctors who qualified overseas were required to work for two or three years in provincial hospitals and write an examination before they could be registered

The organisations have proposed that testing not be necessary after the evaluation period

Randera said a joint statement would be released once the SAMDC had reached a decision.

The SAMDC executive committee meets again in March but Prinsloo said he hoped a ruling would be made as soon as possible.

The doctors were not expected to alleviate the shortage of doctors in provincial hospitals, said Prinsloo

A Masa spokesman confirmed the organisation had participated in the working group but declined to comment further

Muntu Myeza inquest

THE inquest into the death of former Azanian Peoples Organisation defence secretary Mr Muntu Myeza will be held in Bloemfontein on Tuesday. *Sowetan 24/11/91*

However, Azapo said yesterday the Myeza family had received a letter saying their attendance was not necessary.

After receiving the letter, the family informed Azapo which then contacted its lawyers to reverse the position.

Myeza died in a mysterious car accident on July 3 last year on his way from Bloemfontein to Johannesburg.

Azapo said at the time that the organisation did not rule out the possibility of foul play.

Legal aid ⁽²⁵²⁾ for the poor

THE Legal Aid Board is to appoint 10 public defenders to represent indigents appearing in court as an experiment in public defence, LAB chairman Mr Justice CF Eloff said this week.

He said a steering committee had been established to monitor the R2,5 million experimental system which would operate for two years from June 1 and would initially be confined to Johannesburg's lower courts.

Should the experiment succeed, more public defenders will be appointed, Eloff said.

More than 80 percent of people appearing in the lower courts have no representation because they cannot afford it.

Public defenders will initially appear only for people charged with serious criminal offences.

The LAB steering committee plans to recruit well qualified attorneys and advocates - Sapa.

11/11/91
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New call for 'hit squad' probe

Sowetan 24/11/91
THE African National Congress has appealed to the Government to reopen investigations into alleged hit squads in view of the Supreme Court judgment in the General Lothar Neethling court case against two weekly newspapers.

In a statement yesterday, the ANC lamented that many officers allegedly involved in hit squad operations were retaining their high ranks in the security forces.

Mr Justice JC Kriegler on Friday in the Rand Supreme Court rejected a claim by Neethling, former police forensics chief, that he had been defamed by reports in *Vrye Weekblad* and the *Weekly Mail* implicating him in the alleged squads.

"In the public interest, we call on President De Klerk to institute a fresh commission of inquiry into the hit squads that exist both within the SA Police and the South African Defence Force," the ANC said.

It also urged De Klerk to order the arrest of top officials implicated in the Harms Commission's investigation.

Meanwhile, The SAP is to appoint its own legal team to urgently investigate "all aspects" of last week's judgment.

Announcing the decision yesterday, the Commissioner of Police, General Johan van der Merwe, said in a statement the "contradictions" between Mr Justice JC Kriegler's judgment and the findings of the Harms Commission would also be investigated.

The police legal team would also advise the SAP, "before further steps are decided upon", Van der Merwe said.

"Without such advice it is not possible for the police to make a just and honest decision or to comment further."

The police were aware of the seriousness of the situation and realised that it would be in the public interest if a decision was made as soon as possible, Van der Merwe said, adding this would be done "within a few weeks". - *Sowetan Correspondent*.

Government committee backs AIDS education

18/2004 24/1/91

CAPE TOWN — A government committee on AIDS prevention has given strong support to an AIDS education programme for schools

This was announced by the National Health Department after yesterday's first meeting of the inter-departmental committee, representing 16 departments, provincial administrations and the three own affairs administrations

The department said the committee had called for a national workshop on AIDS for educationists at the earliest possible date, possibly mid-February

This was in addition to the nationwide survey the department would conduct to determine young people's attitudes to AIDS and sex

Committee chairman Coen Slabber said all departments at the meeting committed themselves to help in the co-ordination of the national AIDS campaign and AIDS prevention ac-

BILLY PADDOCK

activities within their departments
Before the next meeting of the inter-departmental committee on May 14, each participating department would submit a strategy document to National Health outlining its internal plans, as well as ways in which they could contribute to the national programme, he said

Workshop

All the departments also committed themselves to examining their financial responsibilities in combating AIDS

Department of National Health psychologist Dr Manda Holmshaw said the committee decided it was necessary to introduce the prevention training package into the educational system because "children have not yet established their sexual behaviour patterns and should be seen

as important target groups for intervention"

The committee decided a national educational workshop, to be held in mid-February, would form the basis for the research and development of the AIDS training package

Asked how pupils could be educated on AIDS prevention, given the controversy over sex education in schools, Holmshaw said it would have to be done within the context of teaching life skills

In the latest figures on the disease, released after the meeting, Johannesburg was shown to have the highest incidence of reported cases of AIDS in the country

The figures, based on data supplied by the SA Institute of Medical Research, show that since 1982, of the 613 cases reported, 211 were from Johannesburg, with 124 of those people dying. The total number of reported cases in the Transvaal was 314

New death squad inquiry call

Business Day Reporter

THE ANC yesterday demanded a fresh commission of inquiry into SAP and SADF death squads in the light of Lt-Gen Lothar Neethling's failed defamation action against the Vrye Weekblad and Weekly Mail newspapers

Mr Justice J Kriegler last week accepted testimony by former police captain Dirk Coetzee about the role he played in killing "enemies of the state" and described him as a credible witness

The ANC yesterday claimed that death squads still existed in the SA Police and the SADF. It also alleged that "askaris" continued to act above the law and had kidnapped ANC members at gunpoint around the country. It demanded the arrest of people implicated in the judgment

The ANC said the "askari" base at Vlakplaas has remained fully functional

In the light of Mr Justice Kriegler's judgment, the Harms Commission "lies in tatters" and the report was "not worth the paper it's written on"

"The continued use of death squads

bodes ill not only for the whole peace process, but for stability that is so essential for reconciliation and progress towards a free and democratic SA

"The ANC is therefore forced to the conclusion that units such as the death squads and askaris operate with the highest authority of the SA government, and form part of a continued destabilisation policy of the ANC and of the peace process"

Meanwhile, police decided yesterday to appoint their own legal representatives to "urgently analyse all aspects" of the Neethling case and advise the SAP

Police Commissioner General Johan van der Merwe said in a statement that, without legal advice, it was not possible for the police to take a reasonable and fair decision, nor was it possible to comment further

"The police realise the seriousness and urgency of the matter and that they should act as quickly as possible, and this will happen within the next few weeks," Van der Merwe said

Govt invites input on people's courts

PATRICK BULGER

THE Justice Department has invited the Alexandra Civic Organisation (ACO) to submit recommendations on professional people's courts

A department spokesman, reacting to a statement by the organisation that it would negotiate with government on setting up "community courts", said steps had been taken to make the judicial process more accessible at a local level

"There are also other measures in the pipeline of the legislation process that will bring the administration of justice to communities. We welcome the ACO's recognition of the fact that people's courts have become discredited and have fallen into the hands of ill-disciplined activists

"There is no point, however, in each and every organisation promoting separate court systems. The ACO is invited to co-operate with the authorities to ensure that ideas are harmonised in the reform process — also of our courts," the spokesman said

● Comment: Page 6

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Mandela to open legal indaba

South 29/1 - 30/1/91
From Mono Badela
Johannesburg

ANC deputy president Mr Nelson Mandela will officially open a constitutional conference in Magaliesberg next Friday.

The four-day conference, organised by the ANC legal and constitutional department in collaboration with the Centre for Applied Legal Studies of Witwatersrand University, will shed light on the need for an independent judiciary to safeguard constitutional mechanisms such as a Bill of Rights

Democratic

"There is an urgent need to address the problems facing a future judicial system and to discuss models of legal justice appropriate for a democratic, non-sexist and non-racial South Africa," Mr Zola Skweyiya, head of the ANC's legal and constitutional department, said in an interview

According to Skweyiya, the conference will discuss how a judicial system would meet the requirements of legitimacy in a post-apartheid South Africa

The conference will also deal with

appointments to a constitutional court so that it is truly representative of the country's population

"The present judiciary is unrepresentative of the racial, ethnic, sexual or class composition of our society. Accordingly, it may lack legitimacy and may lack an understanding of the social reality experienced by South Africans," Skweyiya said

"The interpretation of fundamental rights and liberties, and the exercise of

judicial review, is more than an exercise in literal interpretation. Notwithstanding notable exceptions, the judiciary in South Africa has not shown whether it can meet the challenge of this new role," he explained

Top legal experts from other parts of the world will participate in the conference

Local participants include Advocate Arthur Chaskalson and Advocate Pius Langa

Zola Skweyiya

R30 000 bail for AWB man

ONE of three members of the Afrikaner Weerstandsbewing and the Orde van die Boerevolk facing seven charges of murder and 27 of attempted murder has been granted bail of R30 000.

Mr Eugene Marais (28) had appeared in the Durban Magistrate's Court with Mr Petrus Botha (46), alleged commandant of the AWB in Richards Bay, and Mr Adriaan Smuts (38), alleged to be "veldkornet" in the AWB.

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Bus

The State alleges that on October 9 last year they drove from Richards Bay to Durban and followed a Putco bus with black passengers.

At Avaco they overtook the bus and started firing at it with AK-47 and FN rifles, killing seven men, including the driver, and injuring 18 other people. - Sapa.

Gen Neethling takes a walk on the Wilde side 252

W/May 25/11 - 31/11/91
Both Oscar Wilde and General Lothar Neethling went to court when they felt they had been slandered. Both ended up with egg all over their faces.

By GAVIN EVANS

OSCAR WILDE featured prominently at the *Vrye Weekblad's* victory celebration on Friday.

But it was not his famous epithets which were on the revellers' lips. The reference was to Wilde's misfortune in leading with his chin in suing for libel, and finding himself behind bars after losing.

"Neethling should have thought about the Oscar Wilde case before starting this one," quipped a Johannesburg advocate.

"Hmm. Oscar Wilde and General Lothar Neethling. Now there's a thing," a colleague from the sidebar mused.

Nearly 100 years ago the Marquis of Queensberry accused Wilde of immoral deeds. Wilde's high-profile law suit was a disastrous failure — resulting in him being charged, convicted and imprisoned for sodomy.

Neethling, of course, was effectively accused of attempted murder, not of immorality. And far from being imprisoned he is still in his job as the head of the police laboratories. But the effect of losing the case is devastating to the general — and considerably more so to those surrounding him.

He had started out in South Africa under humble circumstances: a German orphan raised by a conservative Afrikaans family after his parents were killed in the war.

Yet he had risen to the pinnacle of two professions. A respected scientist occupying the number two position in the nation's police force. He had the respect of cabinet ministers and police commissioners.

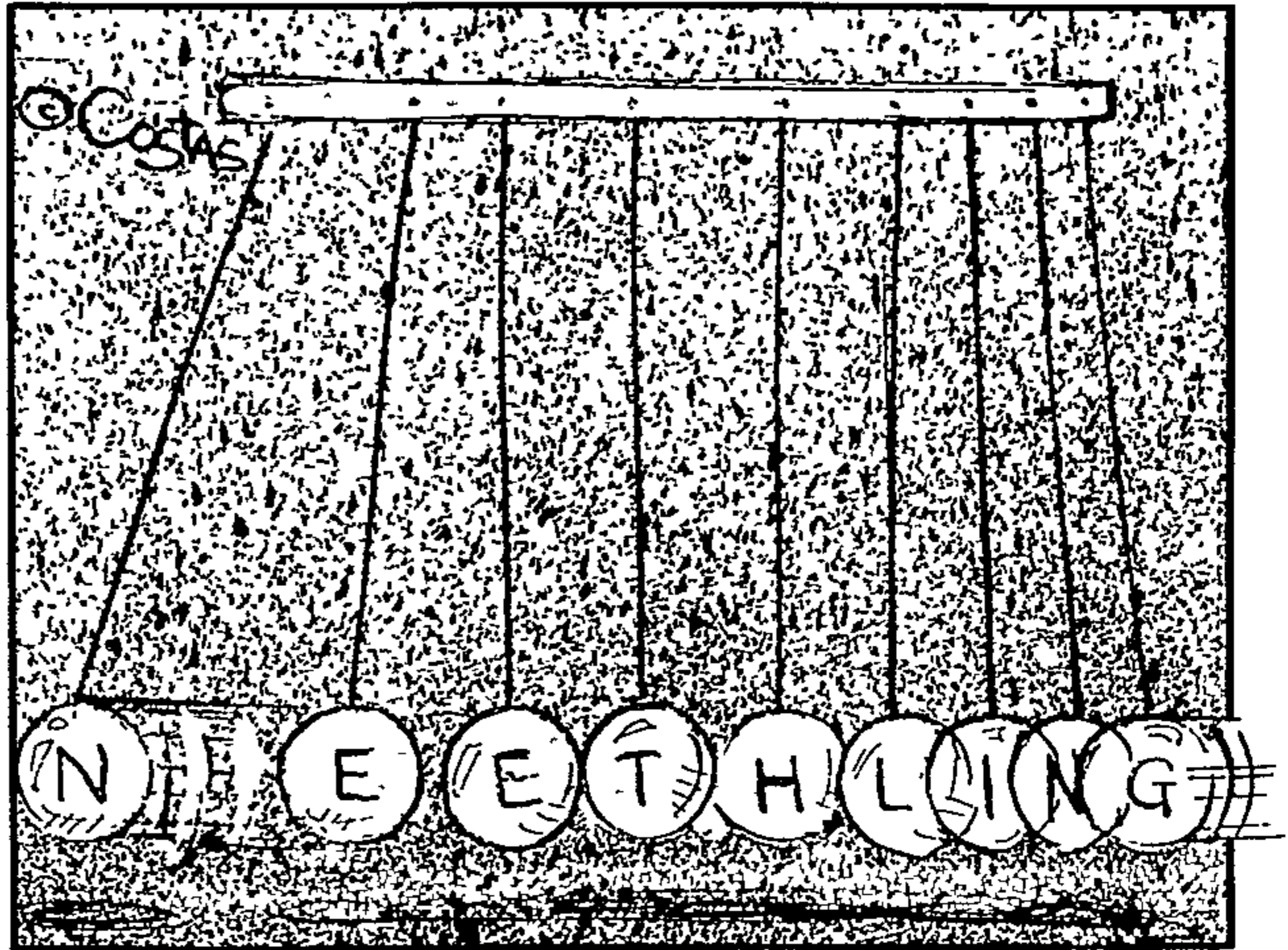
Then an erstwhile underling accused him and many others of being cogs in an assassin's wheel. The general, Dirk Coetzee noted, was a fairly central cog — the man who supplied the poison (in this case intended for the murder of a recalcitrant Askari policeman, and an unco-operative African National Congress member).

He showed in the witness box he was a man who liked order, and hated contradiction. He forbade his wife from wearing Bermuda shorts. He was irritated when his Rottweiler was called a Doberman.

So when the upstart Afrikaans weekly, *Vrye Weekblad*, published Coetzee's story he was incensed. He wanted his pound of flesh and demanded a cool million from them, though precedent suggested even if he won, the award would at best be in the tens of thousands. And, though several other newspapers repeated the allegations, he picked out *The Weekly Mail* for R500 000.

At lunch on day one of the judgment, Neethling was heard saying that the judge was making a precedent — though it was not clear whether he was referring to the law or the amount of damages.

His close friend, former police commissioner General Mike Geldenhuys, and other colleagues looking pleased. Yet the pre-



cedent made was not to their liking.

On the legal level *The Weekly Mail* decision may have significantly broadened the defences against defamation suits.

Perhaps more importantly, on the factual level, a man recently appointed as an acting judge of the appellate division had found a man at the top of the SAP to be a poisoner.

Bombshell after bombshell hit the brass. Neethling lied to the Harms Commission. He lied to the supreme court. He deliberately misled both. He had the gall to alter his Harms evidence, even as he was reading it to the court.

And yes, Coetzee and the *Vrye Weekblad* were telling the truth.

Mr Justice Kriegler's finding on the veracity of the defence witnesses' accounts also suggests several other top officers were involved in criminal activity. Even Geldenhuys was fingered for his "remarkable lapse of memory" — with the judge noting the alternatives were that he was "deaf and blind" to the actions of his subordinates, or did not know of their activities, or "must have preferred not knowing about them".

The judgment was met with a stunned silence by Law and Order Minister Adriaan Vlok and the police.

At the time of writing Vlok has still not responded, and police commissioner General Johan van der Merwe said that without legal advice it was not possible for the police to take a reasonable and fair decision, and it was also not possible to make further comment. The police will appoint their own legal representatives to analyse the case before any steps are taken against Neethling.

After the judgment the SAP took a battering from all sides — with the Harms Commission's police clearance coming in for particular punishment.

The *Sunday Times* put it hardest and clearest in an editorial headed "Murderous State" "So it's true. The death squads do

exist. The police do use poison. General Lothar Neethling has been found by a judge of the supreme court to have misled the Harms Commission, whose work is in shreds," it began.

And it went on to note. "The SAP like the SADF, has become a degenerate organisation, the haven of gangsters", adding that the "murderers of the state" must be brought to trial.

The judgment may provide the ANC with a powerful lever in its negotiations with the government. Its response noted that the court's finding about the presence of "hit squad" individuals in the SAP hierarchy, "goes a long way to explain the present level of violence pervading our country", and called for the arrest and prosecution of Schoon, Louis le Grange and others.

It concluded that "units such as the death squads and Askaris operate with the highest authority of the South African government", and were part of a strategy to destabilise the ANC and the peace process.

Though some have suggested the judgment is likely to be welcomed by President FW de Klerk, this may be wishful thinking.

The Harms Commission gave General Magnus Malan several sharp slaps on the wrist — more than enough to justify his summary dismissal. Yet, perhaps not wishing to upset his security forces at a delicate time, De Klerk chose to respond as though it gave his defence minister a clean bill of health.

With the Kriegler judgment he could use the opportunity to crack the bad eggs in his police hierarchy and pull in the reins. Or he could limit the shake-up to those directly implicated, and ignore the rest. Or he could leave things as they are and let Vlok say, "wait for the 1992 appeal".

Whatever happens, the balance between trying to keep the police brass on his side and trying to build public confidence in his police force will be hard to maintain.

FM 25/1/91

ON THE ISLAND

mickry, De Klerk would be applauded for his efforts even if few accepted the offer

This would have two effects. It would undermine the moral defensibility of the ANC's current strategy to smash local au-



De Klerk can he match last year's speech?

thorities and intimidate government through mass action and draw the spotlight away from its demands for an elected constituent assembly to negotiate a new constitution. It would also weaken arguments for the retention of sanctions and their application in practice.

The focus could then return to efforts to reach consensus on the process of negotiation. The ANC would be compelled to bend particularly if, in any case, attempts at true mass action fail or lead to more violence. The ANC's dwindling audiences at rallies tell one kind of story, and the unthinking support of certain influential members, such as Winnie Mandela for Iraqi President Saddam Hussein, foreshadows a limit to Western tolerance for all-or-nothing politics in SA. ■

THE NEETHLING JUDGMENT

BELIEVING COETZEE

The Harms Commission into alleged death squads cost the taxpayer R12m. It said there weren't any such squads. So perhaps having to cough up a further R1m-R2m for the legal costs of a police general who lost a defamation action may seem small beer. However, the general is SA's number two policeman and stands accused of having misled two judges and of having distributed poison to kill opponents of Pretoria — of having con-

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nived with death squads, in other words. At the heart of his now celebrated judgment involving Gen Lothar Neethling, *Vrye Weekblad* and *Weekly Mail*, Judge Johan Kriegler said Neethling — head of the SAP's forensic laboratories — was a lying (*leuenagtige*) witness. He had misled Judge Louis Harms and sought to mislead Kriegler. Moreover, the key damning evidence of former police captain Dirk Coetzee — "an unattractive person," Kriegler found — was accepted above that of Neethling.

Neethling has given notice of appeal, but there looms the question of who will foot the final bill, estimated by lawyers acting for *Vrye Weekblad* and *Weekly Mail* at somewhere between R1m-R2m.

Law & Order spokesman Leon Mellet referred the *FM* to the office of the State Attorney when he was asked about costs. At that office, the *FM* was told Neethling had his own attorney who instructed counsel and "that the matter rests with Neethling, his attorney and his department." Neethling's attorney, Ari Kanichowsky, was not available for comment at the time of going to press.

It was initially reported that Neethling's costs would be carried by the State unless it was found he had acted irregularly, as Kriegler's judgment states he does. Neethling would have been enriched in his personal capacity if Kriegler had granted him the R1.5m he claimed for defamation by the newspaper articles linking him to death squads.

The judgment leaves a stain on at least one other career: Prosecuting and cross-examining witnesses before the Harms Commission, Free State Attorney-General Tim McNally failed to reveal the evidence which lawyers for the two newspapers had accumulated — and were able to use to convince Kriegler — that death squads *had* existed and that Neethling's role had not been as innocent as he protested it was.

When Neethling told Harms that Coetzee must have seen a British TV programme, *Dispatches*, in which Neethling's house had been shown, the commission neglected to look at the video to verify or negate details. Attorneys from Bell Dewar & Hall (for the newspapers) did just that and found that Coetzee could not have described Neethling's house merely from looking at the video. Armed with a court order, they visited Neethling's house and corroborated Coetzee's evidence.

While McNally and, it seems, Harms as well, accepted police evidence as gospel, attorneys for the defendants queried and subpoenaed security police dockets and files. Coetzee's evidence was corroborated time

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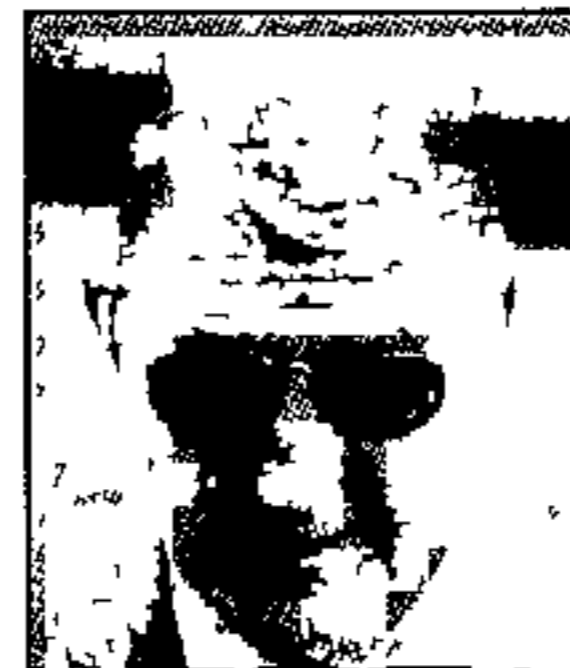
CURRENT AFFAIRS FM 25/1/91

and again McNally and his team had failed to move in the right direction instead Coetzee was painted as an insulin-dependent character (because of his diabetes) who had a grudge against the police from whose ranks he had been discharged

Neethling's position must be in question Should his appeal fail, there should be no



Kriegler



Neethling

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doubt in the mind of Law & Order Minister Adriaan Vlok that the general should be dishonourably discharged — and, on the strength of Kriegler's judgment, charged as an accomplice to murder

Meanwhile, pending an appeal, as the government-supporting *Beeld* said in an editorial on Monday, Neethling should at least withdraw from his work In fact, on Monday, he was back in his laboratories ■

BY CARMEL RICKARD

THE widely-hailed decision in the Neethling case, which could see heads roll if the politicians act on the finding, also has important legal implications.

But the outcome is puzzling because it apparently contradicts the findings by another judge — Mr Justice Harms who headed a judicial commission into hit squads.

The question being asked is whether the courts are divided on the outcome, and on the reliability of former security police officer Dirk Coetzee and police general Lotha Neethling.

Apparently not. Lawyers said this week that the first investigation into the hit squads, the judicial inquiry headed by Mr Justice Harms, was governed by different rules to those of the defamation trial heard by Mr Justice Krieger.

There is no reason why the findings should be the same, since the information available to each, despite significant overlap, was different.

For example, the rules of evidence in a commission of inquiry differ from those in a trial and witnesses can refuse to answer certain questions without committing contempt. Witnesses at the Harms Commission refused to answer certain

Harms hamstrung by inquiry rules

Until this trial it had not been clear whether a newspaper, sued for defamation, had to shoulder full onus or the less heavy "evidentiary burden".

If the former, the paper would have to convince the court that every issue had been satisfied in its (the newspaper's) favour. And even if the court still did not know which of the two versions to believe, the paper would have failed, since full onus implies it should convince the court the person suing was wrong.

On the other hand a newspaper in such a case might be required only to satisfy an "evidentiary burden", a far easier test and in this case, should the court not know who to believe, the paper would win, as the responsibility for convincing the court under such a test lies with the plaintiff.

Media lawyer Mark Rosin, who appeared for the *Vrye Weekblad* and *The Weekly Mail* explained that in the past there had been confusion over which level of proof a newspaper had to satisfy in a defamation action.

Obviously there was a significant difference between the two and it was in the interests of the media that the issue should be resolved. Mr Justice Krieger decided that the press bore the easier "evidentiary burden".

The second question was that of public interest and the circumstances under which public interest could outweigh possible damage to someone's reputation.

This issue was also dealt with by Mr Justice Krieger. He warned he did not wish to set "a dangerous precedent", but that if the right of members of the public was so great that they were entitled to certain information in order to make informed political decisions, and if they were given enough other corroborative material in the article to substantiate the defamatory allegation, then the right of the public to know outweighed the possible damage to the reputation of the person suing.

The judge said this would not apply to every defamation action, but to exceptional circumstances only.

Rosin explained this meant the judge would look at the facts and the corroborative material and then decide whether it was a case in which the public interest and the right to know was more important than the plaintiff's right not to be defamed.

He commented that this was unlikely to be accepted by the courts as a "regular defence".

However, the principle established in the ruling "is still very important".

Commenting on the issue, the acting head of the department of public law at Natal University, Karthe Gouwer, said the legal points decided by the judge were important as they appeared to form part of a new move among the country's judiciary to increase the accountability of government officials.

The judgement has also been welcomed by lawyers who say it is an important victory for press freedom.

Argument for leave to appeal will be heard in April but it is not yet known which issues Neethling wants to challenge — the factual findings that he misled the court while Coetzee was believed, or the technical legal issues.

Rosin said he believed the legal issues alone were of such importance to the media that it was likely the AD would be called upon to settle the issue in a judgement which would then be binding on the whole country.

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questions, thus limiting the information available to the judge.

The evidence presented to the two judges also differed. To cite just one example, it was claimed at the Harms Commission that Coetzee could have obtained certain information about Neethling's house from a video. This claim was not tested at the commission but the trial court viewed the material and discovered that the information provided by Coetzee was not visible on the video.

As a result the Harms Commission was hamstrung through not having access — sometimes because it did not allow itself this access — to the same material as Mr Justice Krieger.

The Krieger judgment involved a controversial finding on the facts — that Coetzee's allegations were probably correct and that Neethling had led and misled the court.

But it also turned on two significant legal points, dealing fully with the question of the nature of the onus on the media in a defamation case, and with the question of public interest.

Top jurists for talks on S Africa law

Sowetan 25/1/91

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THE legal and constitutional committee of the ANC and the Centre of the Applied Legal Studies at the University of the Witwatersrand will co-host a conference on the subject of a constitutional court for South Africa.

In a statement yesterday, the ANC said the event would be held from February 1 to February 3 at the Valley Lodge Hotel in the Magaliesberg.

It said several eminent international jurists had been invited and those who had accepted invitations were:

Mr Justice Tarnopolsky, Canada Ontario Court of Appeals; Mr Justice Shagwati, former Chief Justice of the Indian Supreme Court; Mr Justice Lala,

Mauritius Supreme Court, former president of the UN Commission on Human Rights, Mr Justice Higginbottom, US Federal Court of Appeals

Others are Mr Justice Eso, Nigeria Supreme Court, Mr Justice Dumbutshena, former Zimbabwe Chief Justice, Mr Justice Crabbe, Ghana Supreme Court, now Professor of Law, Barbados; Professor Hans Lunshof, Netherlands; Mr Justice Moreira, Portugal Constitutional Court.

Also to attend are: Prof E Klein, Germany University of Mams; Dr Gotze, Germany Constitutional Court Secretariat; Mr Hirschfeld, Swedish constitutional lawyer, Office of the Prime Minister. - Sapa.

People's courts plan for Alex

By DON SEOKANE

THE Alexandra Civic Organisation plans to introduce "professionally-run" people's community courts and joint ownership of bus operations with Putco, ACO president Mr Moses Mayekiso said yesterday.

Mayekiso said the decision to introduce the courts was taken at a meeting of the ACO after it noted an escalation of crime in the township.

He said his organisation had noticed that police were neglecting crime prevention in the township and residents were reacting negatively to the white judiciary in Alexandra.

It was decided the alternative was for people's courts to be introduced and be run professionally.

Speaking on the organisation's blueprint for the transfer of power to the people, called "Operation Khanyisa", Mayekiso claimed the Centre for Applied Legal Studies at Wits University had agreed to train people in the community to staff and run the courts during weekends.

Mr Edwin Molahlegi of the CALS confirmed yesterday they were negotiating with the ACO for a pilot project of people's courts but said they had not worked out details. He said the court would only be confined to arbitration and mediation cases.

Reacting to the formation of people's courts, Justice Minister Mr Kobie Coetsee said the Government had made progress on measures to make the judicial process more accessible on a local level.

However, there was no point for organisations to promote a separate court system, Putco's managing director Dr Jack Visser, yesterday confirmed they were holding talks with the ACO but said there were still some major issues to be discussed.

Lawyers and Wits to provide help for community court

B/Doc 25/11/91

WILSON ZWANE

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WITS Centre for Legal Studies and an association of lawyers would provide resources required in the setting up of a community court in Alexandra, Edwin Molahlehi, spokesman for the centre, said yesterday.

Molahlehi said a resource committee formed by the centre and the National Association of Democratic Lawyers (Nadel) would provide advice and training.

"The people will be trained in the mechanisms of arbitration, mediation and negotiation," he said.

The establishment of a community court was announced by Alexandra Civic Organisation president Moses Mayekiso this week as part of his organisation's Operation Khanyisa, which is set to start on March 1.

Mayekiso said the court, unlike kangaroo courts constituted at the whim of individuals, would involve trained people who would resolve community issues through the process of mediation, arbitration and negotiation.

Molahlehi said if the Alexandra project was successful it might be used in other communities "if those communities ask for this sort of assistance".

Lawyers for Human Rights (LHR) spokesman Peter Motle welcomed the idea as good, provided that "it has the consent of the Alexandra people".

In another development, Mayekiso yesterday invited Justice Minister Kobie Coetsee to an urgent meeting to discuss the setting up of community courts.

In an open letter Mayekiso said his organisation would like to meet the Minister in the first week of next month at a venue convenient to both parties.

GERALD REILLY reports the Association of Law Societies (ALS) president E M Southey as saying there was no place in SA society for people's courts or any other system of courts not recognised by the state.

However, Southey said the ALS welcomed any attempt to extend the court system to enable justice and the courts to be more accessible to the public.

The ALS believed, therefore, the concept of properly organised community courts within the established structure merited investigation. Also deserving of investigation was the notion of the appointment in magistrate's courts of black assessors with specialist knowledge.

The Department of Justice was willing, he said, to consider such ideas.

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(Republic of South Africa)
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consider such ideas.

PAC man defends Winnie

WINNIE Mandela, wife of ANC deputy president Nelson Mandela and head of the organisation's social welfare department, will be defended at her Supreme Court trial for kidnapping and assault by PAC deputy leader and advocate Dikgang Moseneke.

Mandela's lawyer, Ismael Ayob, said that appearing with Moseneke

would be prominent senior counsel George Bizos, who defended Nelson Mandela at his Rivonia treason trial in 1964, and Pius Langa.

Mandela and seven others appear in the Rand Supreme Court on February 4 in connection with the kidnapping of four boys taken to Mandela's home in Diepkloof from a Methodist manse in Soweto on December 29 1988.

There, it is alleged, she triggered a brutal assault on the boys by sjambokking them.

A few days later one of the boys, James "Stompie" Moeketsi Seipei, 14, was murdered by her unofficial bodyguard Jerry Richardson, trainer of the so-called Mandela United Football Club. Richardson was sentenced to death for the killing on August 6. — Sapa.

Public defender scheme kicks off

By CARMEL RICKARD Durban

THE country's first public defender scheme is due to get off the ground in Johannesburg on June 1 this year

Legal Aid board director Nic Pretorius said yesterday that the date had been decided after the first meeting of an historic "pilot committee" consisting of the board, the General Bar Council, the Association of Law Societies and an alliance of the Legal Resources Centres, Lawyers for Human Rights, Black Lawyers Association and the National Association of Democratic Lawyers as well as the Department of Justice

Pretorius said he was delighted that these organisations had come together and expressed their support for the scheme. They met under the chairmanship of Mr Justice

Eloff.

Pretorius said statistics indicated that only about 20 percent of all accused in the lower courts were represented in court.

The new public defender system involved legally qualified people employed full time to represent accused during trial

Legal experts have been arguing for such a system for some time, saying it has been established that such a system, where the public defender is in full-time employ, is cheaper than the existing one in terms of which the Legal Aid Board pays individual lawyers in private practice to do cases piecemeal.

Pretorius announced that the first-pilot public defender project will begin in Johannesburg on June 1 and that 10 public defenders would be employed.

Death squads' venomous trail

PATRICK LAURENCE

THE use of poison runs like an insidious thread through the tangled saga of death squads in South Africa.

The Krieger judgment in the Neethling case focused on one poisoning episode, the use of poison and "knock out" drops to kill two African National Congress men, Peter Dlamini and Vuyani Mavuso.

Mr Justice Johan Krieger found, on the probabilities, that Lothar Neethling, the police forensic chief, gave poison to Dirk Coetzee, the self-proclaimed commander of a "police death squad".

But the murder of Mr Dlamini and Mr Mavuso — who, according to Mr Coetzee, survived two attempts to poison them before they were given a soporific and shot — is but one of several occasions in which poison was used against anti-apartheid activists.

Battling

Another case concerns the baffling disappearance of Sipha Mzimkulu, a member of the Congress of South African Students. Mr Mzimkulu disappeared in April 1982, shortly after issuing a R150,000 civil damages claim against the Minister of Police. He has not been seen since.

Mr Coetzee, whose evidence was described by Mr Justice Krieger as "wholly believable," testified that Mr Mzimkulu was kidnapped and killed, and his body hidden, by police death squad operatives.

Before his disappearance, however, Mr Mzimkulu was detained in May 1981. He spent five months in solitary confinement before he was released in October of that year, apparently in good health.

But within a few days he fell seriously ill, he was crippled with severe stomach pains and his hair began to fall out. Medical tests established that he had been poisoned by thallium, an extremely rare colourless, tasteless and odourless poison. He was being treated medi-

THE JUDGES



Mr Justice Louis Harms in his report said there was no evidence to support suspicions about poison being used in political killings.



Mr Justice Johan Krieger focused on "knock out drops" to kill two ANC men which were allegedly supplied by Lothar Neethling.

THE HANDLERS



Police forensic chief Lothar Neethling, Mr Justice Krieger said, "on probabilities" gave poison to Dirk Coetzee to kill ANC men.



Former CCB Agent "Slang" van Zyl told Mr Justice Harms of a plan to murder Dullah Omar, legal adviser to Nelson Mandela.

cally at the time of his disappearance and was in the process of recovering.

Mr Justice Louis Harms said in his controversial report on political killings "Mzimkulu might have been poisoned during his detention. The poison is not freely available. It is suspicious that Mzimkulu disappeared shortly after the summons was issued."

But, he concluded, there was no evidence to support the suspicion and no finding could be made in respect of the poisoning and disappearance.

Another anti-apartheid activist who, according to Mr Coet-

zee, was poisoned was Ginzwe Kondele. Mr Kondele suffered a head injury while in detention, Mr Coetzee testified precipitating fears in the ranks of police interrogators that he might die and become a "second Biko".

A plan was thus hatched to release him and then capture and effect, Mr Coetzee attested, except that Mr Kondele was given a soporific before being shot.

In his report, however, Mr Justice Harms rejected Mr Coetzee's account as "inherently improbable and riddled with contradictions."

Frank Chikane, general secre-

26/11/91
Krieger judgment refocuses attention on use of poison *(252)*

THE WITNESS



Self-confessed hit squad member Dirk Coetzee has given accounts of several political killings in which poison featured. His evidence on one of the incidents was "wholly believable", Mr Justice Krieger found. Mr Justice Harms, on the other hand, found his evidence was totally unreliable.

tary of the South African Council of Churches, survived a sophisticated attempt to poison him in 1989. On three occasions during that year, once while he was in Namibia and twice during a visit to the United States, the Rev Chikane fell suddenly and inexplicably ill.

Thorough tests eventually established the cause traces of organo-phosphate, a highly potent poison associated with pesticides, were found on Mr Chikane's clothes. His body had been absorbing the poison from his clothes. His would-be killers were not identified. There were strong suspicions in SAACC ar-

gents, however, that they were State agents.

The attempt to injure or kill Mr Chikane was reminiscent of another poison episode. The sending in 1978 of an acid-impregnated T-shirt through the post to Mary Woods, the 11-year-old daughter of Donald Woods — the then editor of the Daily Dispatch who was active in crusading for the death in detention of Steve Biko to justice Mr Woods, who commissioned former security police officer Donald Card to investigate the matter, blamed the security police for the pusillanimous at-

THE VICTIMS



Frank Chikane, general secretary of the South African Council of Churches, survived an attempt to poison him in 1989.



The plot to kill Dullah Omar involved replacing his heart pills with substitute pills that would precipitate a heart attack rather than suppress it.

THE ACCUSERS



Leslie Lesia, a former Military Intelligence agent, gave evidence that he, too, had fetched poison from the police forensic laboratory.



Donald Woods in his book, "Biko", names policemen whom he suspects sent acid impregnated T-shirts for his daughter in 1978.

tack. He named the two policemen who he believed had put acid on the shirt in his book, "Biko".

The Harms Commission heard of another attempt to poison an anti-apartheid activist. Former Civil Co-operation Bureau agent "Slang" van Zyl told Mr Justice Harms of a plan to murder Dullah Omar, legal adviser to, and friend of, Nelson Mandela, by poisoning him.

The plan, which was reportedly approved by Mr van Zyl's superior officers in the CCB, was to take advantage of Mr Omar's pills heart ailment. Mr Omar's pills were to be replaced with ones

identical in appearance but different in effect. The substitute pills were calculated to precipitate rather than ward off a heart attack.

Evidence on the use of poison in political assassinations was heard in the Neethling case from Leslie Lesia, a former Military Intelligence agent who was called by counsel for Vrye Weekblad. Mr Lesia told Mr Justice Krieger that he, too, had fetched poison from the forensic laboratory headed by General Neethling and that he took it to Maputo for use against ANC members.

The poison was concealed in

cans of beer and bottles of brandy and vodka and he placed them in a specially built secret compartment of his car when he took it to Maputo.

He saw an ANC man, Mr Gibson Ncube, drink the poisoned beer at the Maputo house of a man identified as Sipho Mr Ncube died shortly afterwards.

Mr Justice Krieger found that Mr Lesia had been a credible witness. He could not, however, make a finding on whether Mr Lesia had visited the forensic laboratory in Silverton, Pretoria, or whether Mr Ncube had died of poisoning after drinking the beer.

In general terms, however, Mr Justice Krieger found Mr Lesia's evidence that poisoning was widely used as an assassination weapon during the 1980s, when the war against the ANC at its height, was not implausible.

At the time the war was portrayed as a struggle against the forces of evil, against communism, he said, noting that poison had been used as a weapon in war for more than 2,000 years through to the Rhodesian "bush war".

Poisoned uniforms

Ken Flower, chief of Rhodesia's Central Intelligence Organisation, during the guerrilla war against Ian Smith's Rhodesian government, told of the use of poison in his book, "Serving Secretly".

It involved recruiting young blacks into the guerrilla movement via a highly placed collaborator and equipping them with poisoned uniforms.

"The men would be sent on their way to the guerrilla training camps only to suffer a slow death in the African bush," Mr Flower said. "Many hundreds of recruits became victims."

As Mr Flower noted, South African police served in the war on the side of Mr Smith's forces. "South Africa used Rhodesia as a training ground," he said, "withdrawing units as they became trained and replacing them with untrained ones."

He did not speculate whether their training included the use of poison in secret operations, against guerrillas and their sympathisers.

'No floggings, abuse at Alexandra's new people's court'

THESE won't be any floggings or abuse at Alexandra's new people's court, says Moses Mayekiso, president of the Alexandra Civic Organisation.

It was revealed this week that the people's court is to be reinstated in the township.

Some Alexandra residents have had bitter experiences at the hands of such courts in the past. In one incident Josia Madonsela (37) was flogged 200 times by two youngsters. The youngsters, both 18-years-old, have since appeared in court.

Mr Mayekiso said ACO, by introducing trained personnel to operate the community court house, hoped to erase the bad reputation that people's courts had created.

The main reason for this reputation, he said, was that they had been run by young, untrained members of the township community.

"We are professionalising our community court and officials running it will be accountable to the residents," Mr Mayekiso said. "Also, parties involved in a

JOVIAL RANTAO

dispute will not be forced to come to the community court for arbitration."

He said negative reaction of Alex residents to the white judiciary and concerns about the escalation of crime in the township had prompted his organisation to resolve to establish community courts.

"I must however stress that the community courts are not intended to replace but rather to supplement the existing sys-

tem," Mr Mayekiso added. "The community court, which is part of ACO's 'Operation Khanyisa', is scheduled to start operating in March.

ACO has sent a letter to the Minister of Justice Mr Kobbie Coetzee requesting an urgent meeting to discuss legalising the community court. However, Mr Mayekiso said the court would finally go ahead with or without approval from the Ministry of Justice.

Alex residents opposed to the community court system can re-

port their cases to the police. "We won't force anyone to appear before the community courts. Before a matter is addressed by the court, the two parties involved in the dispute must agree that they want their dispute settle in a community court," he said.

Officials who would run the community courts would be trained with the help of the University of Witwatersrand's Centre for Applied Legal Studies. Local lawyers would also help in their spare time.

Battlers Over Winnie

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WHEN on February 4 "Mother of the Nation" Winnie Mandela goes on trial — charged with kidnapping and assault — two senior members of the Bar will be pitting their legal skills against each other.

Attorney-General Klaus Peter von Laeres and Assistant Attorney-General Otto von Laeres and Advocate-General Alkau will spearhead the state's case. Human rights lawyer George Bizos will defend the wife of ANC deputy president Nelson Mandela.

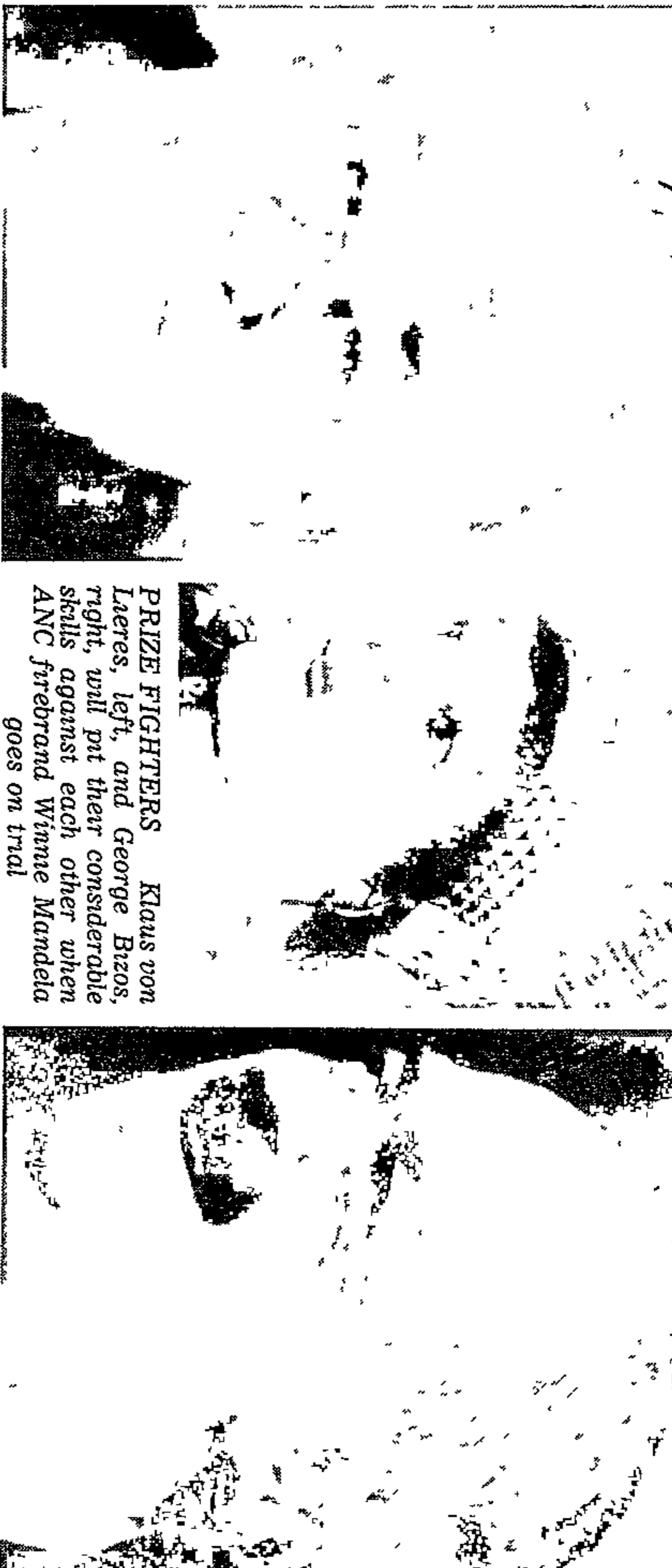
No two men could be more different.

Mr Von Laeres is of aristocratic Austrian descent, born into a family which immigrated to SA from Breslau in Poland in 1920.

Mr Bizos is Greek and has spent most of his career defending people against unjust laws.

He has had a long association with the Mandela family — he was in the team which defended Mr Mandela and his comrades in the Rivonia treason trial 30 years ago.

Klaus von Laeres believes nobody is above the law. Politicians, policemen, state officials, ordinary citizens and corporations are all accountable for their actions in his jurisdiction.



PRIZE FIGHTERS Klaus von Laeres, left, and George Bizos, right, will put their considerable skills against each other when ANC firebrand Winnie Mandela goes on trial.

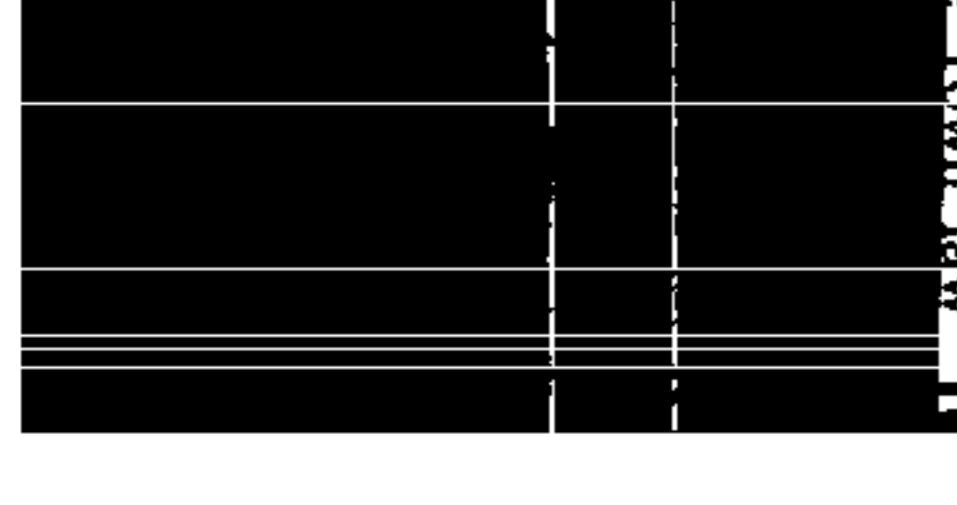
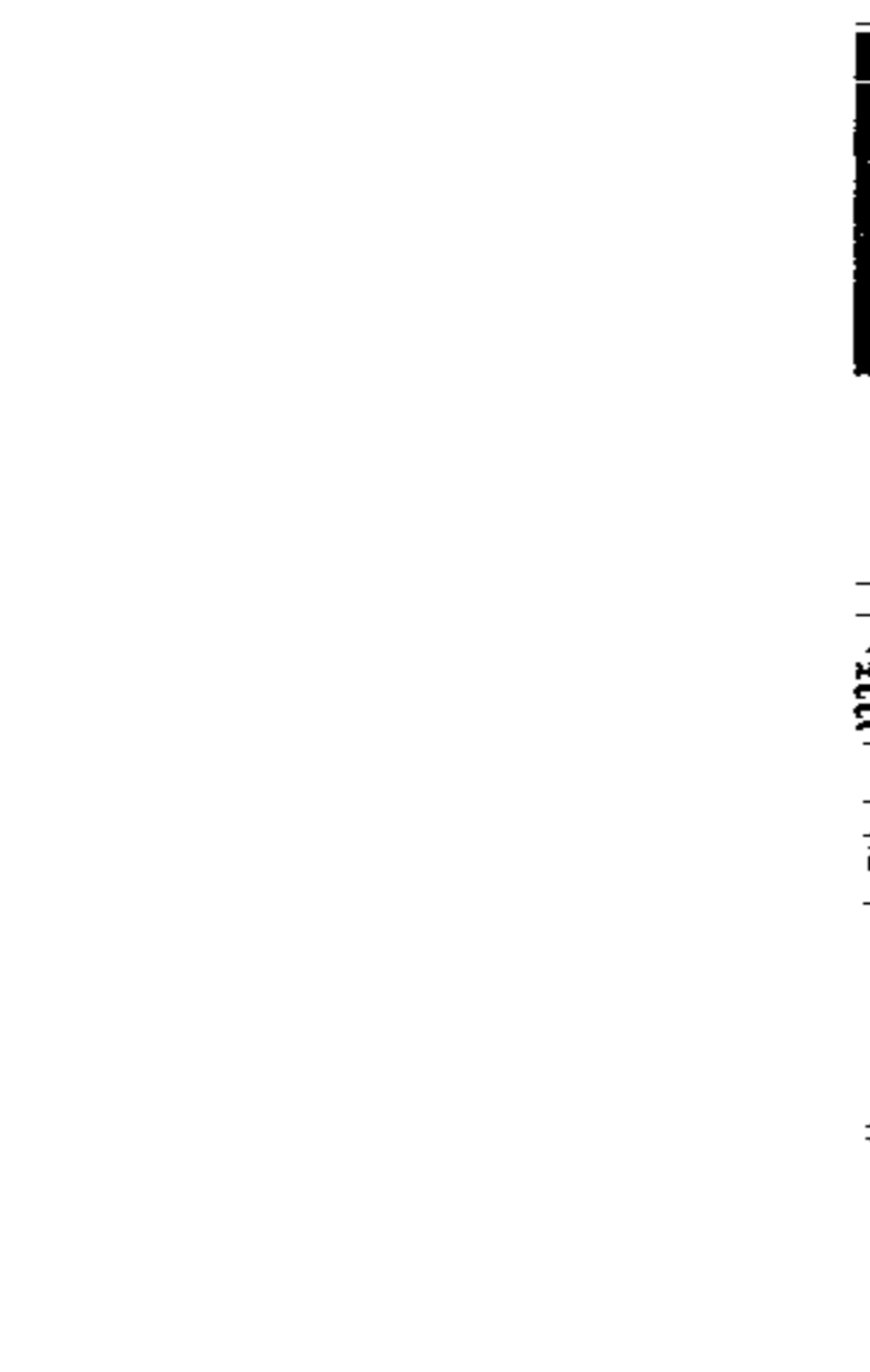
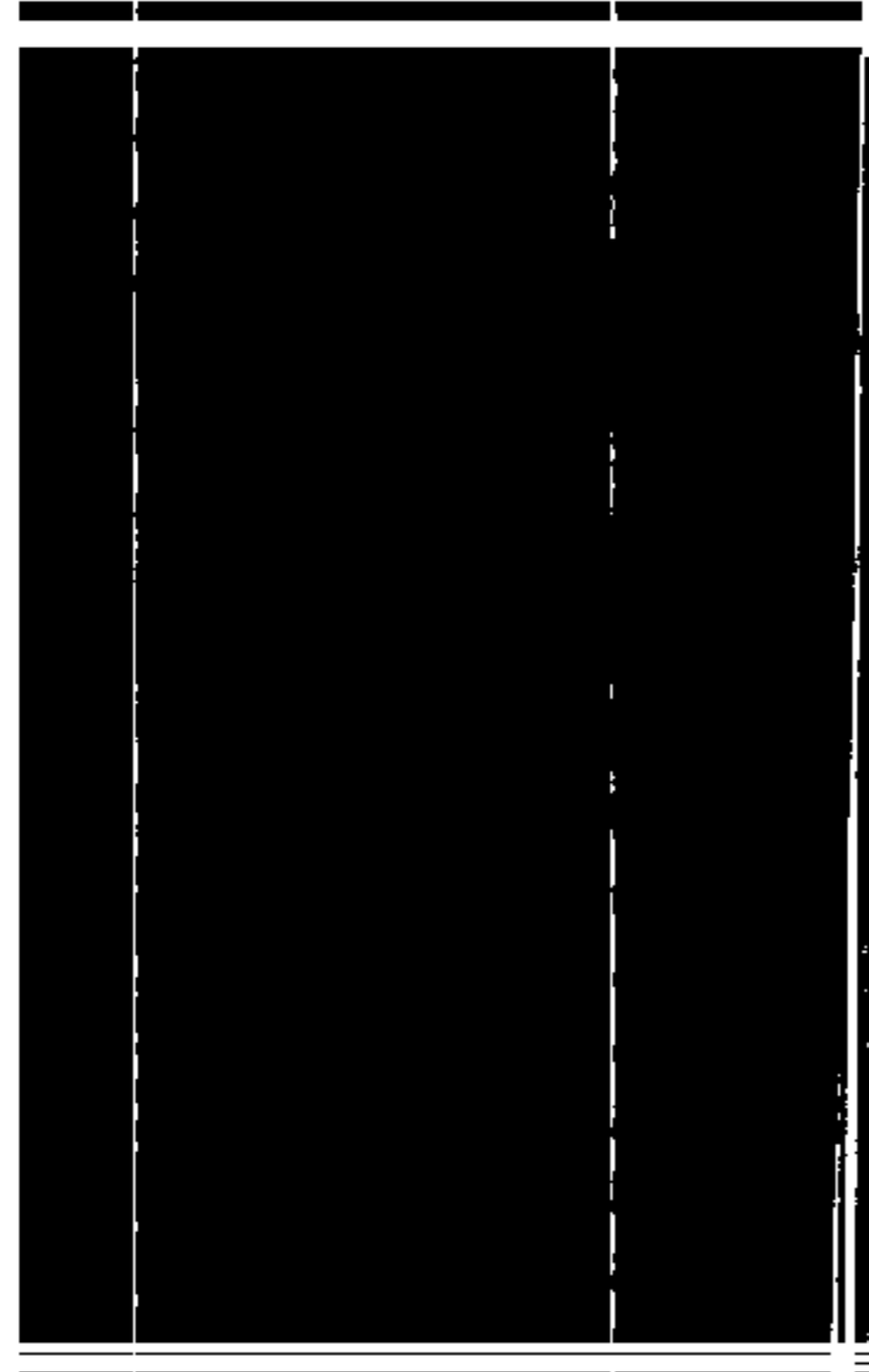
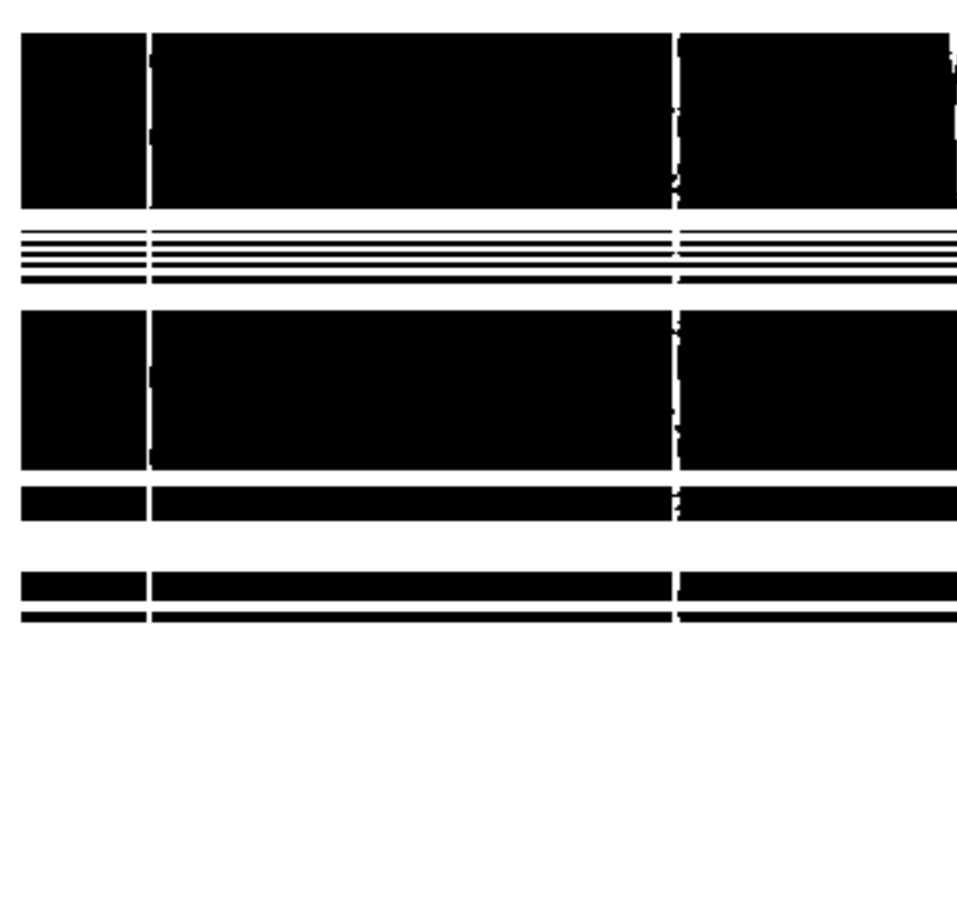
CHARMAINE NAIDOO sizes up the two legal adversaries in the coming court case involving Mrs Mandela

ecuted people to the right and left of the political spectrum, policemen, commercial criminals — everyone who has abused the law."

The human rights lawyer has earned his reputation for being persistent. Colleagues call him "thick-skinned" because of his unremitting persistence.

Colleagues say that Mr Bizos is not thought of as a technician in legal circles. They say, however, that he has a good "bedside manner".

Immediate past president of Lawyers for Human Rights Peter Leon said of Mr Bizos: "George is a great humanitarian with considerable empathy with his clients."



for being politically impartial, even though he's known for having strong political views. But his critics concede that he never allows them to intrude.

Formidable

He says he believes in bringing balance to the application of criminal law and has no qualms about talking on sacred cows, no matter how unpopular his decisions make him.

He's earned the respect of the legal fraternity whose members say Mr Von Laeres is a formidable opponent.

Mr Von Laeres likes being in control in the courtroom. Colleagues say he likes winning and is the first to talk on no-hope cases.

In 1988, he prosecuted a case in which policemen Jack La Grange and Robert van der Merwe were charged with the murder of two

drug dealers and the attempted murder of a Soweto businessman. Both men got the death sentence, which was later commuted to long prison terms.

Mr Von Laeres acted for the state in the trial of Dutch-Belgian national Helene Passtoors who was charged with treason and terrorism in 1986 and jailed for 10 years. (Mrs Passtoors was released from prison early in 1989.)

In mitigation during the Passtoors trial, her defence counsel, Denis Kuny, told the court she was "a woman of character, personality and education".

Mr Von Laeres called her a "wholesaler in death and destruction" and also referred to her as "an important cog in the ANC wheel", saying she was "ruthlessly calculating".

During the trial, Mr Von Laeres contracted mumps and the court

had to adjourn. He continued with the trial when he had recovered.

He says he handles most extradition cases. In June 1989, he flew to Switzerland to personally arrange for the extradition of Commodities broker Nico Shefer to stand trial for a R47-million Trust Bank fraud.

Criminals

In 1985, Mr Von Laeres was also responsible for bringing Gert Rademeyer, a deputy chief accountant at Eskom, back to SA to stand trial. He had defrauded Eskom of R6,75-million.

Mr Von Laeres says the track record of his office is proof that it is doing a good job.

He opened the first Johannesburg attorney-general's office which hitherto had operated out of Pretoria — in 1983. "Since then this office has pro-

not a desk man and prefers the courtroom.

"I try to appear in about two to three cases a year, apart from which I manage 130 courts and 230 prosecutors a day.

"When I'm appearing in a case, all administrative work has to be done after hours. This makes life a little difficult.

"I market legal knowledge. If I don't keep my hand in and prosecute a few cases a year, I'm afraid I'd lose touch," he says.

Mr Von Laeres is, as yet, not sure if he will personally prosecute the Winnie Mandela case. But whatever happens, he will be directing the battle of wits against the formidable George Bizos.

has great personal skills, too, especially in the way he treats his clients.

The list of people he has defended over the years reads like a Who's Who of the left — Nelson Mandela, Barbara Hogan and Trevor Huddleston. He was a tower of strength to the families of Steve Biko and Neil Aggett during the inquests into their deaths.

And his clients never forget him. In February last year, at Nelson Mandela's homecoming rally in Soweto, the ANC leader called Mr Bizos, the man who had defended him 27 years before, on to the stage for an emotional reunion.

Inspired

Before 100 000 people Mr Mandela embraced Mr Bizos and co-defender Arthur Chaskalson, the two men who had probably saved him from the gallows.

He is even believed to have inspired a Marlon Brando movie role. The human rights lawyer played by Brando in Andre Brink's A Dry White Season is widely believed to have been based on George Bizos.

In 1982, Mr Bizos defended Barbara Hogan — a member of the then-banned ANC charged with high treason. She was convicted

professor Dennis Davis said "Mr Bizos has been South Africa's most tenacious advocate for human rights in modern times."

Revolts

"He has an extraordinary record for promoting human rights in his profession. He was one of the two senior counsel in the Delmas treason trial, which was the longest trial of its kind in SA history.

"More importantly, at the height of Verwoerdian rule in the late 50s and early 60s, Mr Bizos acted on behalf of blacks in the homeland areas when police suppressed rural revolts.

"At a time when it was highly unpopular for advocates to take on those kinds of cases, Mr Bizos was fearless."

Jules Browde, national chairman of Lawyers for Human Rights in SA, said "George Bizos has made a very considerable contribution to the fight for human rights in SA.

"Over the years he's been associated with the defence of persons involved in the fight against unjust laws and has been an example of what can be achieved by lawyers who are dedicated to the rule of law in this country."

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Sunday Times

The People's Court will come to Order, Judge Molobi presiding

ST Times 27/11/91
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V A small smoke-filled office on the first floor of an Alexandra township shopping centre, Joseph Molobi olds court.

The chain-smoking judge" appointed by the Alexandra Civic Organisation makes decisions on up to 50 cases a day.

Mr Molobi, 43, has no legal training and relies on his understanding of the township way of life to make decisions. His highest educational qualification is a diploma in education.

He holds a dual position as head of the township's justice centre.

The Department of Justice has cautiously accepted an invitation by the civic organisation to explore the possibility of incorporating its legal system into the township's legal system.

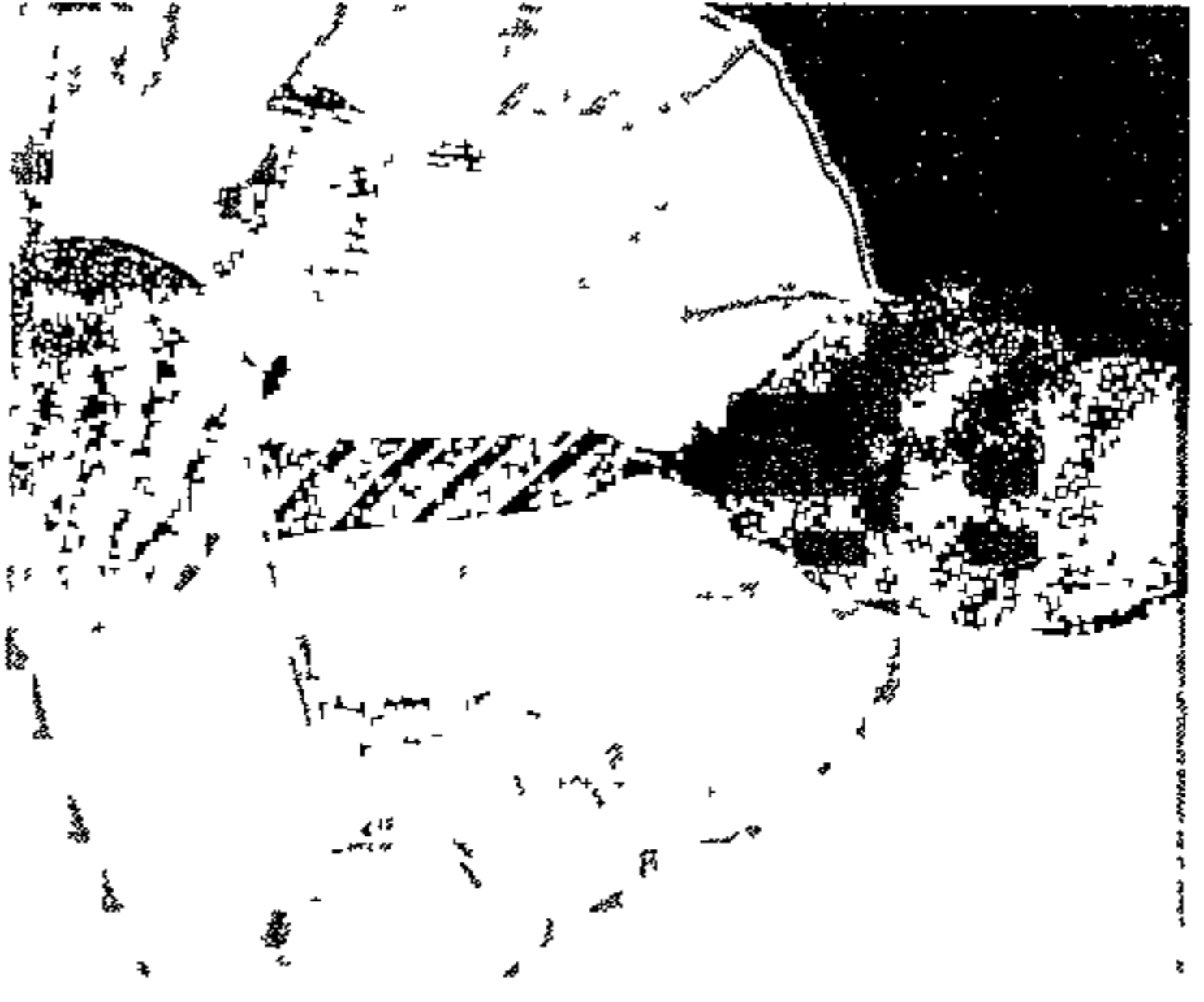
The president of the organisation, Moses Maseko, this week disclosed he had the backing of the University of the Witwatersrand's centre for legal studies and the National Association of Democratic Lawyers.

Petty
He said the bodies would provide advice and training for a pilot project in township justice in Alexandra.

Refusing to comment on whether civic organisation members were already in operation, Mr Maseko said the intention was to establish a framework in which "people's courts" could operate.



THE 'COURT' accused people, 'encouraged' by 'comrades' to attend, have their fate decided



JOSEPH MOLOBI, judge without training

By EZRA MANTINI and MARK STANSFIELD

Pictures: JOE SEFALE

stolen In other disputes, we act as arbitrators between the feuding parties.

Sitting behind his simple desk, Mr Molobi stressed his court was different from the notorious township "kangaroo courts."

"We keep records of all cases and we do not fine or flog those found guilty of an offence."

Mr Molobi has a team of sheriffs, whom he refers to as "comrades." He says the "court" uses the sheriffs to "encourage" those charged with offences to attend hearings.

"When a complaint is made, we summon the alleged offender to court so he can defend himself or explain his side of the story."
"We normally do this by sending a letter with one of

our voluntary workers

"If the accused does not heed our notice, we send in the comrades to encourage him to come. They explain that it is in the person's own interests to settle the problem amicably."

"After meeting the comrades, most people heed their letters and come to court. We have never had an incident in which anyone has defied a visit by the comrades."

Bail

Mr Molobi claimed most township residents favoured "people's courts" because "instant justice" was guaranteed.
His assistant, Richard Mdakane, said "Many people in the township have lost confidence in the criminal courts and the police."

Mr Mdakane, the administrator of the advice centre, explained that many township people did not understand Western legal processes.

"They cannot understand how a suspect can be arrested one day and be out on bail the next day."

"The offender must get his punishment instantly. If his case is postponed for months, as often happens, he continues intimidating the people who laid charges against him."

"In our court, we listen to both sides and find a solution to most problems."
Mr Molobi and Mr Mdakane were quick to say they detested "kangaroo courts", as these were not accountable to anyone and no records were kept.

"At no time do we

encourage harsh treatment or flogging. Our cases are always conducted by adults."

Mr Maseko said "people's courts" were an established fact of life in townships countrywide and would continue to be part of the lives of township residents despite the state's avowed intention to stop them.

Lawyers

His view was that, instead of attempts to stop them, this crude system of justice should be given direction and those involved trained in arbitration, mediation and negotiation.
A working document has been drawn up with the help of several prominent Johannesburg lawyers, Mr Maseko said.

JOSEPH MOLOBI, judge without training

"The idea of establishing such a court has been derived from our past experiences of the legal system in South Africa."

"In particular, the vast majority of disputes in Alexandra are left unattended because the legal process as it exists is often inaccessible, too costly or inappropriate as a means of resolving these disputes."
"Our community needs a system designed to cater for its specific needs and which will be democratic and effective."

"The proposal which we wish to discuss with the minister of justice is not intended to replace, but rather to supplement, the existing system."
"In ideal circumstances, the community should be involved in the establishment and, to some extent, execution of the law."
"The law must have legitimacy and must

deserve and command the respect of the ordinary citizen."

"We want to establish a community court in Alexandra which will deal with disputes brought to it by residents through the process of voluntary mediation and voluntary arbitration."

"No coercion will be exercised on the parties in regard to these processes."
"The community court will have a trained registrar, whose duties will be to interview the parties in order to ascertain the nature of the dispute and to discover from the parties how they wish to resolve the dispute."

Monitor

"Cases that cannot be dealt with by the community court will be referred to existing bodies such as the Legal Resource Centre, Lawyers For Human Rights, private attorneys or the Small Claims Court."
"It is only when all the parties wish to refer the dispute to mediation or arbitration that the community court can be of assistance."
"The pilot project would be located in a reasonably homogeneous community, accessible to a university campus and all participants will be trained in all aspects of the operations of the community court."
"Proceedings will be closely monitored by a suitable academic institution so that a theory and practice of community dispute resolution can be developed," he said.

cases such as murder, rape, serious robbery or violence, but should be allowed to mediate in petty cases, such as the theft of washing from a washing line or civil and family-related disputes, he explained.

"An example of a case not suited to our present legal system is when a brother within a family refuses to contribute towards the household budget. This sort of case can be resolved with the establishment of a legitimate people's court," he said.

Mr Molobi's court concentrates on petty crimes, family disputes and community squabbles about rent and living space.

People accused of serious crimes were handed to the police, he said.

The most serious punishment handed down, according to Mr Molobi, is for an offender's shack to be destroyed.

"In cases of petty theft, we encourage the offender to give back what he has

S/Times

27/1/91

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COME now, Moses Mayekiso. What is the difference between people's courts and kangaroo courts?

You say the people's court that your organisation, the Alexandra Civic Association, plans to introduce in March will be a democratic community court.

Kangaroo courts are associated with indiscriminate and brutal floggings, necklacing and arbitrary justice dispensed by young radicals

Unlike the notorious kangaroo courts, in the people's court the parties involved in a dispute will not be forced to come for arbitration and residents opposed to these courts will be free to report their cases to the police

"Operation Khanyisa"

— meaning light — is Mayekiso's idea for dealing with the spate of crime and violence in the townships and a way of resolving family disputes without involving the "white" courts.

Sounds fair enough, does it not?
It means no more

MY WAY
With Khulu Sibiyi

The people's judgment?

Apprentice



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people will be dragged kicking and screaming in the early hours of the morning to dimly lit shacks to account to young, uncouth brats about their family squabbles

Stories of elderly people being flogged — some with up to 200 lashes — will be a thing of the past, according to Mayekiso.

We as a newspaper have highlighted these miscarriages of justice by black people on other blacks. It did not matter who you were or what your standing in the community, these young radicals would humiliate you with their barbaric methods of punishment

Late last year City Press senior journalist Elias Mahuleke — who should be credited by all for his relentless exposure of the kangaroo courts — was a victim of instant justice.

Mahuleke was found guilty before he even appeared in "court" because he had written "negatively" about the young comrades of Mamelodi who flogged people who were older than their mothers and fathers.

Mayekiso may have good intentions with the people's courts. Any community, especially in the South African context, prefers to be

judged by its own peers.

In the US you have a jury system, which has proved over many years to be effective and acceptable to the community.

In South Africa, before the white man arrived with his "civilised" standards of justice, we used to have our traditional leaders in the form of chiefs, headmen and village elders.

These men were respected for their wisdom and impartiality in dispensing justice. In dealing with complicated cases they would sometimes take weeks before making judgment.

One also understands that Mayekiso's people's court idea stems from black people's negative attitude towards "white" courts. The poor reputation of "white" courts is linked to apartheid laws

One can only hope that if the people's courts come into effect, the judgment of Mayekiso and all those involved in "Operation Khanyisa" will not be clouded by their political affiliations.

What would happen if an Azapo or an Inkatha member is forced to appear in the people's court, charged with possession of a dangerous weapon, and Mayekiso, who is known to be a member of the South African Communist Party, is part of the jury?

Will he be impartial in his judgment? This may sound simplistic, but the situation in the townships at the moment is based on the battle for political supremacy

The street committees are all about which political organisation has more membership and influence than the others

Judge Kriegler strikes a blow for press freedom

Sunday Times Reporter

THE judgment last week of Mr Justice Johan Kriegler in the Neethling defamation case was an important breakthrough for press freedom in SA. Media lawyer David Hoffe — who acted for both Vrye Weekblad and Weekly Mail — said the courts had slowly extended press freedom in the past decade.

"The trend is particularly welcome if one bears in mind that in 1982, the Appellate Division laid down that newspapers were to be treated differently from others, and imposed strict liability on the press.

"A newspaper could not (and still cannot) raise in its defence that it had reasonable grounds to believe in the truth of what it published.

"Nor could it use as a defence the fact that it had taken all reasonable precautions to ensure that what was published was true and accurate, if in the event it turned out to be false. This is the case in America," Mr Hoffe said.

Truth and public interest have always been a defence.

But the onus in the past was on newspapers to prove that what they had published was true.

Based on Appellate Division authority, Judge Kriegler held that the onus was on the plaintiff — in this case Neethling — to prove that the allegations published by Vrye Weekblad were false, and not the other way round.

This is a departure from earlier law. Mr Hoffe said this was a significant finding and had the effect of, to some extent, lessening the burden placed on a newspaper to ensure that its sources were credible.

He said, however, that Judge Kriegler held that even if the burden had been on Vrye Weekblad to establish the truth of its allegations, it would have succeeded.

The Weekly Mail case — which relied on hearsay evidence — succeeded on public interest alone.

Mr Hoffe said this finding confirmed a precedent set in a 1984 case — Zille versus Johnny Johnson of The Citizen newspaper.

Mr Hoffe said: "The first crack for press freedom opened in 1984 when Rand Daily Mail political correspondent Helen Zille sued the Citizen and its editor Johnny Johnson.

"A notable feature of the 1981 general election was the controversy aroused by the remarks of the then Minister of Health, Welfare and Pensions, Lapa Munnik, that pensioners could live on a R20-a-month diet."

Miss Zille was the first to report the Minister's remarks and her account set in train a lively debate.

In response, Mr Munnik's released to the press a telegram conveying a complaint to the Steyn commission of inquiry into the media.

In it he complained of "twisted and malicious reporting" constituting "a flagrant and total distortion of the facts and the malicious misrepresentation" of his intentions by "certain newspapers"

This statement was reported by, among others, the Citizen newspaper.

Mr Hoffe said: "It undoubtedly defamed Miss Zille who instituted action against the Citizen for defamation.

"There was no doubt at the trial that Miss Zille's report of what the minister had said was accurate and true and so, under normal circumstances, she would have succeeded in her defamation application."

However, the court found that under these special circumstances, the public had a right to be kept fully informed.

It ruled that the press, including the Citizen, had a right "and indeed a duty" to publish all statements that might be germane to this issue, irrespective of whether the statement defamed a member of the public.

The right of a citizen to his good name and reputation, under these circumstances, had to yield to the greater good of the public weal.

Miss Zille, backed financially by the Rand Daily Mail, lost the case and was ordered to pay all costs.

Mr Hoffe said that Mr Justice Kriegler's judgment in the Neethling case endorsed this principle.

"However, the heart of the Neethling case lies in a credibility finding — that Vrye Weekblad had proved the truth of its allegations.

"Mr Justice Kriegler was at pains to stress that the facts in the Neethling case were extreme, and were unlikely to be repeated," Mr Hoffe said.



JUDGE KRIEGLER
Onus on the plaintiff

Inquest on cell death man starts

By MATHATHA
TSEDU

THE inquest hearing into the death last June in police custody of Mahwelereng teacher Mr Donald Madisha resumed in Potgietersrus yesterday.

Madisha (26), an Internal Security Act detainee and member of the ANC, was found hanging on the cell grill door with his shirt on June 1.

Police have told magistrate Mr PR Uys that he had been screaming and crying for over 16 hours before allegedly killing himself.

Crying

Uys and his assessor, Professor Johanna Loubser, heard in earlier evidence how Madisha had started screaming and crying on the evening of May 31, claiming he was seeing people who were coming to kill him.

Madisha allegedly also said the "killers" had already murdered his parents and other members of his family.

The inquest heard that Dr A van den Berg, who was summoned about 8pm that night, only arrived three hours later and then conducted a 25-minute examination while Madisha was standing in a semi-darkened cell lit only by a 40-watt bulb.

Van den Berg administered Valium, a strong drug that induces sleep, to Madisha.

The court heard that Madisha, however, continued to scream. The doctor did not leave "clear and precise instructions" on what was to be done after the application of the drug.

Neither did he phone the police station to check on Madisha's condition, the inquest heard.

Drug

The next day, Van den Berg was summoned by the police early in the morning but he allegedly told them he was too busy.

It was only after Madisha was found hanging in the cell before 1pm that Van den Berg arrived at the police station and certified the detainee dead.

The inquest has drawn strong legal representation with four teams representing the Madisha family, the police, the Transvaal Provincial Administration and Van den Berg.

The family is represented by Advocate J Kraut instructed by SM Dawood of Ismail Ayob and Partners. Mr JS Stofberg is leading evidence for the State.

(Proceeding)

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ANC unveils bill of rights

ALL natural resources, including minerals, not owned by any person at the time of the implementation of a new constitution will belong to the state, says the ANC.

Unveiling a proposed bill of rights in Johannesburg yesterday, ANC international affairs director Thabo Mbeki said the document was released to generate informed debate

The bill emphasises the role of the state in creating economic and social equality

In an introduction to the 37-page discussion document, chairman of the constitutional committee Zola Skweyiya writes that the committee identified certain needs as being so basic as to constitute the foundation of human rights

These include the rights to nutrition,

TIM COHEN

education, health, shelter, employment and a minimum income

"We do not want freedom without bread, nor do we want bread without freedom. We want freedom, and we want bread," he writes

Human rights lawyer Fink Haysom said the ANC's proposals include aspects of human rights which are not found in many constitutions, called second and third generation rights

The proposals were therefore modern, progressive and innovative, he said

The proposed constitution will be guaranteed by the courts and will be binding on

To Page 2

Bill of rights

the state and organs of government "at all levels and where appropriate, on all social institutions and persons"

It also proposes a human rights commission and an ombudsman

On the economy, land and property it says: "Legislation on economic matters shall be guided by the principle of encouraging collaboration between the state and the private, co-operative and family sectors with a view to reducing inequality, promoting growth and providing goods and services for the whole population"

On environmental rights, the constitution proposes that all will have a right to a

healthy and ecologically balanced environment and the duty to defend it

The law will provide for appropriate penalties and reparation in the case of direct and serious damage caused to the environment. It also allows interested persons to interdict public and private activity which manifestly causes or threatens to cause irreparable damage to the environment, the article says

On affirmative action, the ANC says nothing in the constitution will prevent the enactment of legislation to procure the advancement of, and opening up of opportunities to, those who have been discriminated against in the past

From Page 1

SAF/MB/30/11/91

3 prisoners to hang in Venda

PRETORIA (252) Three prisoners are to be executed tomorrow in the Venda homeland and a fourth will go to the gallows next week despite an appeal against their death sentences not being heard. A human rights group charged yesterday

Saying it had heard of the pending executions by chance, Lawyers for Human Rights said no notice of execution had been given to the men's lawyers — Sapa

01

Trial of Inkatha 15 is off

Sowetan 11/1/91

(252)

By IKE MOTSAPI

THE trial of 15 Inkatha members charged with illegal possession of arms and ammunition was yesterday postponed to next month by a Sebokeng magistrate.

Mr KJ Klopper the presiding officer, told the men to appear in court on February 4. Klopper extended their bail of R200 each.

They were not asked to plead.

The men were arrested last month near the Sebokeng Hostel. They are Carphus Mbatha (37), Samson Mduli (23), Selby Gamede (24), James Mbatha (27), Kosmate Mtshali (21), Elliot Mbatha (37), Samson Mdlalose (30), Moses Shamase (24), Nicholas Zweimuthi (24), Victor Mthembu (25), Sebosa Khazwe (32), Sibuso Chongo (21), Bekani Thimbukela (24), William Nhlapo (25) and Salebesa Buthelezi (33).

Missionvale 22 in hot water over 'popular' justice

PEOPLE'S courts have again come under the spotlight after 22 people were arrested last week in the squalid area of Missionvale, north of Port Elizabeth, for allegedly meting out "popular" justice.

Police began arresting people on Wednesday, and they appeared in court on Thursday charged with assault. Bail for the 22 was refused and the case was postponed until February 8.

Residents in the Missionvale area said street committees were formed last year to curb crime in the area.

They added the formation of these street committees was a direct consequence of the failure of police to deal effectively with the high crime rate.

Residents said on some occasions when they had summoned police to report an incident, they were told to go to the "comrades".

Residents also reported that not one murder took place over the December period, while the incidence of crime in the area had dropped as a direct result of the work of the street committees.

However, charges of assault were laid against members of the street committees after some residents complained that the punishments being meted out were too harsh.

The crimes dealt with by the street committees included assaults, stabbings, housebreaking, attempted murder and at least one incident of attempted rape.

They said when an offender was "caught", the person had to answer to the community on the "charges" brought against that

person. In consultation with the victim, punishment was meted out, which included lashings.

Other forms of punishment, like doing "community service", were also meted out.

One victim reportedly told police he was beaten up on Christmas Day for having a "squabble" with his wife. He said he received 30 lashes after being taken to an open veld and hauled over a concrete sewer pipe.

"I thought they were just going to talk to me, so I was not afraid," he said, adding his pants were pulled down and six people took turns to deliver five lashes each.

He said when one person laughed while delivering the lashes, he in turn received 15 lashes.

Up to 50 people have been "punished" in this manner by street committee members since the operation began in September, he said.

Police liaison officer Pieter van Straaten, denying that police only arrested ANC members, said peoples' courts would not be tolerated.

Chairman of the ANC-aligned Northern Areas Co-Ordinating Committee (NACC), Ronald Niegardt, said the organisation did not sanction people's courts.

A spokesman for the ANC's Northern Areas branch said the organisation would take a serious look at the matter, but conceded the street committees were formed "because of the inability of the police to deal effectively with crime in certain areas". - PEN

CIPREN 13/1/91

CIPREN 13/1/91

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Pearce before inquiry over spy scandal

By Louise Burgers
Municipal Reporter

Johannesburg's suspended public safety director John Pearce pleaded not guilty to charges of misconduct at his disciplinary inquiry which began yesterday. Mr Pearce was sus-

Star 16/1/91
pended last year after the Hiemstra Commission, which investigated the municipal spy scandal, found him to have been negligent.

Some witnesses who appeared before the Hiemstra Commission are likely to be recalled to give evidence.

It is being presided over by independent senior counsel T Plewman.

Mr Pearce is represented by an official from the Johannesburg Municipal Employees' Association, Theo Crouse.

Right-wingers to be freed lawyer

By HERMAN JANSEN

MORE than 30 right-wingers expect to be granted unconditional amnesty this week.

The group includes Piet "Skiet" Rudolph, currently awaiting trial on various charges of terrorism, and his Orde Boerevolk lieutenant, Leonard Veenendaal. *ST 3/2/91*

The lawyer representing the group, Wim Cornelius, is optimistic that mass killer Barend Strydom, currently on Death Row, will also be granted indemnity.

Mr Cornelius said yesterday he expected an announcement to be made by President FW de Klerk on Friday.

"These would be the first applications granted to right-wingers in terms of the Pretoria Minute and the chances are excellent that amnesty will be given," he said.

Urgent

He added that the right-wing amnesty would be balanced by a similar gesture to left-wing activists.

Mr Cornelius faxed an urgent letter to President De Klerk on Monday, when Veenendaal was in a critical condition after a 24-day hunger strike.

He and three other Orde Boerevolk members are facing charges of terrorism.

"I told Mr De Klerk that Veenendaal was facing kidney failure and brain damage and pointed out that his had been one of the earliest applications for indemnity.

"That night, I received a faxed reply from the Department of Ministerial Services, saying they hoped to reach finality

about Veenendaal's application within days. *WHO*

"I was also told by a state advocate this week that the names of right-wingers granted indemnity would be made known this week," said Mr Cornelius.

More gain indemnity

A FURTHER 219 people have been granted indemnity from prosecution for leaving the country without a valid passport or authorisation before October 8 last year, the Department of Justice announced on Friday morning (25/10/52).

This brings the number of people granted indemnity for the two offences to 1 562. The names of those added to the list appear in the latest Government Gazette. — Sapa.

First individual indemnity given

Blpny
5/2/91
(252)
GOVERNMENT has granted its first individual indemnity to an SA exile — a move lawyers say clears the way for the return of remaining exiles and the release of political prisoners

Until now government has granted permanent indemnity only to exiles who left SA illegally

Hundreds of political prisoners — among them ANC and PAC exiles as well as a number of right-wingers — have applied for indemnity

Exile Mncedisi Jason Sishuba, who left the country illegally in December 1977, has been given "unconditional indemnity" in terms of a Justice Department notice published in the Government Gazette.

According to the notice he will not be prosecuted for having alleg-

PATRICK BULGER

edly stolen a typewriter and duplicating machine from a Soweto school or for escaping from police custody in November 1977. Neither will he be prosecuted for allegedly leaving the country illegally a month later.

Although lawyers said his alleged offences were relatively minor, Sishuba's indemnity opened the way for indemnity to be granted to others on an individual basis.

Lawyers for Human Rights regional director Ahmed Motale, who has applied for indemnity on behalf of several clients, said yesterday Sishuba's indemnity was of "great significance".

"We can expect a flood of indemnities now," he said.

Black Lawyers Association Director of Legal Education Justice

Moloto said he was aware of at least 200 individual indemnity applications that had been lodged with government.

"They are going to start moving now," Moloto said.

He had also processed a case in which an exile who had received indemnity for leaving the country illegally had been arrested on returning to SA because of other offences for which he had not yet received indemnity.

The Justice Department has, meanwhile, granted indemnities to 1 562 people whose only offence was leaving the country illegally. It emphasised, however, that people returning in terms of the indemnity had to ensure they did not also require indemnity for other offences.

The ANC last month set a deadline of April 30 by which all exiles would have to be repatriated and

political prisoners returned. The organisation threatened to break off negotiations if this deadline was not met.

Meanwhile, MICHAEL HARTNACK reports from Harare that an international network is to be established to advise the estimated 40 000 SA exiles on problems surrounding their return, and to help their relatives at home locate them.

Announcing the plan at the end of a one-day conference attended by parties interested in the repatriation process, SACC general-secretary the Rev Frank Chikane said many difficulties still blocked mass repatriation and much depended on the outcome of continuing talks between the SA government and the UN High Commission for Refugees (UNHCR).



Bill to provide wider access to civil litigation

LESLEY LAMBERT

252

CAPE TOWN — Civil litigation, previously the province of companies and wealthy individuals, will soon become accessible to the man in the street if a Bill tabled in Parliament is approved.

The Short Process Courts and Mediation in Certain Civil Cases Bill proposes a new mediation procedure aimed at settling civil disputes out of court.

It also proposes the creation of special "short process" courts with the jurisdiction of magistrate's courts, but presided over by a wider range of legal adjudicators.

Based on the alternative dispute adjudication procedure in the US, the proposals aim to cut the costs of civil litigation and to make the legal process more widely accessible.

The Bill is the latest effort to increase access to the SA legal system.

The process began with the creation of Small Claims Courts and will take another significant step forward if this widely supported Bill is passed.

In terms of the Bill, mediators will be appointed by the Minister of Justice from a list approved by the Association of Law Societies, the General Bar Council of SA and the Justice Department.

If both parties in a civil case agree to mediation proceedings they will appear before a mediator in chambers. The mediator will interview them and attempt to bring about a settlement or to simplify the issues.

Experienced

If the parties do not reach settlement during the proceedings or reach only a partial settlement, they will be able to proceed with the case in a magistrate's court or a short process courts, provided the defendant consents to the jurisdiction of the latter.

Short process courts will be established in various districts by the Justice Minister who will appoint adjudicators from the ranks of advocates, experienced attorneys, academics and retired magistrates. Legal experts in the districts will implement the process.

The order of a short process court will be final and no appeal will lie from either it or a mediator's order, but provision will be made for certain grounds of review.

Parties will be entitled to legal representation at both the mediation proceedings and in the short process courts. Mediators, adjudicators and other court officers will be paid by the state.

Kangaroo courts claim: 22 arrested

252

Star 11/11/91

PORT ELIZABETH — More people were arrested on Wednesday night in connection with alleged brutal punishments meted out by people's courts in and around Missionvale in Port Elizabeth

Eastern Province police liaison officer Captain Pieter van Straaten said so far 22 people had been arrested for alleged involvement in "kangaroo courts"

Some of the people "tried" and "punished" by people's courts have allegedly received up to 220 lashes across their buttocks with a sjambok

Captain van Straaten said most of the victims had been punished for minor offences such as domestic squabbles and petty theft

On Christmas Day, a man allegedly received 30 lashes from the people's court for having a verbal argument with his wife

Speaking in the presence of the investigating officers, the man, who was in too much pain to sit down, told his version to the press

He said that soon before midnight on Christmas Day a crowd had arrived and dragged him to an open lot near the Missionvale primary school

"I thought they were just going to talk to me, so I was not very afraid," he said

However, when they arrived at the lot, they pulled his trousers down, forced him over a concrete pipe and held his arms and legs

He said the leader of the group told him why he was to be punished and how many lashes he would receive

"I was not allowed to say

anything"

He said six people from the group had taken turns to beat him — each delivering five lashes

"After they beat me, they just left me there. I was in so much pain I found it very difficult to get home"

Almost 16 days later, the man still found it difficult to walk and bent forward when standing

Up to 50 people had been beaten by the people's court, which had started operating in September last year, he said

Asked if people were dealt with more harshly for committing more serious crimes, he said the punishments were meted out arbitrarily

Some of the people had received up to 220 lashes, he said

He said members of the street committees operating in the area were running the people's courts and the people who had beaten him were members of his community

The people who took part in the people's court called each other "comrade" and were all ANC members, he said

He said one of the "comrades" who had laughed while he was being beaten had been given 15 lashes for laughing

Captain van Straaten said the police strongly denied allegations that they supported the people's courts or that they were arresting ANC members only. Police would not tolerate people's courts, he said

Regional ANC chairman Benson Fihla said the ANC was investigating the allegations

He said the ANC was aware of the situation, but would not comment until he had more information — Sapa

Court releases Barolong tribesmen on R150 bail 252

By Montshiwa Moroke *Star 4/11/91*

Twenty-three of the 25 members of the Barolong-Ba-Madiboa community, who were arrested at Matloang (Machaviested) near Potchefstroom on Wednesday night for reoccupying their dispossessed land, were released on bail of R150 each yesterday.

Two boys, aged eight and 15, who were also taken into custody when police swooped, were released without bail.

The men and boys appeared before Piet Myburgh in the Potchefstroom Magistrate's Court, charged with trespassing.

The granting of bail followed two short hearings. The case was initially postponed until today as lawyers for the defendants and the prosecutor could not reach agreement on bail.

However, as the case was "very sensitive", the senior state prosecutor contacted the attorney-general who instructed that bail be set at R150, according to the accused's defence council.

The hearing was postponed to February 20.

After the men entered the courtroom at about 2 pm, their relatives and about a dozen local and overseas reporters who filled the benches were ordered to leave because of the two minors.

Those before the court were Alfred Matlawe (55), Piet Kwena (65), Andries Mabaso (46), Solomon Dinkebo-gile (48), Esau Matlau (65), Josiah Loate (40), Alfred Masitla (58), Jacob Magoro (45), William Tsimane (53), Ismael Mot-samai (78), Moses Booysen (76), Koos Kwena (62), Ismael Seroalo (75), Eskia Kobedi (64), David Mokate (65), Lavios Lerefole (42), David Mathube (55), John Mathube (42), Lucas Rapulane (62), Gabriel Gabaotswe (no age given), Sakaria Phakedi (37), R J Ntsimane and Josiah Kgosimang (47).

Mr Seroalo and Mr Ntsimane are respectively chairman and vice-chairman of the Matloang committee.

The tribesmen were charged with trespassing by the Potchefstroom Town Council.

Watching the watchdog

Wilmant 1/2 - 7/2/91

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LAW & THE COURTS

CARMEL RICKARD

Lawyers believe the best solution to dealing with maladministration by public servants would be to establish an ombudsman along the lines of such offices in other countries.

The Association of Law Societies and the Bar Council share this view and have urged that such an office be established to deal with public complaints and investigations into maladministration.

However, the drafters of the new Advocate-General Amendment Bill have not incorporated the suggestions of the organised legal profession, leading to a sharply critical editorial in the latest issue of the ALS journal, *De Rebus*. The ALS asks why the government has "failed to grasp the nettle of appointing a fully-fledged, classical ombudsman".

Instead, *De Rebus* charges, the government has chosen "to continue to inch along a path of (extremely) gradual evolution of the office of advocate-general towards ombudsmanship".

The government is accused of being reluctant to act decisively in this matter and *De Rebus* claims the proposed new legislation has a number of shortcomings.

De Rebus charges that despite a detailed response made to the government on changes to the proposed Bill, the new draft shows it is "essentially the same. The Bill in its present form comes down to a regurgitation of the original draft with minor, mainly editorial, amendments".

The *De Rebus* editor makes the point that the office of the advocate-general was never intended to fulfil the role of ombudsman. It was created for a different purpose — launching investigations into the maladministration of public funds — and its use to fulfil another function is problematic.

Among the issues raised by the ALS is the criticism of the name of the post. The ALS feels "advocate-general" has "militaristic overtones" and does not convey to the public that the post has shifted its work and is now concerned with all acts of public maladministration, not only maladmin-

istration involving public funds.

There is also criticism about who should appoint the ombudsman/advocate-general. The ALS has urged it should be a parliamentary appointment made "on behalf of the people", rather than an appointment by the state president.

"The appointment must be free of any hint of party political connection so that all members of the public will have absolute confidence in the appointee's ability to investigate their complaints and where necessary to probe the dark corners of government without fear or favour.

"As necessary as that is now, so will it no doubt also be in the South Africa of the future."

The Bill as it stands now contains limits on the discretion to investigate complaints. The argument of the ALS is that there must be no limitation. The ombudsman/advocate-general must have a free discretion on investigating complaints, regardless of whether the person complaining has exhausted all other legal remedies, or whether the complainant suffered "only an injustice as against actual prejudice".

The present version gives the advocate-general the right to refuse to investigate a complaint until the complainant has exhausted all other legal channels.

The draft Bill allows the advocate-general to ask the help of "any person in the service of the state" to help in an inquiry, a provision slated by the ALS as "completely unacceptable if he is to have the image of independence from the civil service".

Despite the short-comings listed by the ALS, the minister of justice has said the Bill will create an office which fully comports with the accepted norms for an ombudsman — a claim which the ALS does not accept

"We reiterate with all the strength at our command our previous call on the government to appoint a classical ombudsman to protect the interests of the ordinary citizen against injustice as a result of maladministration without further delay.

"It is inevitable that there will be pressure for provision for an ombudsman to be made in a future South African constitution, as is the case in Namibia. Surely it is better that such an urgent matter be dealt with now rather than subjected to the political rough and tumble of possibly protracted constitutional negotiations."

Commenting on the *De Rebus* editorial, a spokesman for the Department of Justice said the representations of the ALS had not been ignored. Their comments were fully considered by the department, but as the department did not agree with the changes proposed by the ALS, they were not included in the Bill introduced into parliament.

He added that the Bill was now with the parliamentary joint committee on justice to which the ALS had also submitted their proposals, and the committee had invited the association to elaborate on their written representations in oral evidence.

The chairman of the joint committee was not available for comment, but as the committee is still considering the ALS proposals, the Bill may yet be amended. Asked for confirmation the spokesman from the department of justice agreed that changes could still be made.

He also said he was surprised at the *De Rebus* article since the minister of justice worked "very closely" with the association on the proposed amendment to the Act.

He added that according to Mr Justice Van der Walt, the present advocate-general, the proposed Bill will have many powers and should be more effective than the traditional, overseas ombudsman. "This is another reason, therefore, that we are rather surprised by the editorial in *De Rebus*."

LHR demands full investigation of Phola Park attacks

252

By WALLY MBHELE
LAWYERS for Human Rights (LHR) has called for an investigation into the involvement of "other parties" in September's attacks that wrecked the East Rand squatter camp of Phola Park.

In its report — entitled "Phola Park, Community under Siege" — based on 30 sworn affidavits from a collection of more than 150 taken soon after the attacks on Phola Park, LHR says the picture that emerges "is disturbing and leads to some pertinent questions regarding the nature of that attack".

The report was released to the press only a week after two policemen were killed in Phola Park, near Thokoza.

In September, more than 80 people died and shacks were razed, some with people inside. Scores of victims were admitted to Natalspurt Hospital, while more than 1 500 took refuge at the

Catholic Church in Eden Park.

According to LHR, a number of substantial claims have emerged in the affidavits. "It would appear from the affidavits that even if police were not directly involved in the attacks on Phola Park, they were not consistent in their attempt to prevent the violence and destruction of shacks," says the LHR.

Of the 30 affidavits, 20 refer to whites who had attempted to disguise themselves by putting a black substance on their faces and wearing balaclavas.

"These people were seen working closely with the attackers and are often referred to in connection with setting the shacks alight," the report adds.

One affidavit refers to Inkatha, SADF and police collusion in attacking Phola Park residents.

"Over and over again the affidavits allege that the police shot at them ... and

consistently tried to get them to return to Phola Park when they had fled in fear of their lives," LHR charges.

In its conclusion, the report notes that it would be foolish to ignore the stormy history attached to Phola Park as one of the reasons for the attacks.

Violence which may not initially have been group rivalry in nature is now surfacing in many areas on the East Rand, the report says, adding that questions which arise from the affidavits need to be answered and those responsible be made accountable for the attacks.

"Undoubtedly, the longer these questions go unanswered in the same way that questions relating to similar incidents in other areas receive no response from the authorities, the closer we move to total anarchy," said LHR.

The document concluded by stressing the need for an investigation, adding

that "though clients are not prepared to release their names to the police, we believe they would be willing to testify before the commission of inquiry".

Law and Order spokesman Captain Craig Kotze said police would welcome the opportunity to study "these claims and hope that LHR will urge its witnesses to come forward so that the evidence can be taken and verified".

However, in the past it has been the SAP experience that the overwhelming majority of such claims were completely unsubstantiated and seemingly given to the media for propaganda impact, said Kotze.

● A report by the Washington-based human rights group, Africa Watch, last week urged the US government to call on South Africa for a public investigation into the role of security forces in township violence.

People's Court 'judge' detained

JOVIAL RANTAO

JOSEPH MOLOBI, the "judge" who presided over a people's court in Alexandra, outside Sandton, was detained by police this week along with 11 other members of the Alexandra Civic Organisation (ACO)

A police spokesman said they were being held under Section 50 of the Internal Security Act

Two of the detainees, Obed Bapela, publicity officer of the local ANC branch, and Mzwanele Mayekiso, executive member of ACO, were former Alexandra treason trialists

Mr Mzwanele is the brother of Moses Mayekiso, ACO president, who was the chief accused in the treason trial

Mr Molobi (43) whose highest qualification is matric, had no legal training and relied on his understanding of the township way of life to make decisions

In interviews before his arrest, he said he only handled petty cases. More serious ones were referred to the police. "We do not fine or flog those found guilty," he said

The ACO and the ANC Youth League condemned the detentions and said police should stop harassing activists

n townships





Quicker, cheaper justice on the cards

Arbus 5/2/91 252

By MICHAEL MORRIS
Political Correspondent

LEGISLATION to make civil court cases simpler and cheaper has been tabled in parliament

The Short Process Courts and Mediation in Certain Civil Cases Bill provides for the establishment of an alternative mediation procedure and alternative so-called "short process" courts to speed up certain civil actions and to cut costs

President De Klerk mentioned the legislation in his opening address, saying that it came against the background of a worldwide trend towards simplifying legal procedures and making the legal process more accessible.

In terms of the new Bill, the Minister of Justice will be empowered to appoint one or more mediators — advocates, attorneys, law academics or retired magistrates proposed either by the Association of Law Societies, the General Bar Council or the Department of Justice — for any area or district.

He will also be able to appoint a short process court, to be presided over by an adjudicator, in any area

Evidence

They will be regarded as magistrate's courts except that the procedure of hearing evidence will be different

After a notice has been issued subjecting a dispute to the mediation process, the parties will appear before the mediator in chambers

The mediator will attempt to settle the disagreement

After this process, the mediator will issue an order which becomes part of the case record

If no settlement is reached — or only a partial settlement — the case will go on to a magistrate's or short process court

TUMAHOLE Civic Association member Ephraim Dabi was awarded R1 500 damages last week in a claim against a Parys policeman who called him a "kaffir" and threatened to assault him.

A Pretoria Magistrate's Court awarded Dabi damages and costs in his civil claim against the Minister of Law and Order after the Attorney-General declined to prosecute the policeman involved.

The case resulted from an incident at the Parys police station in January last year, where

'Kaffir' awarded damages

Dabi - general secretary of the Tumahole Civic Association (TCA) - and other officials were called to discuss a protest march by their organisation.

A Warrant Officer Blignaut repeatedly called Dabi a "kaffir" and threatened to assault him.

Dabi laid charges of crimen injuria.

At an identity parade Dabi was told to place his hand on the shoulder of the person who had insulted him.

When he tried to point out the policeman in this way, Blignaut said he would knock him flat if he touched him.

The matter was referred to the Attorney-General, but he declined to prosecute.

Dabi, well-known in the community as a counsellor at the TCA, launched the R10 000 civil claim against the police with the help of the Johannesburg Legal Resources Centre.

'What about Harms, Goldstone?'

Political Staff *8/5/79*

Democratic Party leader Dr Zach de Beer was gagged in Parliament yesterday while speaking on the failed court action of police forensics chief Lieutenant-General Lothar Neethling.

Acting Speaker Dr Helgard van Rensburg ruled that the matter was *sub judice* on the grounds that an application for leave to appeal would be heard in April.

Dr de Beer said he had abided by the ruling under protest.

He was criticising the Government for the "crisis of credibility" surrounding the country's security forces. President de Klerk had not mentioned, in his speech on Friday, that he was aware of that crisis.

He had not mentioned the Harms Report, the Goldstone Report, judgment in the Neethling case, or the report of the International Commission of Jurists. They had all identified elements of the security establishment which had acted dishonestly, incompetently, brutally or ille-

gally *252*

The Harms Commission had been unable to get at facts — police covered their own misdeeds and the Government was "quite ineffective" in identifying and punishing culprits.

"No one expects all the members of any police force to behave well all the time, but if there is to be trust and credibility, the wrongdoers within the force must be ruthlessly exposed and justly punished.

"And that is what, in general, does not happen here," Dr de Beer said.



VISITING JURISTS ... The chairman of the United Nations Commission on Human Rights and a judge in the Mauritius Supreme Court, Mr Justice Rajsoone Lallah, second from left, meets Mr Dullah Omar, director of the University of the Western Cape's Community Law Centre. With Mr Justice Lallah, are, from left, Mr Justice Vincent Crabbe, Mr Justice Walter Tarnopolsky, Ms Marianne Eliason, Ms Dominique Remy-Granger, Professor Hans Lunshof and Mr Justice Vital Moreira

Picture ANNE LAING

Staff Reporter

A GROUP of international judges and legal academics — lead by the United Nations Commission on Human Rights chairman, Mr Justice Rajsoone Lallah — are on three-day visit to meet members of the Cape Town legal profession

The group arrived in the city on Monday night, after attending a weekend conference on "Whether South Africa needs a constitutional court", organised by the University of the Witwatersrand's Centre for Applied Studies, Lawyers for Human Rights in Washington and the ANC's Legal and Constitutional Committee

They are in the city at the invitation of Mr Dullah Omar, the director of the UWC's Community Law Centre

Mr Justice Lallah said some 100 partici-

CMA 7413 6/2/91 (252)
**Legal eagles
 on city visit**

pants from about 12 countries met to exchange views and ideas about a constitutional court for South Africa and its relationship with normal courts

The participants had no preconceived ideas about what South Africa's constitutional court should look like because the purpose of the meeting had been to give views of what was happening in other countries, he said.

He said a constitutional court in South Africa would guarantee political rights without discriminatory clauses based on race and colour, prohibited by international human rights norms

The group — which includes Mr Justice Vincent Crabbe, a former judge in the Ghana Supreme Court, Mr Justice Walter Tarnopolsky, an appeal court judge from Canada, Ms Marianne Eliason, Undersecretary for Justice in Sweden, Ms Dominique Remy-Granger, from the French Constitutional Court, Professor Hans Lunshof, a legal academic from the Netherlands, and Mr Justice Vital Moreira, a former member of the Portuguese Constitutional Court — will be visiting members of the city's legal profession and community leaders

Bail ruling today

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Sowden 6/2/91

A DECISION on the bail application of 11 people arrested in connection with last month's gruesome Sebokeng night vigil slayings is expected today.

Charges against the 12th suspect, Mr Bhekumuzi Ngema (41), have been withdrawn.

The bail application hearing has been going on since last Thursday.

By DON SEOKANE

The 11 accused, including a woman, appeared before Mr G. Reynders in the Vanderbijlpark Magistrate's Court.

They have all not been asked to plead.

Mr Willem Basson, an employee of Iscor who is also in charge of a hostel where most of the accused were allegedly stay-

ing, told the court that the hostel was solely for people working for the company.

The State argued that most of the accused had no fixed addresses and were unemployed.

It argued that the possibility existed that they might skip bail or become victims of revenge attacks since some of them had already had their homes burnt.

Warrant Officer Marius de

Jager, who was called to support the State's opposition to the bail application, said three of the AK-47 rifles allegedly used in the killings were still missing.

De Jager said if the accused were granted bail they might interfere with the investigation of the case.

The defence, led by Mr Barry Roux, requested bail to be fixed at R1 000 each.

[Handwritten scribble]



Bridgette Mabandla: Constitutional court should not be seen as a political tool

'New SA's constitution must be protected'

A MECHANISM is required to ensure that the constitution is upheld in a new South Africa as it is impossible to radically change the current judiciary system.

This was one of the conclusions at a conference on constitutional courts held at Magaliesberg in the transvaal last weekend.

The conference was attended by several international jurists and constitutional experts

ANC constitutional lawyer and one of the conference convenors, Mrs Bridgette Mabandla, said the debates focused on the status of a constitutional

court South Africa 7/2-13/2/91 -
There was a strong argument for the court to be part of the judiciary but to have a semi-autonomous status as a specialised court within the broad framework of the existing judicial system

One of the tasks envisaged for constitutional courts was that it should advise the executive or structures of government

Mabandla said participants emphasised that the constitutional court should not be seen as as a political instrument or tool of the government

Mabandla said the conference was

"exploratory".

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"It did not have the kind of mandate to come out with a blueprint. It was recommended that there should be a body that is independent of the judiciary but made up of judicial persons from the bar and from democratic organisations to further discuss concepts such the jurisdiction, the appointment of judges and the composition of a constitutional court," she said

The four-day conference was organised by the ANC Legal and Constitutional Department and the Centre for Applied Legal Studies of the University of the Witwatersrand

As the trial was being conducted, a gunning ship

Human rights abuses continue in SA, says international 'watchdog'

By Noel Bruyns 252

AMNESTY International (AI) told

a UN commission this week human rights violations still occurred in South Africa.

Since President FW De Klerk's opening of parliament address last year, the South African government had "taken some initiatives to reduce violations of basic civil and political rights," AI told the Commission on Human Rights in Geneva, Switzerland.

However, specific concerns raised by AI in a statement to the UN Ad Hoc Working Group of Experts on Southern Africa in 1989 had yet to be addressed.

"Insufficient action has been taken to prevent the assault and torture of detainees, often held incommunicado, and some have died as a result.

"The government has so far failed to repeal laws which permit indefinite in-

communicado detention without trial and grant indemnity to the security forces against prosecution, provisions which facilitate human rights abuses," AI said.

Pretoria had failed to take adequate steps to investigate and bring to justice members of the security forces implicated in the torture and killing of government opponents.

AI reported that "at least 18 people" died in police custody under suspicious circumstances last year.

Torture

In the aftermath of only one of the 18 deaths in custody did the government order an independent judicial inquiry into the circumstances.

Certain police stations, notably Welverdiend near Carltonville, had been repeatedly named as places where torture had occurred.

At Welverdiend, the victims were predominantly 15- to 20-year-olds who

had described being beaten, kicked, suspended upside down on an iron bar, partially suffocated and given electric shocks.

Commenting on police action in breaking up peaceful demonstrations, such as the one in Sebokeng last year when five people were shot dead and 161 wounded, AI said it was "apparent that the police violated international standards in this incident and appear to have committed extrajudicial executions."

"The government should state publicly and unequivocally that the torture and ill-treatment of prisoners will not be tolerated. Formal procedures to ensure that all such allegations are subjected to independent and impartial investigations should be established.

"Those responsible for human rights violations should be brought to justice. In particular, individual members of the security forces must be held accountable for the human rights violations which they commit or authorise."





Ms Beula Khubeka of the Inkatha Freedom Party with Mr HG Stopforth, who appeared on behalf of the 11 people arrested in connection with the Sebokeng night vigil slayings. Khubeka had supported the bail application by the accused.

Pic: LEN KUMALO

No bail for 11 suspects in Vaal vigil terror killing

Sowetan 7/2/91

9-52 *000* *723*

A VANDERBIJLPARK magistrate yesterday refused to grant bail to 11 people arrested in connection with the Sebokeng night vigil killings.

Passing judgment on the bail application, Mr G Reynders said the court had taken into account the number of charges the accused were facing and the fact that further charges of attempted murder were pending.

Warrant-Officer Marius de Jager testified that in addition to 38 charges of murder, the accused may face 12 further charges.

Reynders said there was no guarantee the accused would not skip bail since nine of them had no fixed addresses and were unemployed.

Many of the accused had said they would stay at the KwaMadala hostel, run by steel company Is-

DON SEOKANE

cor, where they were previously living.

The magistrate said he had no guarantee that Iscor would allow them to return given the charges against them.

Earlier, Mrs Beula Khubeka, a parent of one of the accused and relative of three others, had said she believed the defendants would stay at the hostel.

Khubeka said she was herself staying at the hostel following the burning of her house.

An Iscor representative, Mr Wilhem Basson, who oversees the running of the hostel, told the court that accommodation was strictly for male workers of his company.

The accused are to remain in custody until February 22 when the trial begins.

It's more than just law

w/ Mail 8/2-14/2/94

A CONSTITUTIONAL court for South Africa appears as certain as a new constitution. But there is far less certainty about this court's structure, the extent of its jurisdiction, its composition and the mechanism for appointing its members.

Will it be the final word on constitutional issues, or will the Appellate Division retain this function? Will members of the public have direct access to the constitutional court to demand rights granted them under the constitution which they are being denied? Will the court be empowered to consider proposed legislation before it is passed to ensure it does not conflict with the provisions of the constitution?

These are difficult questions, but the composition of the court is just as fraught.

The debate over the absence of black judges on the supreme court and AD bench has a long history; the question now is whether the controversy will spill over to the constitutional court.

If members of the court are drawn from the same "pool" as supreme court judges, namely from the ranks of the country's senior advocates, the problem of colour on the bench of the constitutional court appears no closer to a solution.

However, there is strong support among many lawyers for the field to be widened and for members of the court to be drawn from senior academics and attorneys as well as advocates.

This would make it highly unlikely the constitutional court would be all white and all male as is presently the case.

Last weekend, president of the National Association of Democratic Lawyers, Pius Langa, took the debate in a new direction. He made a plea for a shift of emphasis away from the colour of the judges comprising the court, focusing instead on the mechanism of the appointment of judges.

He argued that the issue was to ensure the appointment procedure was an acceptable and legitimate one, "for which the entire

LAW & THE COURTS

CARMEL RICKARD

community could claim responsibility".

Speaking at a conference on the constitutional court, Langa said commentators had long pointed out that a racially exclusive judiciary "regardless of its merits" was unlikely to achieve the required level of credibility in the eyes of those who were not represented in its composition.

Solutions were not easy to find as "there could be no thought of a lowering of standards or turning a blind eye to incompetence and possible serious miscarriages of justice."

"In the context of the constitutional court, the issue is even more critical, the credibility of that court is fundamental to the viability, not just of the court, but of the entire process of the development of a rights culture."

There will be no sudden influx of legally qualified blacks with the required experience into the ranks of senior counsel, so another solution has to be found.

"I would suggest that the solution lies in a shift of emphasis. Inherent in the argument of a number of commentators is this concern about the absence of blacks in the administration of justice, more specifically, on the supreme court bench. Underlying these expressions of concern is the suggestion that the credibility of the courts in the eyes of the major part of the population will rise once they see that people of their own race are part of the judicial system."

"The credibility of the courts depends, in the first place, on the community's attitude to the whole process that brings the courts and the judiciary into existence."

"The fact that everything is imposed — there is no sharing of responsibility for their existence — militates against loyalty and a sense of belonging, not only with the courts, but with the entire legal system."

"A shift of emphasis would mean con-

centrating energies on legitimising the system, not by simply bringing blacks into the administration of justice, but by making blacks co-responsible for the system.

"The courts of the land need to be representative in terms of race, gender and so on. But the absence of some component of the population on the bench is not per se fatal to the credibility of the court as long as the mechanism that makes the appointment is an acceptable and legitimate one for which the entire community affected can claim responsibility."

Langa's view is that the body which makes appointments to the constitutional court should include members of the executive and/or the legislature, but that they should not have a majority. Once the first constitutional court judges are appointed, they should have representation on the appointment body. Legal practitioners and academics should be represented as should organisations such as the Black Lawyers' Association, the National Association of Democratic Lawyers, Lawyers for Human Rights and the Legal Resources Centre.

Langa also recommended that other bodies such as the Human Rights Commission should participate in the selection and appointment process.

The question of ensuring black representation on the supreme court bench is high on the list of concerns for the department of justice and for the judiciary itself.

At present there are only three black senior counsel in the country; and pressure from some influential quarters in the black legal community has until now made it difficult for these three to accept even an acting appointment.

But there is no reason why judges should continue asking only white men to act as assessors.

And Langa's paper suggests another approach: that at the same time as trying to find suitable candidates for the bench, attention should be given to the appointment mechanism as this could be a key to ensure improved legitimacy for the courts.

I won't sit in jail - Coetzee

LONDON - Former police captain and alleged "hit squad" commander Dirk Coetzee said yesterday he did not know details about an application for indemnity made on his behalf by the ANC.

A Johannesburg newspaper reported yesterday that the Ministry of Justice had turned down the application

A spokesman for the Ministry said indemnity applications were "treated as personal".

Coetzee said he would return to South Africa whether he received indemnity or not, but that he would not return "under (Justice Minister) Kobie Coetsee's conditions" - who has promised the former

policeman a free and fair trial

He said he wanted Coetsee to explain "what he meant by a free and just trial"

Accusing the Minister of "playing childish games", Coetzee said he was prepared to stand trial for his part in alleged death squads, but he doubted that his superiors would stand alongside him in the dock.

A prosecution depended on a successful police investigation and the police had shown "no willingness to uncover evidence about death squads", Coetzee said.

He would not sit in jail while his superiors went free. - Sapa

London 8/2/79

(252)

~~SECRET~~

Murdered man 'judged people'

Own Correspondent

JOHANNESBURG — The murdered ANC member whose funeral vigil became the scene of the Sebokeng massacre on Saturday was involved in a "people's court" which sentenced four "gangsters" to death three weeks earlier, township sources alleged yesterday

Police confirmed they were looking into allegations of a people's court operating in the Vaal Triangle township

Township sources, who did not want to be named for fear of retribution, said Mr Christoffel Nangalembe passed the death sentences at a people's court on December 22 last year

The ANC has admitted he was involved in efforts to combat crime.

The sources alleged that the four gangsters, who eventually escaped execution, might have been ANC members who then formed a breakaway faction and took revenge. One of the four was said to be related to senior Inkatha member Mr Temba Kubheka. The ANC has alleged a relative of Mr Kubheka's was involved in the mass slaying

Police have arrested 10 people in connection with the massacre. Their names have not been released

Mr Nangalembe, 28, was found shot and strangled on January 6. His killers have not been found

ANC PWV regional chairman Mr Kgalema Motlanthe said Mr Nangalembe was not part of an organised ANC crime-prevention unit but was prominent in youth structures. He confirmed, however, that Mr Nangalembe had chaired a meeting

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J&L

From page 1

with local gang members to discuss crime.

"This gang was told that their activities would not be tolerated. It was a joint meeting at which the gang was to be given a stern warning to desist from terrorising the community," Mr Motlanthe said

But the sources said Mr Nangalembe sentenced four men to death for gang-related activities

They said the men were handcuffed in pairs. Two were locked in the boot of a car and the other two in the car itself. The vehicle was then set alight. But the men managed to escape. Two weeks later Mr Nangalembe was killed

Another version of the car incident was reported in a Sunday newspaper, which said a former gang member claimed there were clashes between the gang and comrades in early December. A meeting was called and a truce was reached

It reported the former gang member as saying some members were unhappy about the truce and kidnapped four of the pro-truce faction

He alleged that the four members were put into a car and driven away

The car stalled, however, and the driver left it to call the police. When he returned the men had fled and the car was in flames

The former gang member and the four men were later approached by Inkatha members, who offered to help them get revenge. Two of the men accepted the offer, he said



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Man whose funeral vigil ended in massacre linked to people's court

THE murdered ANC member whose funeral vigil became the scene of the Sebokeng massacre on Saturday was involved in a "people's court" which sentenced four "gangsters" to death three weeks earlier, township sources alleged yesterday.

Police confirmed they were looking into allegations of a people's court operating in the Vaal Triangle township.

Township sources, who did not want to be named for fear of retribution, said Christoffel Nangalembe passed the death sentence at a people's court on December 22 last year.

The ANC has admitted he was involved in efforts to combat crime.

The sources alleged that the four gangsters may have been ANC members who then formed a breakaway faction and took revenge. One of the four was said to be related to senior Inkatha member Tembha Kubheka. The ANC has alleged Kubheka's relative was involved in the mass slaying.

Police have arrested 10 people in connection with the massacre. The names of those being held have not been released.

Nangalembe, 28, was found shot and strangled on January 6. His killers have not been found.

ANC PWV regional chairman Kgalema Motlanthe said Nangalembe was not part of an organised ANC crime prevention unit.

PATRICK BULGER

but was prominent in youth structures. He confirmed, however, that Nangalembe had chaired a meeting with local gang members to discuss crime.

"This gang was told that their activities would not be tolerated. It was a joint meeting at which the gang was to be given a stern warning to desist from terrorising the community," Motlanthe said.

But the sources said Nangalembe sentenced four men to death for gang-related activities.

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The car stalled, however, and the driver left it to call the police. When he returned the men had fled and the car was in flames.

The former gang member and the four men were later approached by Inkatha members, who offered to help them get revenge. Two of the men accepted the offer, he said.

The township sources say that two of the four men sentenced to death by the people's court are among the 10 arrested in connection with the massacre.

They say Sebokeng has long been known

To Page 2

People's court

as a stronghold of the ANC's military wing in the Vaal Triangle township of Ukhokho. We Sizwe (MK) members have been involved in a battle for street supremacy for several months and have attempted to consolidate their hegemony under the guise of anti-crime campaigns, they say.

SAP liaison officer for the Vaal Triangle, Piet van Deventer, said yesterday there were a number of groups battling for supremacy in the township.

From Page 1

Police were aware that Nangalembe had been involved in an anti-crime campaign and were investigating allegations about a people's court. They had not yet found evidence of such a court.

Van Deventer said the nine men and one woman were being detained in terms of Article 3 of the Security Emergency Regulations.

Comment Page 6

The answer is 'justice for all'

SKW 1/11/91.

~~SKW~~ 25.2

THE greatest challenge facing the legal profession in South Africa is to make the judicial system accessible to the public. There should be about one and a half times as many practising attorneys as there are now if we are to remain on the fringe of the First World.

The problem cannot be solved overnight without affecting standards, so the profession needs to tackle the problem using existing resources.

For instance, the Association of Law Societies (ALS), which represents more than 7 000 attorneys in South Africa, has just completed a successful pilot project for candidate attorneys.

This should be extended to enable more prospective attorneys to receive at least part of their training otherwise than under articles, although articles are likely to be with us for some time.

We have persuaded the Department of Justice to extend the rights of appearance of candidate attorneys with B Proc degrees, and also candidate attorneys who

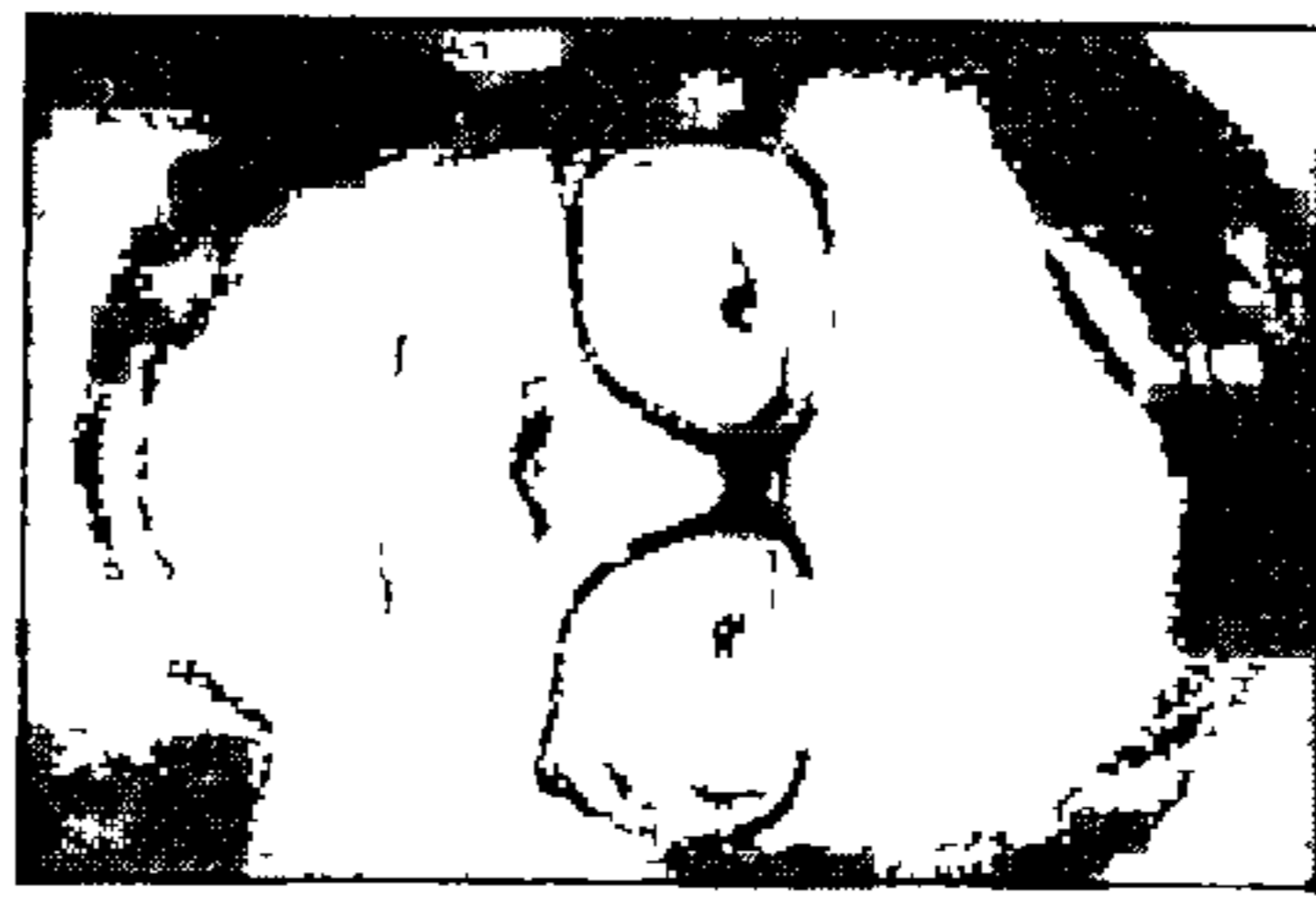
have completed their articles. The ALS has approved rules for taking on claims for damages under a special fee arrangement so that if they win they receive payment in accordance with a special tariff, but if they lose, the client pays nothing.

Then there are the small claims courts which are now established throughout the country and in which a large number of attorneys provide their services free of charge.

But one must remember lawyers expect to be paid for what they do and here the Legal Aid Board renders an invaluable service. However, it is far too limited.

I believe the Department of Justice gets a raw deal in the budget when compared to other social services.

It would help if donations to the Legal Aid Board were tax-deductible. The money spent on legal aid is very well spent but there is not enough of it. Also, the department should



Ed Southey . . . president of the Association of Law Societies.

bring the *pro Deo* system under the wing of the Legal Aid Board.

This would improve the system by providing the *pro Deo* advocate with an attorney to enable a

proper defence to be made available in serious cases.

I have never understood why this could not be done.

The Legal Aid Board has been directed by the Minister of Justice to investigate whether there is room for a State-appointed public defender to assist accused persons in criminal trials.

The ALS has also been investigating the concept.

Personally, I doubt whether the public defender will be able to reach sufficient people to be able to make any impact on the problem. The money can be better spent through the legal aid system.

Regarding matrimonial and family-type disputes, I think the legal profession should encourage the use of alternative dispute resolution procedures which take disputes out of the confrontational court arena into a more relaxed atmosphere.

I think all attorneys' firms should commit themselves to a greater involvement in *pro bono* work. A lot is spoken about this

but there is little commitment

In the United States, and in Britain firms big and small devote time to civic, charitable and *pro bono* work and we should be doing likewise in a country where the need is so much greater.

The whole system for appointing judges and magistrates will have to change.

Appointments to the Bench should be made by some sort of cross-section of practitioners and others involved in the administration of justice.

Appointments should be made not only from the ranks of advocates but also from attorneys and possibly academics and magistrates. Such a system will create a much larger pool from which to draw suitable people to hold judicial office.

It is frequently pointed out that no black person has been appointed as a judge and the number of black magistrates is small.

An electoral college of the kind I have mentioned should help solve the problem.

We should rebuild respect for the law, not only in the political sense, although here obviously a lot of leeway needs to be made up. I am talking about the law as it affects people in their everyday lives.

How can there be respect for a court system when 80 percent of the population have no hope of being able to afford legal representation in the courts?

This may be part of the reason people resort to violence and boycotts.

And the problem is that one thing leads to another. The only remedy is to re-establish the respect of all citizens for our legal system, to make the law more "user-friendly" and to ensure all people can approach the courts at a reasonable cost.

● Ed Southey is president of the Association of Law Societies. He also serves as a commissioner of the small claims court in Johannesburg and is one of only two South Africans who are on the International Bar Association. □

Two jailed in 'stolen child' case

By EUNICE RIDER
Court Reporter

252

TWO Khayelitsha residents who beat and stoned a woman pointed out by a sangoma as having stolen a missing child were yesterday found guilty of attempted murder

Aaron Gushman, 32, and Nongetheni Kelo, 35, of Site B, were respectively sentenced in the Cape Town Regional Court to 6½ years, with two suspended, and 4½ years, with 18 months suspended

The magistrate, Mr F F Botes, found them guilty of stabbing Miss Esther Guma, 27, with sharp objects, kicking her and striking her with knobkerries, stones and bricks on March 24 last year

In her evidence, Miss Guma said she was accused of stealing the child of a friend by a sangoma, who used a mirror as a medium

The sangoma, Mrs Abigail Gnu, was the third accused, until charges against her were withdrawn in November

Miss Guma said she was led to the home of the missing child at Site B and then to the home of her own mother, Mrs Christina Guma

When the child was not found, a large group ordered her to undress. They beat her and marched her, naked, through the streets

Neethling case presents 'difficulties'

Spn 18/1/91

By Cathy Stagg
and Brendan Templeton

Mr Justice Kriegler said the central question he had to decide in a R1,5 million defamation case was whether allegations made about General Lothar Neethling, head of the SAP forensic division, were true or not.

The court case arose from two articles in Vrye Weekblad and one in the Weekly Mail, published at the end of 1989, in which former police Captain Dirk Coetzee was quoted as saying General Neethling gave members of the security police poison to use on ANC members. Judgment began in the Rand Supreme Court yesterday and is expected to end today.

One of the questions touched on during the judgment, but not yet decided, is if — in certain circumstances — the press would be justified in printing a story with only small corroboration, to ensure public debate and political action.

The judge described the death row confession of Albert Nofomela, who worked as Captain Coetzee's subordinate, as the "trigger which caused the explosion" and said Nofomela's affidavit had led indirectly to the Harms Commission.

Mr Justice Kriegler made it clear he would hold himself aloof from the findings of the

Harms Commission or any other hearings in deciding the validity of Captain Coetzee's claims.

General Neethling was the main witness on his side while Captain Coetzee's evidence was essential to the newspapers' defence. The judge said if the case had to be decided on the two men's characters it would have been a simple matter, but it was more difficult than that.

One of his greatest difficulties was trying to assess the character of Captain Coetzee without ever having met him face to face. He had relied on evidence such as tape recordings, a signed statement by Captain Coetzee, the London hearing before the Harms Commission where the ex-policeman gave evidence, and a television programme where the captain was interviewed.

He found Captain Coetzee to be a "self-confessed hoodlum" who was allergic to routine and discipline, while General Neethling had proved himself to be an intellectual person who worked hard and was a strict taskmaster.

The ex-policeman, if he had killed "even half" as many people as he claimed, would be a "hoodlum of Olympic proportions", Mr Justice Kriegler said. General Neethling was a man capable of diplomatic tact, but who was quite arrogant about his intellectual abilities.

AS2

"He was more a sabre than a rapier," the judge said.

While Captain Coetzee's evidence had to viewed with the greatest suspicion, it could not be ignored. Much of what he had said had been verified by independent evidence.

His claims which did not directly affect General Neethling also had to be considered because Captain Coetzee spoke of a "security culture" where policemen were subject only to their own laws.

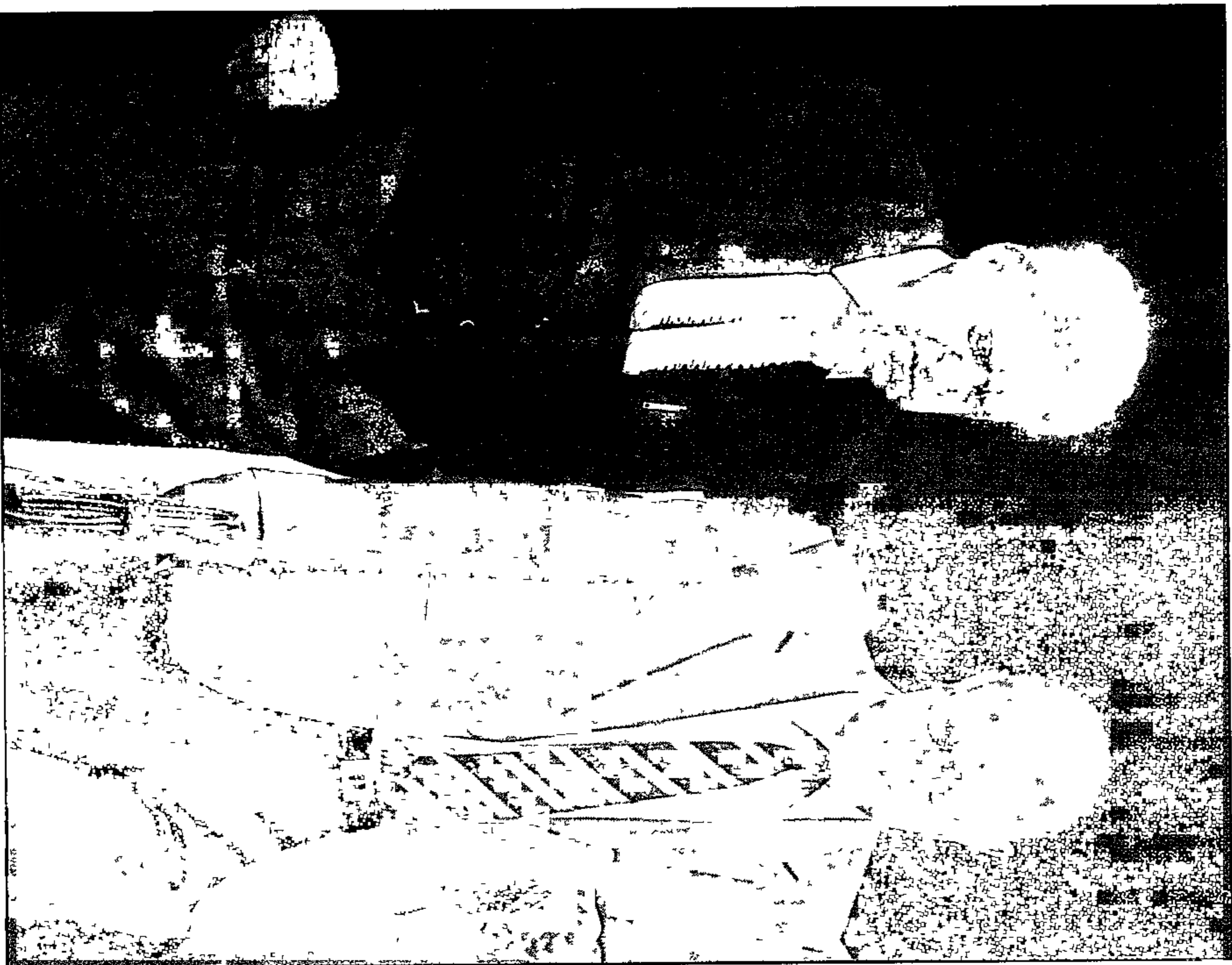
Mr Justice Kriegler said he had to look "through a double-focus lens" at other claims which could have a bearing on the case.

The judge had no difficulty in accepting that Captain Coetzee and his subordinates made a cross-border raid on a house on official instructions. This part of Captain Coetzee's story, which he told to Vrye Weekblad reporter Jacques Pauw in Mauritius in 1989 — eight years after the event — had been backed up last year by documents supplied by the Botswana government.

Referring to a failed attempt to kidnap an ANC man known as "General" in Swaziland, the judge said it was a "droll story" in the Peter Sellers genre, which had undertones of cow-boys and crooks.

Mr Justice Kriegler had allowed evidence from freelance journalist Martin Welz to be admitted. He said Welz had given useful information about his profession's ethics and if, as Welz testified, Captain Coetzee had told him about the poisonings long before the first Vrye Weekblad article was published, it was "directly relevant".

Welz testified that if he had had the limited corroboration that Nofomela's affidavit provided, and he had had the facilities to publish, he would have done exactly what Vrye Weekblad had done.



Rand Supreme Court . . . General Lothar Neethling (right) and Willy Oshry, QC, head of the legal team handling General Neethling's defamation action. Picture: Karen Fletcher

Coetsee requests judicial inquest (252) into soccer stampede deaths ^{Soweto 278} 18/11/71

JUSTICE Minister Mr Kobie Coetsee has requested the Transvaal Judge President to appoint a judge to head a judicial inquest into 43 soccer stadium deaths at the weekend.

Forty-three fans lost their lives during a friendly match between Kaizer Chief and Orlando Pirates at Orkney on Sunday.

In a speech made at Oud-noorn yesterday

Coetsee called on those concerned to use proven mechanism so that the circumstances of the disaster and those responsible could be determined within the framework of the law.



New civil law procedure for SA's lower courts

CAFF TIPS 18/1/91 202
OUDTSHOORN — A new system of civil-law procedure in the lower courts is to be introduced and a model for the proposed procedure will be introduced next year, the Minister of Justice, Mr Kobie Coetsee, said on Wednesday.

Opening a new magistrate's court here, he said one change would be that civil courts would be in buildings separate from criminal courts.

He added he had already discussed a new system with senior magistrates, who had welcomed the proposed changes — Sapa

New Bill provides for easier access to law

Sowetan 8/2/91

252

A BILL published in Parliament yesterday provides for mediation and easier access to a cheaper and quicker civil court.

The Short Process Courts and Mediation in Certain Civil Cases Bill sets out the conditions for an alternative dispute adjudication procedure.

It proposes that advocates, attorneys and retired magistrates with at least five years' experience be considered for the post of adjudicator, as could people who have been involved in the tu-

tion of law. Minister of Justice Mr Kobie Coetsee will appoint adjudicators to preside in an area or district established by him.

Mediators

The Bill also provides for the appointment of mediators recommended by the Association of Law Societies, the General Bar Council of South Africa and the Department of Justice.

After a notice has been issued subjecting the dispute to mediation pro-

ceedings, the parties will appear before a mediator in chambers.

The mediator will interview the parties and attempt to bring about a settlement or simplification of matters. He will issue orders which will later form part of the record of the resulting action in the court concerned.

If no settlement is reached in the mediation proceedings, the case may proceed in a magistrate's court or a Short Process Court - Sapa

New 'mediation' courts will cut cost of litigation

Spines 10/2/91

IMAGINE being the owner of a small engineering concern embroiled in a R200 000 dispute with another company over a loosely worded contract. Options are pretty limited — either sue or walk away.

The former is expensive. Legal fees would amount to about R70 000 but that is only the beginning. Executives' time would be swallowed up, projects delayed and negative publicity could damage both sides.

Not so long ago the temptation would have been to walk away. Now a third option offers itself — mediation, or, as it is more forbiddingly named, alternative dispute resolution (ADR).

The engineering entrepreneur once frightened off by costs can now expect to get away with under R9 000 in legal costs. And foreign experience indicates there would be an 80 percent chance of settlement.

The search for alternatives to court action has only recently gripped South Africa, although ADR is already extremely popular in Britain, the United States, Canada and Australia.

Last month 12 Johannesburg law firms met to establish an alternative dispute resolution task force. It is backed by the Association of Law Societies.

What is ADR? It is a system which allows parties in an argument to meet with a professional mediator and sort out problems without the expense and delays of a full legal

BRIAN POTTINGER reports on a new bid to keep legal costs down (252)

trial. Much of the technique for this mediation has in fact already been acquired in South Africa in labour disputes.

The growth of the system was inevitable. Legal costs in South Africa are so high that many people are effectively barred from using legal processes. The most extreme consequences of that (together with the general politicisation of the debate over the judicial system) has been the growth of "People's Courts".

The comparatively recently introduced Small Claims Courts helped deal with the nickel-and-dime disputes, but not much else. This week the government tabled a draft Bill for the creation of short process courts to build into the legal process an opportunity for parties to sit down before full trial and try to reach a settlement.

The purpose of the ADR initiative undertaken by the legal profession is to create a body of qualified mediators who can intervene at an early stage to give settlement, rather than suing, a chance. The procedures can be as simple, or as complicated, as the parties wish to make them.

It can also take various forms: full mediation in which a professional mediator acts as a "facilitator", a conciliation process in which an independent party makes proposals which the parties are either free to

accept or reject or, finally, a mini-trial in which an executive from each of the disputing parties supported by minimal council, present their cases to an independent moderator who tries to help them reach settlement. Again, it is voluntary and parties are free to pull out at any stage.

Andre van Vuuren, director general of the Association of Law Societies, spells out the main reasons why people are seeking alternatives to litigation worldwide.

The high cost of litigation, length of time before justice is done, the trauma of open court hearings and the passive position of litigants during formal procedures (every person, after all, wants his "day in court", but preferably without the expense).

In countries where ADR has enjoyed success there has been a conscious effort to obtain from major corporations an agreement not to sue before alternative methods are tried. Now the South African ADR task force is trying to canvass support for the same sort of declaration.

The cynical may ask why lawyers are so interested in promoting dispute settlement procedures which keep cases out of court and reduce costs. The answer is simple. More clients are prepared to come to them for help.

Kutlwanong - 11 in the clear ⁽²⁵²⁾

By DAN DHLAMINI

THERE was jubilation in the Odendaalsrus Magistrates' Court this week when four murder charges were dropped against 11 of the 34 Kutlwanong residents charged with the murder of four whites.

The appearance of

^{9/11/91 10/2/91}
Philip Matela 25, and 33 others, including 18-year-old pregnant Annah Makinitane, is a sequel to the gruesome death of four Odendaalsrus whites.

They were hacked to death and set alight - allegedly by Matela and the others - after going to

Kutlwanong township during a drinking spree on September 29 last year.

The charred remains of Shelley Basson, Anthony Casey, Michael Bellele and Basie van Niekerk were retrieved from the shell of their burnt-out car in Kutl-

wanong's Mshenguville squatter camp.

This week Magistrate Ellen van Heerden withdrew the four charges of murder against seven minors aged between 15 and 17; and those against Petrus Diale, 19; Gabriel Molefi, 24; Petrus Ntsane, 33; and Johannes Kole, 35.

The accused have not yet been asked to plead. Makinitane is out on R50 bail while the minors were released into the custody of their parents. Matela and the remaining accused were granted bail of R300 each.

Van Heerden has issued warrants of arrest for Mandla Dlamini and Abel Sekete who failed to appear in court.

The case was postponed to March 5.

Bid to bring justice closer to the people

By Peter Fabricius
Political Correspondent

The Government and the Alexandra Civic Organisation (ACO) have found much common ground during discussions about re-forming the Alexandra Community People's Court.

Justice Minister Kobie Coetsee gave this encouraging signal yesterday after meeting ACO chairman Moses Mayekiso in Cape Town for talks.

The successful meeting is being seen as a further sign of a growing consensus between the Government and the township communities on the sensitive issue of people's courts.

The Government has unveiled several measures during the last fortnight to bring justice closer to the public.

These include proposals to refer certain civil matters to mutually acceptable arbitrators rather than courts.

Other proposals are that non-legal assessors should assist judges and magistrates in trials and that justices of the peace should try lesser cases.

Mr Mayekiso requested yesterday's meeting after announcing last month that a re-formed people's court would be reintroduced in Alexandra.

There would be no more floggings or other abuses, and trained officials would run it, not the untrained youths of the community, as in the past.

A resource group convened by the Centre for Applied Legal Studies also attended the discussion.

In a statement the Justice Ministry said the meeting had decided to form a working group representing the Alexandra community, the resource group and the Department of Justice to conduct follow-up discussions.

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macy

The admission followed a scandal last year over a number of infant deaths in private hospitals

Scrap Security Act, says HRC

The Human Rights Commission (HRC) has called on the Government to scrap the Internal Security Act and detention without trial, and seek forgiveness from about 80 000 victims of these laws

The HRC estimates 80 000 people have been "arbitrarily deprived of their liberty and right of access to the courts over the past 30 years"

At least 73 people had died in detention cells, said the commission

"If President de Klerk is sincere about dismantling apartheid, he cannot avoid dismantling the apparatus devised over the years to defend and perpetuate it," said the HRC

Three-quarters of all detainees were never brought to trial, and only two or three percent were convicted of any offence
— Staff Reporter

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People to
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on courts

A WORKING group with representatives of the Alexandra community and the Department of Justice would be set up to discuss the structure of the Alexandra people's courts, the Minister of Justice, Mr Kobie Coetsee, said yesterday.

He said in a statement that he had met Mr Moses Mayekiso and members of a resource group convened by the Centre for Applied Legal Studies.

It was found that the group had "common ground" with the government's initiatives in "dispute resolution at community level".

The working group will put forward proposals for Mr Coetsee's consideration. — Sapa

252 Mamelodi inquest

*9 Mr P G SOAL asked the Minister of Justice

- (1) Whether, with reference to his reply to Question No 3 on 23 June 1987, the Attorney-General has reached a decision regarding the inquest into the deaths of the persons killed in Mamelodi on 21 November 1985, if not, (a) why not and (b) when is it anticipated that a decision will be reached, if so,
- (2) whether the inquest has been held, if not, why not, if so, (a) when and (b) what were the findings?

Answered 12/2/91
The MINISTER OF JUSTICE B15E

- (1) Yes
- (a) and (b) fall away
- (2) Yes

(a) The inquest commenced on 11 January 1988 and was finalized on 22 June 1989

(b) The magistrate found that the responsibility for the deaths of the deceased concerned was not determinable

In view of the magistrate's finding the Attorney-General, Pretoria, has returned the docket to the South African Police with the request that the whereabouts of one of the witnesses who disappeared, be established. This witness has as yet not been traced

*10 Mr J J Walsh—Finance [Question standing over]

*11 Mr J J Walsh—Development Aid [Question standing over]

Amending of legislation (252)

*12 Mr S S VAN DER MERWE asked the Minister of Justice *Answered 12/2/91*

Whether any legislation amending the (a) Internal Security Act, No 74 of 1982, and (b) Public Safety Act, No 3 of 1953, will be introduced in Parliament during the current session, if so, when in each case, if not, why not?

B24E

The MINISTER OF JUSTICE

Answered 12/2/91
Further to the Pretoria Minute the Government has now had the opportunity of considering the repeal, on the one hand, of certain provisions and, on the other hand, the review of other provisions of the Internal Security Act, No 74 of 1982. A further announcement in this regard will soon be made and legislation to amend the said Act will be introduced during the current session of Parliament. The review of all other legislation, which may have a bearing on security matters, is still receiving attention *(252)*

Formula funding policy

*13 Mr R M BURROWS asked the Minister of National Education *Answered 12/2/91*

(1) Whether any universities or technikons are to receive in respect of 1991 the full amount which they should receive under the formula funding policy administered by his Department, if not, why not,

(2) whether any of these universities or technikons are to receive less money from the State in real terms in 1991 than they did in 1990 in terms of the amounts determined by his Department, if so, which of these institutions,

(3) whether he will make a statement on the matter? *(251)* B29E

The MINISTER OF NATIONAL EDUCATION

Since the Minister of Finance has not submitted the Draft Budget Bill for the 1991-92 financial year to Parliament yet, the figures are not presently available

- 13(1) Falls away
- 13(2) Falls away
- 13(3) Falls away

Certain teachers' union, negotiation

*14 Mr R M BURROWS asked the Minister of National Education *Answered 12/2/91*

(1) Whether he and/or any education departments in the Republic have recognized for negotiation purposes a certain teachers' union, the name of which has been furnished to the Minister's Department for

the purpose of his reply, if not, why not, if so, (a) subject to what conditions and (b) what is the name of this union,

- (2) what other national teacher organizations are currently recognized for negotiation purposes in education,
- (3) whether he will make a statement on the matter? *(251)* B30E

Answered 12/2/91
The MINISTER OF NATIONAL EDUCATION

(1) No Discussions are being conducted with all interested parties of which the teachers' union, the name of which has been furnished to my department, is one, in order to formulate criteria with a view to recognition for the purposes of negotiation

- (a) Falls away
- (b) Falls away
- (2) Falls away
- (3) No

Cape Peninsula: additional teaching posts

*15 Mr K M ANDREW asked the Minister of Education and Training *Answered 12/2/91*

Whether any additional teaching posts have been created at existing (a) primary and (b) secondary schools in the Cape Peninsula in 1991, if so, how many in each case, if not, why not? *(251)* B46E

The MINISTER OF EDUCATION AND TRAINING

- (a) Yes, 46
- (b) Yes, 19

Budget, amount spent

*16 Mr K M ANDREW asked the Minister of Education and Training *Answered 12/2/91*

Whether the non-recurrent sum of R150 million and the education portion of the special sum of R1 billion set aside in the 1990 Budget have been spent, if not, (a) why not and (b) on what items are they to be spent, if so, (i) what total amount has been spent to date, (ii) (aa) on what and (bb) where was it spent and (iii) what persons and/or organizations were con-

sulted prior to spending it? *Answered 12/2/91* B47E

The MINISTER OF EDUCATION AND TRAINING

The amount of R150 million has been allocated as follows

To the Department of Education and Training R73,950 million
To the six Self-governing Territories on Vote Development Aid R76,050 million

Of the amount of R1 000 million the following amounts have been allocated to education for Black people

To the Department of Education and Training R337,500 million
To the six Self-governing Territories on Vote Development Aid R337,500 million

The amount of R73,950 million as well as R150,009 million of the amount of R337,500 is being spent in the 1990-91 financial year by the Department of Education and Training

The amount of R337,500 million is being used for the reduction of backlogs in school buildings. The spending of the amount is being distributed over two financial years, namely R150,009 million in the 1990-91 financial year and the balance of R187,491 million in the 1991-92 financial year

- (1) The full amount of R73,950 million was spent in the current financial year
- Of the amount of R337,500 million, R150,009 million is being spent in the current financial year
- (ii) (aa) The amount of R73,950 million was spent as follows

Operational expenditure R72,713 million

School buildings R1,237 million

The amount of R150,009 million is being spent as follows during the current financial year

Reduction of backlogs in school buildings R122,00 million
Replacement and provision of school-books R28,000 million

Major issues to be tackled 'soon'

3 (Day) 13/2/91

Political Staff

CAPE TOWN — Announcements about the release of political prisoners, indemnity and the amendment of the controversial Internal Security Act are to be made soon

Deputy Justice Minister Dame Schutte said in reply to questions in the House of Assembly that Justice Minister Kobie Coetsee may issue a statement on the release of prisoners and indemnity possibly within the next few days

Coetsee also said an announcement about the amendment of the Internal Security Act would be made "soon"

Legislation to amend the law would be introduced during this session of Parliament, he said in reply to a question tabled by Tian van der Merwe (DP, Green Point)

However, Coetsee added that the review of all other legislation, which may have

had a bearing on security matters, was still receiving attention

Although government is likely to remove some provisions in the Internal Security Act, such as the banning of political organisations and people and the "listing" of people as communists, it is unlikely to scrap its most contentious clauses which provide for detention without trial

Last week Law and Order Minister Adriaan Vlok said Section 29, which provides for indefinite detention for interrogation purposes, was still needed

The success in tracking down right-wing terrorism suspects could be attributed to such provisions, Vlok explained

Working group set up to probe community courts

(ASA)

WILSON ZWANE

JUSTICE Department officials and members of the Alexandra Civic Association (ACO) have agreed to set up a joint working group to investigate the possible creation of community courts in the township.

Justice Ministry spokesman Maj Elsa Jones said it had been decided to establish the working group at a meeting between Justice Minister Kobie Coetsee and delegates from ACO and the Resource Group, an organisation of legal experts, in Cape Town this week.

"Proposals emanating from the group's discussions will be considered by the minister in due course," Jones said.

ACO official Richard Mdakane said the group would get going "soon after all the parties concerned have chosen their delegates".

Jones said the proposals put forward by ACO president Moses Mayekiso had much in common with government initiatives aimed at making "the administration of justice accessible to people of all levels".

Mayekiso recently said the proposed community courts would involve trained people who would resolve community disputes through mediation, arbitration and negotiation.

They would not be like the discredited kangaroo courts which were often constituted at the whim of an individual, Mayekiso said. And residents would not be coerced into using these courts.

The Resource Group, which was formed by the Wits Centre for Applied Legal Studies and the National Association of Democratic Lawyers (Nadel), would train people involved in the courts in the mechanisms of mediation, arbitration and negotiation.

Fare rise to aid rail revamp

LINDEN BIRNS

SUBURBAN rail fares will increase by 10% on April 1 in order to help finance a major multimillion-rand overhaul of railway security and facilities.

Transport, Public Works and Land Affairs Minister George Barlett announced the increase in Parliament yesterday.

Spoornet marketing GM Koos Meyer said the increased revenue would be used for a general upgrading of passenger safety and services at all Metro (suburban line) stations over a five-year period.

Stations in the PWY area, Durban, Cape Town, Port Elizabeth and East London would benefit.

"The major improvements we are looking at are in passenger safety and general security. We have an agreement with the SAP whereby we provide the infrastructure — items like secure fencing and charge-office installation — which they

will then man," he said. Other items to be repaired, upgraded or installed include platform lighting, benches, ablution facilities and roofing.

The programme would cost "many millions" over the next five years, he said.

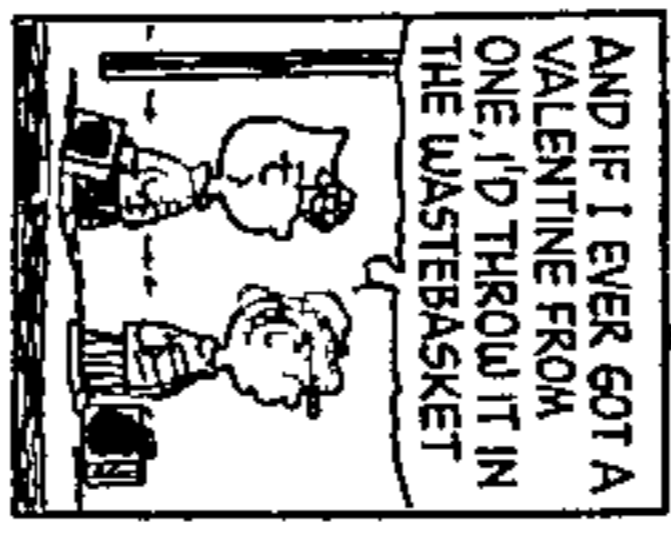
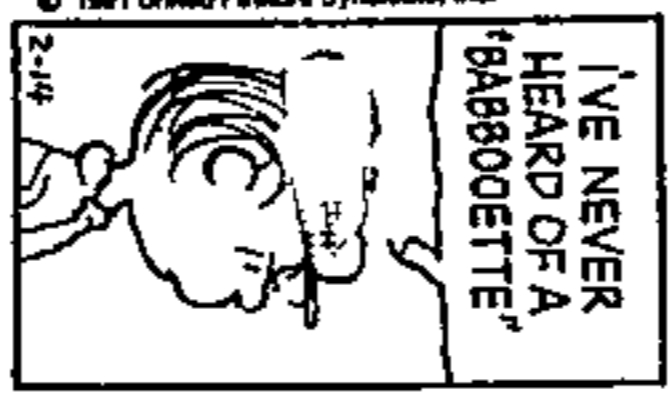
Work had already begun at stations in Benoni, Katlehong and Soweto, while 60 to 80 stations on the Reef and in the Cape would receive attention in the new financial year, Meyer said.

Spoornet is also planning to install a new electronic fare collection and ticket dispensing system to replace obsolete electro-mechanical machines currently in use.

The fare increase is the second in five months with the most recent increase of 9% occurring in November last year.

PEANUTS

By Charles Schulz



Standard Bank Investment Corporation Limited

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What the Nats are saying

South 1412-26/2/91

252

THE protection of minorities must be interwoven into the entire structure of the constitution, and not be restricted to a specific chapter of the document, says Dr Tertius Delport, deputy minister of Constitutional Development.

He was responding to a question on the National Party's reasons for not favouring the Westminster system of government.

"There are other systems which bring minorities into parliament. The Westminster system excludes minorities—249 percent minority can be left without representation in parliament."

Interviewed on issues surrounding the negotiation process and the National Party's attitude to a new constitution, Delport says he sees "no timetable at present"

Constituent Assembly

Delport says the government rejects the ANC call for a constituent assembly as it will preempt real negotiations. Any party that enters an election for a constituent assembly must surely state what its policy is, both on negotiations and on the final outcome of the constitution.

"They will obtain a mandate on this basis and will not, therefore, be free to arrive at any form of compromise in the negotiation process."

Constituent assembly elections would thus be detrimental to that process. Delport sees no problem with the government playing "both referee and player" in the negotiation process.

What is the National Party, the other "main actor" on the South African political stage, really saying about the country's constitutional future?

A definite "no" is a constituent assembly. A definite "yes" is the maximum devolution of power, according to the NP's Tertius Delport, Deputy Minister of Constitutional Development. He was interviewed by RORY RIORDAN:

"Our position in South Africa is quite different from the sort of situation that calls for an interim government. The NP is a legitimate government which has shown its willingness to embark on reform—a position virtually the entire world accepts."

"These factors add up to a situation that is completely different from one of a government refusing to reform or one of a government putting obstacles in the way of the reform process."

Delport says the concept of a unitary or federal state in a new South Africa is "unhelpful"

"Even in a unitary state one can devolve power to second-tier government or even to third-tier government. Depending on the extent of the devolution, a unitary state will, correctly, become a federal state.
"I'm not going to argue about whether we should rather have a unitary or a federal state—what I say, rather, is that we must have a maximum devolution of

power, subject to two important qualifications

"Firstly, one must not devolve power that cannot be adequately exercised for want of skilled manpower at the lower level, and secondly, devolution must be accompanied by acceptable levels of funding of lower level government," says Delport.

He agrees to a bill of rights, an independent judiciary and the end of racial discrimination. He is also in favour of proportional representation, but qualifies it.

"There are many possible models—national, regional and local. Regional and local could be more workable in South Africa, I think."

On the possible scenario of a future coalition government, Delport says "Coalition is a sophisticated form of government, the radical opposition of majority domination."

"I prefer a system of enforced coalition to one of majority domination."

Constitutional Court

The extent to which a constitutional court will be needed, in his view, will depend on how the constitution, the laws and the statutes are framed.

"In America, where they have a code of laws, the courts can play a very dynamic role in interpreting the constitution. But we have a history of writing statutes in the minutest detail, which makes such interpretation much less possible, less valuable."

"Whether we need a constitutional court or not will depend on how we plan to write our laws."

What would the NP do if, under a new constitution, the ANC won the election and proposed joint government?

"The president has already answered that, when he said he would be willing to serve under Nelson Mandela."

—Adapted from Monitor

Tertius Delport, deputy minister of Constitutional Affairs



(15)

NAPOLEON apparently claimed that a constitution should be short and obscure.

Albie Sachs has said that a country's constitution should be the autobiography of a nation, and Ismail Mahomed has added that a constitution should be the mirror of a nation's soul

A constitution creates and establishes structures of the government with which we are familiar, such as local and national authorities.

But more important than establishing the structures, the constitution empowers them. It sanctions the exercise of powers in particular ways, normally through three organs of government at central level: the legislature (parliament), the executive (cabinet), and judiciary (Supreme Court)

A constitution most often also sets out the formal outlines of the structure of the state or organisation concerned, for example, whether it is to be a federal or a unitary state or some variation on those themes. This is then the aspect of a constitution which has to do with power and its use in society

Power
Secondly, a constitution regulates and controls the exercise of that power by laying down in advance (and making widely known and understood) predictable channels and procedures for the carrying out of that power

It normally does this by providing for checks and balances between the different organs and levels of government, an entrenched and supreme bill of rights on behalf of all the citizens of the country, universal franchise arrangements for all adult inhabitants of the nation, the independence of the legal system, often called the rule of law, and several other institutions, such as that of an "ombudsman", whose function it is to investigate and control the exercise of executive power

Many other sources of potential regulation and control can be laid down in a constitution, such as some sort of separation of powers between the various

Constitutional awareness needed to avoid bleak future

252

South 20/1/91

constituent elements of that organisation

Special majorities in parliament can also be required, certain matters can be absolutely "entrenched", that is, impossible to amend or delete, and provision is normally made for accountability to the electorate by means of regular elections

A constitution must be practically implementable. It must not be so complex as to be almost unworkable, as the 1983 RSA Constitution Act has tended to be. In addition, the constitution must be legitimate—approved by and adopted with the support of the majority of people. If such a constitution is intended to last a long time and be seen as binding

Constitutions are normally interpreted through a court, either the ordinary Supreme Court of the country or a special constitutional court whose only jurisdiction is to interpret and give meaning to the constitution. In this process of interpretation and implementation, a set of habits, practices and conventions is built up, which gives life to the constitution, and which are as important as the piece of paper itself

South Africa, as a political entity, has had basically three constitutional Acts (and therefore constitutions) since 1910 (and therefore constitutions) since 1910

Each of these constitutions, in diminishing degrees, has been influenced by South Africa's British colonial history

The importance of a well-understood and thoroughly-debated constitution-making process cannot be underestimated, writes Hugh Corder in a paper for the SA Institute of Race Relations. Nevertheless, he says, people talk too easily about things such as constitutions and bills of rights, often without knowing what they entail. A shortened version of his paper follows:

arrangements pre-Union, and was gradually eroded even further over the years

This was done by the extension in 1930 of the franchise to white women, by the removal of African voters to a separate voters' roll in 1936, and by a similar process with regard to "coloured" voters in 1956

At the time the whole system of apartheid gained constitutional form on the basis of the Land Acts of 1913 and 1936 and the creation of local and then regional government authorities in the reserves or bantustans

The second South African constitution came into being in 1961 when the Union of South Africa became a republic and was expelled from the Commonwealth. The life of this constitution was marked by a further erosion of civil liberties, by some of the "bantustans" (Transkei,

Bophuthatswana, Venda and Ciskei) proceeding to independent status in the eyes of South Africa constitutional law, and by all the other bantustans reaching the status of "self-government"

This 1961 constitution eventually gave way in 1983 to the present constitutional arrangement which attempts, through the tricameral system, to extend the process of government to co-opted elements from the "coloured" and Indian groups, to the final constitutional exclusion of people classified "black" in this country

This present constitution has been marked by an extremely low level of legitimacy and insignificant polls in the elections for the smaller Houses of Parliament. It has also led to resistance on a scale never before seen in South Africa, with the consequent declaration of successive states of emergency from mid-1985 upwards

South African constitutional history is a good example of constitutions and constitutional government which have been doomed from the beginning because of the manner in which they have been drafted and adopted, as well as imposed. A shortcoming has been that there have been insufficient mechanisms for control of the legislature (until 1960) and then the executive (1960s to 1980s)

Thus, the majority party in parliament made a mockery of constitutional rights and guarantees (with the connivance of the electorate) up to 1960, followed by rule by the cabinet and bureaucracy (including the military and the police) with the same policies since then. The recent states of emergency are the most virulent example of constitutional lawlessness on a large scale

The challenges which face us now are as follows

- To avoid mistakes,
- To build a rights — and constitutional — awareness and culture among all the people of this country, in local groups, religious institutions, trade unions, educational organisations, societies, sports groups, etc

This means that all persons must be made conscious of their own rights, duties and civic responsibilities in whatever organisational context they find themselves. In addition, and of equal importance, all people must be aware of the potential restraints on the exercise of power, wherever it resides, and of the methods by which those restraints can be enforced. This ought in time to establish a mood of accountability and self-restraint among those who wield social power in whatever form it appears.

● To provide for procedures whereby ordinary people (voters) can be consulted in the creation of a new constitution,

● To provide for mechanisms of accountability by ordinary people and organisations if their representatives have gone astray. This is done ultimately through elections every four to five years, but this is not enough. Provision must be made for referenda, for the protection of civil freedoms, such as the right of free assembly, of a free press, free speech and various other basic rights, both individual and collective. These rights must be available not only to those who support the government, but also to those who disagree with it

The ultimate challenge is to destroy apartheid and to reshape this country, something which will require a large measure of power to be lodged in the hands of any future government

A properly drafted, adopted and applied constitution can aid this process. But without the majority of South Africans understanding the full implications of our need for a constitution, the prospects of freedom and democracy in the future are bleak

(Corder is a professor of law at the University of Cape Town)

Call 711 14/2/91 (252)

Winnie trial casts doubts over future of justice in SA

Own Correspondent

LONDON — The proceedings at Mrs Winnie Mandela's trial have cast doubt over the future of South Africa's judicial system, according to commentators in two leading British newspapers

The Johannesburg correspondent for The Times said attorney-general Mr Klaus von Lieres und Wilkau's claim that any attempt to intimidate witnesses would be dealt with by "the

fullest vigour the law can command", had been "ignored with impunity"

"The law's response has been negligible, and a mockery is being made of the South African judicial system"

The Daily Mail said the trial had "dangerous ramifications for the whole country"

"And the truly awesome aspect of the whole situation is that the mighty power of the old regime cannot and will not act against it," the Mail added

"Increasingly, the ordinary people of South Africa — both blacks and whites — are asking why everyone in power seems to be turning a blind eye

"And the answer is that President F W de Klerk, with his dreams of a new, united South Africa, cannot afford to upset the applecart, however rotten

"Whatever the anathema of apartheid, and the need for it to be destroyed, there will be no easing of racist attitudes if a future black

government fails to replace it with true democracy and an impeccable judicial system

"ANC behaviour in the Winne Mandela case holds out little hope that justice will emerge unscathed in this trial. The events of the last few days signal that South Africa under black rule might be no better than it is under white rule

"The nightmare ahead is that it could conceivably be a great deal worse . . ."



JUSTICE FOR ALL . . . Mrs Winnie Mandela arriving at court yesterday with Mr Nelson Mandela at her side. Events at her trial are causing British commentators to question the future of justice in South Africa. Picture REUTERS

Two won't testify against Winnie

Own Correspondent

JOHANNESBURG — Two young men allegedly kidnapped and assaulted by Mrs Winnie Mandela and three co-accused yesterday refused to testify against her, saying they feared for their lives if they did so

Mr Kenneth Kgase and Mr Barend Thabiso Mono said they had decided not to testify following the apparent kidnapping of another key witness, Mr Gabriel Pelo Mekgwe, on Sunday night.

Mr Justice M Stegmann will rule today on whether the two have a justifiable excuse for not giving evidence

The three witnesses, together with teenage activist Stompie Moeketsi Sepele, were allegedly kidnapped from a Methodist manse in Orlando-West and taken to Mrs Mandela's Diepkloof Extension home, where they were allegedly assaulted in December 1988.

Mrs Mandela and her co-accused have pleaded not guilty to

the charges

Deputy attorney-general Mr Jan Swanepoel, SC, told the court yesterday that the state's case rested on the evidence of the three

Mr Mono and Mr Kgase, like Mr Mekgwe, are under subpoena and face prison if they refuse to give evidence

Yesterday they told the court that despite having fears they had given evidence at last year's trial of former Mandela United football coach Jerry Richardson about the alleged kidnapping and assaults

'Lives at risk'

Mr Mono and Mr Kgase said they had been prepared to give evidence in the present trial until the disappearance of Mekgwe. Both said they believed Mr Mekgwe had been kidnapped.

They both said they realised they could be sent to jail for refusing to give evidence but faced the risk of losing their lives after the trial was over if they did.

Asked by Mr Swanepoel under

cross-examination if he had implicated Mrs Mandela in the assaults during evidence at the Richardson trial, Kgase replied he "won't talk about that"

Mr Paul Kennedy, who is acting for both, argued that in the circumstances his clients had a "justifiable excuse" in law for refusing to testify

Their residual fears, he said, had now been heightened to an unbearable degree

Mr Swanepoel said he had great sympathy for the two but they had not established a justifiable excuse for failure to testify, he submitted

Referring to Mr Kgase earlier, Mr Justice Stegmann said the matter threatened the very foundations of the system of justice and could not be tolerated

He also asked the media to adhere to the spirit of the sub judice principle after an objection from Mrs Mandela's counsel, Mr George Bizos, SC, about "speculatory" reports linking "an organisation of which his client was a leading member" to Mr Mekgwe's disappearance

Witnesses' safety cause for concern'

Soweto 14/2/91

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A CALL was yesterday made for a witness protection scheme which does not involve involuntary detentions.

Houghton MP Tony Leon said in a statement that there was cause for profound concern regarding the case against Mrs Winnie Mandela and others currently before the Rand Supreme Court.

He said that without commenting on the merits of the case the disappearance of certain of Mrs Mandela's co-accused and the disappearance of one of the State witnesses had called into question the "basic efficacy of the entire criminal justice system"

"At the very least we urgently require a witness-protection scheme, not involving involuntary detentions, to reassure potential witnesses that they can testify against powerful figures who might instill fear in persons called to testify.

"The Ministry of Justice should immediately accelerate any proposals it is considering in this regard"

He also called on the leadership of the African National Congress to try and scale-down the "frenzied atmosphere outside the courtroom" to try and ensure that the "deliberations inside continue without possible outside pressure and interference" - Sapa

Judges head hearings into exiles' indemnity

Blom 157 2191
TWO former judges and an Appeal Court judge have been appointed to chair committees to determine whether awaiting-trial prisoners and exiles should be granted individual indemnity.

The two former judges are Mr Justice Solomon and Mr Justice Leon. The Appeal Court judge is Mr Justice Steyn.

The indemnity committees were authorised in terms of last year's Indemnity Act and will facilitate the granting of individual indemnities to people facing possible charges related to politically motivated offences.

Indemnities will allow these exiles to return, a development which would help considerably to clear the way for a start to constitutional negotiations.

To date only one individual indemnity has been granted.

In terms of government regulations, exiles will only be granted indemnity in two categories of offences — membership of a previously banned organisation and leaving the country illegally.

PATRICK BULGER

Up to 40 000 South African exiles are waiting to return. The committee will consider applications from trial-awaiting prisoners, but not from serving prisoners.

The committees' proceedings will be held in camera and no statement made by a person appearing before a committee will be admissible in a court of law.

Mr Justice Steyn said yesterday hearings were not expected to begin before the end of the month as premises for their deliberations were still being sought.

Meanwhile the return of exiles edged closer to reality yesterday with the announcement by the Canadian government that it had given R100 000 to Cowley House in Cape Town which is being used as a primary reception centre for Cape exiles.

Sapa reports that the PAC announced yesterday it would not approach government to discuss the return of exiles.

It said the return of exiles was a right and not a privilege to be negotiated.

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Case one: An Alexandra resident was arrested by the Brixton Murder and Robbery squad in November 1989. He was accused of receiving the proceeds of a robbery and, he alleges, was subjected to torture, including shocks to his wrists and ankles. He says that under duress, he completed a withdrawal slip for the total amount in his account, R33 570,61 and made it over to the commanding officer of the Brixton Murder and Robbery Unit. The supreme court then ordered that the money be returned and the arrested man was released without ever being charged for robbery. The police say a seizure of illegal investigation.

Shock reports. But no

W. Mail 15/2-21/2/91

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Case two: A 17-year-old Soweto matriculant was driving through the township with two friends. He alleges that white men driving an unmarked car gestured to them to stop, but did not identify themselves as policemen or use a siren. The men then began firing shots, which hit the young boy, resulting in his paralysis. The boy was questioned about a gun he allegedly had, but a search of the car found only grocery parcels. All three were charged for vehicle theft but these were withdrawn. Police say they have no record of this shooting. The boy's lawyers, however, have

Under investigation... four cases, all based on sworn statements

Case three: A 39-year-old hospital worker was arrested at two in the morning by police who said she had been seen in the company of a wanted man. She alleges police assaulted her at her home, and names three of the men she claims did it. She was then taken to Brixton where, she says, she was tied by her wrists and ankles to a chair. "He covered my head and face

records

W. Mail 15/2-21/2/91

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they have no record of it. **Case four:** A man was visiting his girlfriend, who lived at the back of a Florida house where she was employed as a domestic worker. The owner of the house called the police who, the man alleges, came into the room and began assaulting him with feet and fists. The complainant says, "he was also punched by the owner, who 'screamed that his house was not Mandela's'. The man was then taken to the Krugersdorp police station where he was told he was being charged for drinking in public and was being held for a day. The police say that "no record of a charge laid can be found". The complainant said, however, he has a case record number in support of his claim.

War crimes: Should SA hold trials?

From PAGE 19

Sachs does not believe it is simply a question of punishing those concerned — but rather of ensuring they are not able to act in the same way again. "We have to ensure that our country firmly rejects those kinds of actions — and that nobody will feel they can get away with it. There will have to be total exposure of all the hidden secret forms of poisonings, the murders, the assassinations. The true victory over the torturers will not come from locking them up in a cell — but from exposing what happened," he said. With exposure should come some form of reparation for apartheid's most visible victims — the tortured, imprisoned, the forcibly moved, he added.

A general amnesty without such exposure preceding it should be approached with far greater caution than is presently being manifested by either the government or the ANC.

The government would do well, then, to look beyond its R4-million "Peace First" campaign if it wants justice to be done. So far, its actions suggest it has no intention of cleansing our society of the rot which extends to its very foundations.

Nor should the ANC ignore the deep hurt being in the psyche of millions in this country. Alongside its quest for peace, it should place on the negotiating table its quest for justice.

Only in this way will the ghosts of apartheid be laid to rest.

NEXT WEEK: Albie Sachs on peace, justice and reconciliation in Chile.

Should we hold 'war crimes' trials?

W/M 15/2-21/2/91

COSAS '91

Is merely scrapping the remaining apartheid laws enough, or should the government, and individuals, be forced to redress the wrongs done to millions of South Africans? **ZUBEIDA JAFFER** looks at justice for the victims of apartheid.

THE government's R4-million peace campaign launched last week will share the fate of the infamous "peace song" if it is not accompanied by a rigorous commitment to justice.

It has declared its intention to finally scrap the remaining pillars of apartheid but has not said a word about the redress of the wrongs that these laws have inflicted on millions of South Africans. Thousands have been displaced, deprived of their ancestral lands, subjected to indiscriminate shootings and torture. Millions have been discriminated against by virtue of their skin colour.

As the country moves towards democracy and an end to apartheid, what is to be done about the crimes that have been committed in its name? Will South Africans forgo their right to justice and redress for the crimes inflicted on them in order to have peace? Will the price that South Africans pay for peace be that the perpetrators of these crimes be allowed to walk free?

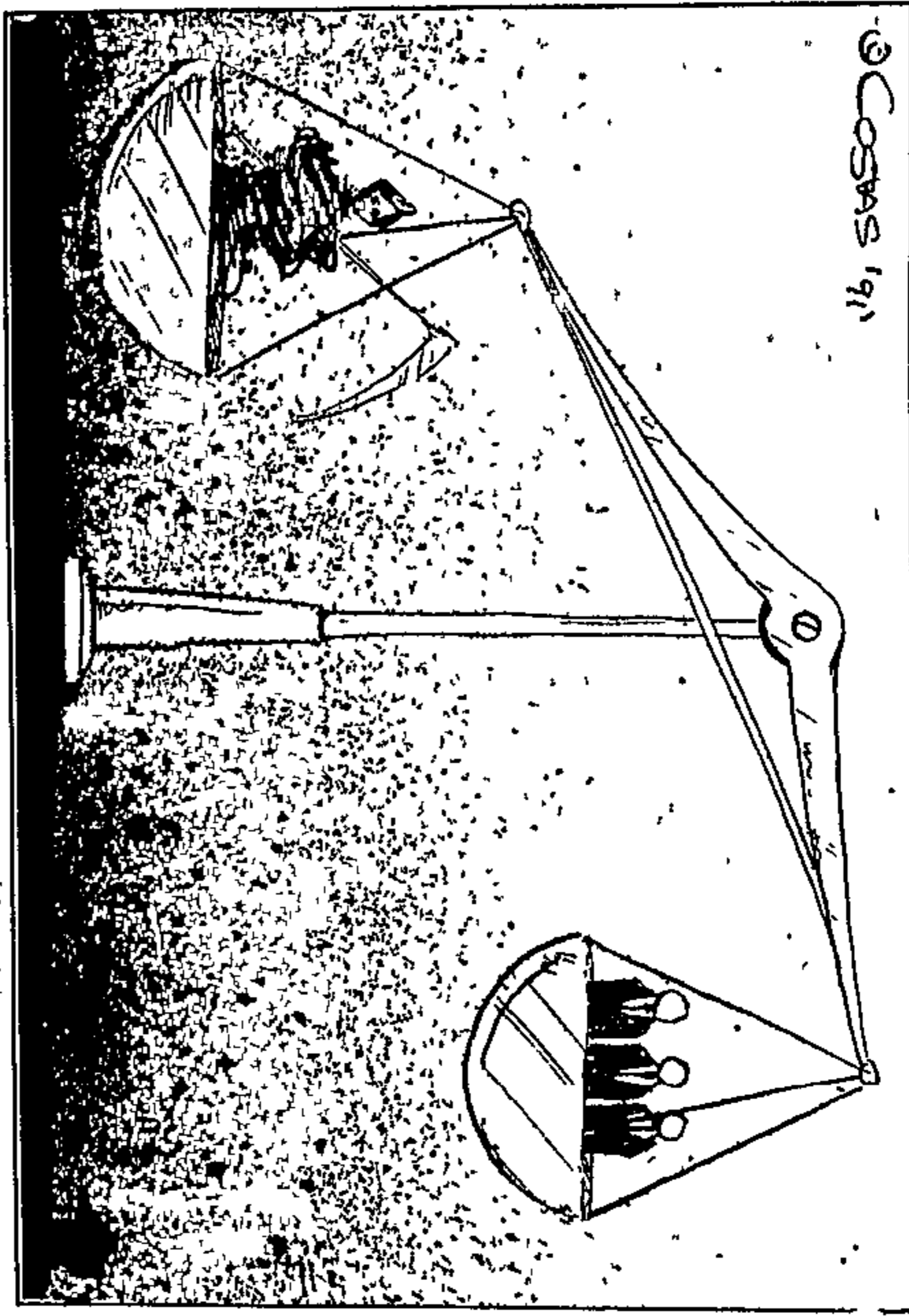
After the findings of the Harms Commission, State President F.W. de Klerk said: "Let bygones be bygones." Democratic Party leader Zac de Beer sounded the warning bells when he responded: "It is all very well for the state president to look towards the future, but I fear that these spectres from the past will come back to haunt him."

The government's cavalier attitude to "past violations" suggests that it intends taking no action. Instead, it has opted for a campaign for "peace without either truth or justice."

What might be the consequences for South Africans if they do not finally rid themselves of the gangrene infecting the country's body politic?

Canadian lawyer David Mains, author of *Justice Delayed, Nazi War Criminals in Canada*, believes that not doing so now will only result in the cry for justice resurfacing later.

Speaking at the National Association of Democratic Lawyers (Nadel) conference last year, Mains said that while Britain in 1948 successfully pleaded for the prosecution of Nazi war criminals in South Africa, there has so far been



for justice resulted in the prosecutions being restarted, years later. Mains believes that South Africa runs the risk of living through the same scenario "if there is an amnesty now. For political reasons, of the worst crimes of apartheid, there may well be 20, 30, even 40 years from now, persistent efforts to bring the criminals to justice.

Inadequate redress will also mean that those responsible for some of apartheid's worst crimes will remain in their posts and be in a position to pursue their criminal ways for other ends.

An Amnesty International report indicates that after a general amnesty was declared in Brazil in 1979, police continued to act beyond the law, torturing criminals "with impunity and increasingly resorting to extra-judicial executions".

The report concluded that a lack of thorough investigation and prosecution for serious abuses in Brazil had resulted in their being condoned.

The message is that the perpetrator runs no risk committing them, that no matter what the law says an amnesty will release the perpetrators," said Mains.

In South Africa, there has so far been

nothing has been said by the two major players — the National Party and the African National Congress — about the prosecution of apartheid crimes or reparation for their victims.

History offers a number of possible scenarios. In Portugal after the revolution of 1974, the Portuguese people wrote a clause into their constitution to provide for the prosecution of former political leaders responsible for atrocities.

In Argentina in 1985 a general was tried and found guilty of atrocities and sent to jail.

In Chile, more than a decade after large numbers of people were herded into a sports stadium and executed, the debate about prosecutions rages on.

In South Africa, the focus is on achieving peace, rather than justice. But can one be achieved without the other being properly addressed?

The "confession of guilt" by African theologian Dr. Willie Jonkers, where he acknowledged his part in apartheid's cruel rule, was a step in the right direction and accepted as such by Archbishop Desmond Tutu, who acknowledged it as "the beginning of a process towards the reconstruction of a just society".

Jonkers' example calls into question its commitment to accepting responsibility for crimes perpetrated against the entire nation. Instead, it proceeds with what could be seen as self-righteousness as it boasts of the strides it has made in dismantling a system which has caused untold hurt.

There are many who would have greatly valued De Klerk using the opportunity of parliament this month to ask for forgiveness for the wrongs of the laws he intended repealing.

Instead, he presented himself as a liberator, freeing the country from the fetters of apartheid laws — unleashing a confusion among a battered people that the country can ill-afford.

And the ANC neglects to dispel this myth.

If too proceeds from the assumption that "bygones should be bygones", with astounding insensitivity, it has gone ahead and met with people such as the Reverend Allan Hendrickse and homeland leaders — people who have stood in direct opposition to those who have fought so hard for a united, democratic South Africa.

University of the Western Cape psychologist Sibus Cooper believes that, before meeting them, the ANC should have first clearly stated that it did not

in the name of apartheid.

"It is very important that people have a sense that their grievances are being addressed. There has to be some public demonstration that the atrocities of the past are behind us.

"Years after Nuremberg, they are still bringing those who committed atrocities to book. To expect people all of a sudden to forgive and forget is too much," Cooper said.

Mains understands the dilemma faced by the ANC in this regard. "The ANC has made a virtue of necessity. It has internalised what the current regime itself would want. Prosecution complicates transition to democracy. Transition to democracy is the main goal. Therefore, for the ANC, prosecution is to be avoided," he said.

The ANC has, in fact, gone out of its way to be reconciliatory, to ally while fears, to prove to its former oppressors that it will be neither vindictive nor seek retribution.

This is understandable, given the physical realities of power relations in this country. But the ANC also has a constituency out there which is still suffering the consequences of security force action — a constituency that will first have to concretely experience adequate redress of its suffering before peace has any meaning.

It is unlikely that the majority of South Africans, living as they do, will be as generous as Albie Sachs, who survived the blast of a car bomb planned by South African agents.

For Sachs, the only vengeance that can assuage the loss of his arm is "the triumph of our ideals. If the price of peace in South Africa is that those involved in these terrible murders go unpunished, it is worth it." Sachs wrote in his book, *The Soft Vengeance of a Freedom Fighter*.

Mains argues strongly that South African democrats should not jump to this conclusion too readily: "If South Africans are going to pay a price for peace, they should know what the price is," he said. "Failure to prosecute torturers, murderers, criminals against humanity as a price for peace would be a violation of international human rights laws."

If there was a general amnesty, South Africans would also be paying the price of making their country a haven for its own international criminals. In terms of international law, an amnesty in South Africa would not prevent people from being prosecuted, the moment they set foot outside the country.

Rot ends up at the top, says judge

W | Mail 15/2-21/2/91

IN May 1989, a Natal court found two Margate policemen guilty of culpable homicide and a third guilty of assault with intent to cause grievous bodily harm, following the death while in custody of a robbery suspect.

The court heard how the policemen used electric shocks and other forms of assault to extract information from the deceased and from a second suspect: "The electricity was generated by a telephone dynamo. It is a smallish device with a crank handle, and this particular one had two wires emerging from it. When the handle is cranked, electricity is generated and delivered to the two wires"

With one of the suspects, the police inserted the wires into his ears. With the other, the wires were attached to his nipples using a clothes peg.

In passing judgement, Mr Justice J Broome said that "the whole tenor of the defence was that this form of treatment meted out to suspects has been resorted to by them for a number of years. I regard this a very serious matter indeed. It is a deplorable state of affairs that these people could have acted in this manner for such a long period of time, some four years since the device (the dynamo) ... was first, we are told, brought to Margate. Apart from this conduct itself being unlawful and brutal it reflects very adversely on the officers in charge of the people who acted in this manner. It is no good blaming the juniors; the seniors are responsible for their acts and, having gone on for as long as they have, suggests a serious lack of control and lack of appreciation of what was actually going on, or worse, the turning of a blind eye. Why I say this is that if an illegal practice has been prevalent for such a long time, it raises the question and the potential problem that people who start behaving in this manner eventually are promoted and eventually find themselves in the position where they should be preventing those below them from doing it ... What I have tried to say, that if there is rot at the bottom it has a nasty habit of working its way through to the top."

Tales of torture by electric jolts

W/Man 152-21/2191
SOME of the affidavits contain chilling descriptions of torture by electric shock. A Soweto man was arrested, taken to Brixton and accused of robbing a supermarket.

"The white policeman who had escorted me from the cells instructed me to get undressed and to sit on the chair. Once seated in the chair he placed a canvas hood over my head. Two policemen secured it around my neck. At the same time I was doused with water. One policeman placed a cap over my big toe which caused electric shocks to surge through my body.

"The cap was removed and then applied to each of the five toes on my left foot. At the same time as I was shocked, I was hit with a rubber hammer on both sides of my ankles and knees ... Two policemen tightened the hood around my neck and shook me very roughly. Shocks were then applied to my penis and the base of my back.

"I estimate that I was shocked in this way for three hours. The policemen holding the sack around my neck would occasionally loosen their grip to allow me to breathe. I vomitted. The hood was then removed by one white and one black policeman. They took me naked to a toilet on the same floor where I vomitted again for about 15 minutes. I was given water to drink and taken back to the room. I was again assaulted in exactly the same way as described above. I estimate it lasted for approximately one hour."

The complainant alleges that he was subjected to three more sessions of this. The incident, which occurred in August 1989, is according to the police, "still under investigation". (252)

Taking the sting out of the people's courts

MENTION "people's courts" and chances are the bloody victims of kangaroo hearings come to mind, backs raw from their lashing "sentences".

Or elderly women on the Natal south coast accused of witchcraft, brutally killed and surreptitiously buried, their families threatened with a similar death should they tell the police.

While these horrors are continuing in some parts of the country, a new attempt is being made to rehabilitate acceptable elements of the community courts concept.

This week Justice Minister Kobie Coetsee and several senior officials heard details of a proposal to set up what is in essence a community dispute resolution mechanism, similar to mediation and arbitration schemes already operating in many sectors of society and in many parts of the world.

Coincidentally, draft legislation was published this week, the Short Process Bill, which reflects an attempt by the government to bridge the gap between the existing legal process and ordinary people. In terms of the Bill, arbitrators and mediators can be appointed to deal with matters which it is not appropriate for the magistrate's courts to hear, in special "short process courts".

The community court scheme was presented to Coetsee by members of the Alexandra Civic Organisation and by lawyers who have been helping them.

Speaking after these talks, a legal consultant to the ACO said there were several crucial differences between the scheme they had proposed and those "people's courts" which practised serious abuses.

The dispute procedure would be voluntary, it would not hear serious criminal matters, and would not have the power to impose sentences. It would also operate as an adjunct to the existing police and court structures, rather than replacing them, in a

LAW & THE COURTS

CARMEL RICKARD

similar way to labour arbitration or mediation in which management and workers agree to submit their dispute to a third party for help in finding a solution. In the United States and England similar structures — often government funded — are widely used to help resolve domestic and community disputes.

Another legal adviser to the ACO, Edwin Molahlehi of the Centre for Applied Legal Studies at Wits, gave an example from his own community at Kagiso where a dispute developed between students and teachers which led to a breakdown in schooling.

Fed up with the chaos, Kagiso people wanted to resolve the issue. It was not the sort of dispute to take to the police or the courts. Instead, experienced and trusted members of the community were asked to help.

The two sides agreed to submit to the procedure. Both presented their stories to the negotiators, who were able to suggest a way out of the deadlock which satisfied both parties, and schooling was soon back to normal.

The idea of a community dispute procedure is partly motivated by the alienation many people feel from the police and the courts.

"Many people feel the present structures lack legitimacy," Molahlehi said. "They want a system designed and implemented by the people for the people."

There are other problems apart from a sense of alienation. It is often not appropriate for the police to handle the kind of disputes which arise in a community; to go to court is too expensive; the proceedings are

too technical and people would not be able to understand what is going on.

The ACO proposal is to establish a registrar's office to which everyone can have access for reporting problems.

The registrar will contact the other party to ask whether he or she is willing to submit to the jurisdiction of the "court".

Should the party be willing to participate the registrar will recommend one or more arbitrators to hear the matter, but if unwilling, the complainant will be advised to consult a lawyer about the possibility of laying a charge with the police.

Legal consultants to the project admit there is the possibility of abuses creeping in. But they argue this is all the more reason to set up an agreed official procedure with which everyone becomes familiar so that abuses can be prevented.

The proposed scheme relies on voluntary participation and therefore does not strictly speaking need approval by the authorities.

However it could be in everybody's interests that this approval is given: with an official nod, communities would be able to approach professionals for assistance in training potential mediators; it would give communities a dispute resolution structure which is both lawful and effective, and would also help provide an off-stage deterrent to abuse, uniting the community behind the new, and against the old.

There are differences between the two proposals — for example, the Bill provides that only experienced lawyers may mediate or arbitrate while the ACO proposals would allow anyone suitably trained and acceptable to the community — but they are alike enough for some compromise to be found.

There are signs that the separate Coetsee/ACO initiatives could be brought together and a joint working committee has been set up between the government and the ACO to explore the community court proposal further.

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Police files: Their own unsolved cases

What happens to a rogue policeman who, in the course of investigating a crime, beats up or tortures the accused?

JOHN PERLMAN looks at 30 cases against policemen, not one of which has led to prosecution to date

JAKE never did find out why the police came bursting into his Soweto house at four in the morning.

After beating and kicking his brother, his mother and himself, throwing raw eggs around the house and smashing up some furniture, they took Jake away to Protea police station. There, he alleges in a signed affidavit, he was assaulted by a white policeman who "put his foot on my stomach while choking me with the other foot".

Some two hours after Jake — not his real name — crossed paths with the police, he was released: "I was told by the black policeman that they had made a mistake as I was not the person they were looking for," he says in his affidavit.

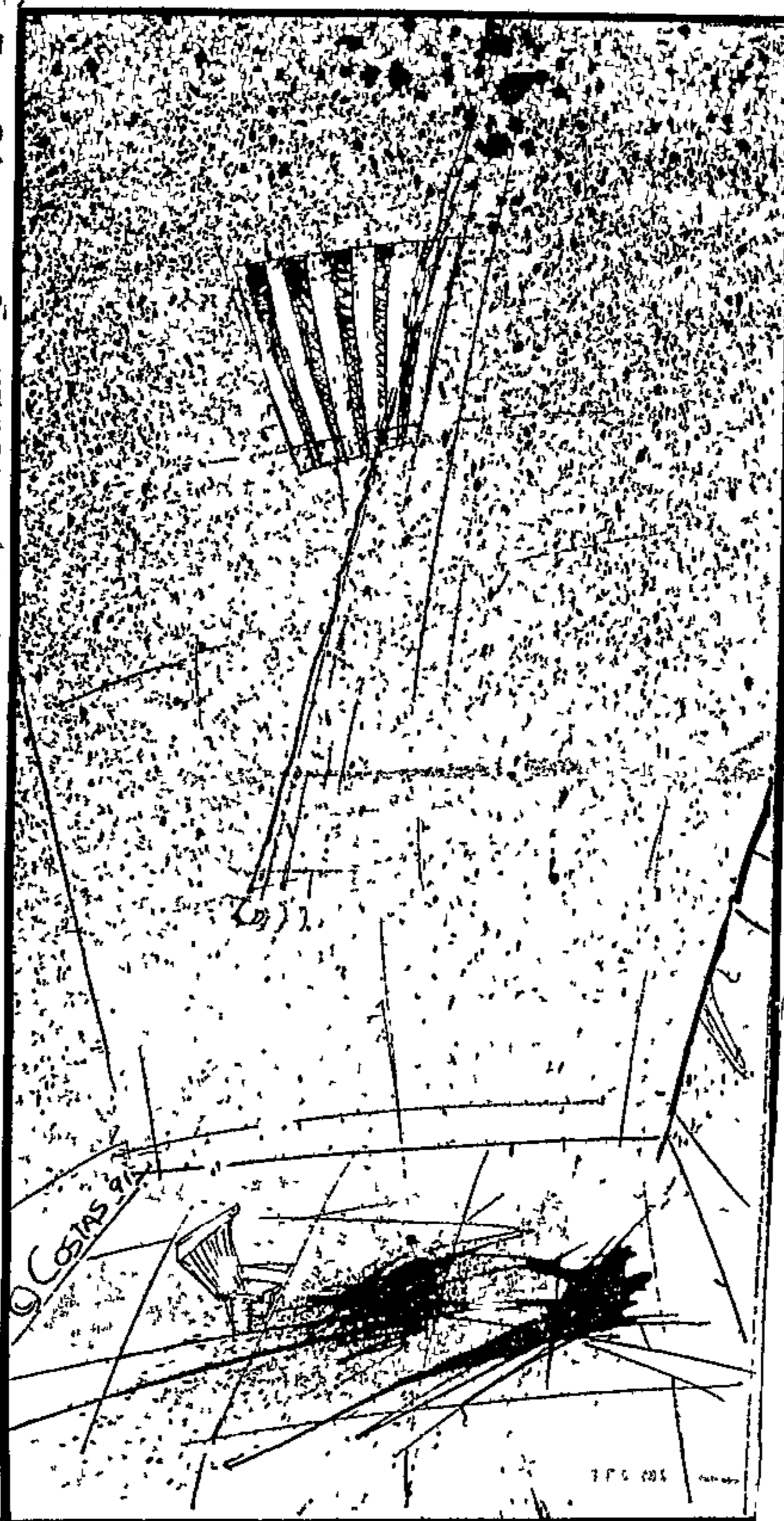
Jake's affidavit is one of 30 in *The Weekly Mail's* possession which allege assault, theft and even murder by policemen in the course of ordinary criminal procedures. The newspaper sent a complete list of the complainants to the police and to the attorney-general to establish what action, if any, had been taken.

A total of 24 of the complainants allege assault including shock treatment and seven claim damage to property and theft — one man was forced to sign over some R33 000 from his bank account to the commanding officer of the Brixton Murder and Robbery Unit. Four complainants were shot — one is now paralysed. And four of the matters involve deaths while in police custody or in the course of arrest.

A number of leading lawyers who deal with criminal cases say they believe that excesses during criminal investigations are widespread and on the rise, as pressure mounts on police to crack down on crime. And Lawyers for Human Rights have written to Law and Order Minister Adriaan Vlok expressing concern at the "unlawful conduct of policemen and the failure of the authorities to take prompt action to curb these criminal offences".

This letter followed the death while in the hands of the Soweto Murder and Robbery Unit of Bethuel Maphumulo last December — police initially said he had drowned in the Protea swimming pool while trying to escape, but the postmortem indicated multiple injuries and strangulation. The LHR warned that failure to curb "the increase in police brutality" would promote "lack of confidence in the police force and the judicial system".

The way people suspected of robbery and the like are treated seldom comes into the spotlight. Whereas political detainees have managed to secure a measure of protection through campaigns by human rights groups and in the media, the same



cannot be said for people who encounter the police in the course of criminal investigations. People who commit crimes, and their friends and family, don't expect much public sympathy. And life lived at the sharp end of the law has not encouraged them to seek redress from that same system.

Fifteen of the complainants were either never charged or had charges withdrawn. Yet not one of the incidents alleged in the affidavits has resulted in criminal procedures against any police officers.

Thirteen cases are still under investigation, according to the police directorate of public relations, including two fatal shootings, one last September and one in December 1989, and a drowning (of Lesley Majola) while in police custody last July. In a further six cases, civil claims against the minister of law and order are underway. And in eight cases, according to police public re-

lations, there are no records of charges being laid. In five instances this is contradicted by affidavits, which give details of where the charge was laid, and in three cases a charge number. And in another, a civil claim for damages has been instituted.

Police said a further two cases had been referred to the attorney-general, who declined to prosecute. The attorney-general's office, however, said only one docket had been received in connection with these incidents. That docket dealt with a Soweto man who was arrested on suspicion of involvement in a burglary in Randburg and taken to Brixton police station.

He was, he alleges, punched and kicked, then stripped naked and given electric shocks, while roped to a chair. He said he signed a confession, but on his first court appearance informed the magistrate that he had been assaulted and showed him-

The police reply

THE South African Police has on numerous occasions stated its impartiality. Complaints are received regarding allegations of misconduct or brutality made by members of the public. It must be borne in mind that the police come into daily contact with unscrupulous criminals who do not hesitate to attack and kill innocent victims. These criminals must then be apprehended by the police and on a number of occasions, members of the SAP have been shot at. These criminals also resist arrest. When the police are compelled to use the necessary force to overcome such resistance, certain media create the impression that the police were the aggressors and publish a one-sided version before the allegations can be tested in a court of law.

In each case mentioned by Mr Perlman, an untested and one-sided version is presented. He is well aware of the fact that the cases reported to the SAP will be investigated and upon completion, the case docket will be forwarded to the attorney-general for his decision. Although the AG may in some cases decline to prosecute, these matters are investigated by the police with the view to disciplinary steps. The SAP does not cover up allegations against members. To give one example, a member of the force was given a two-year jail sentence on 11 February 1991 when convicted of removing articles from a recovered vehicle. In this instance no mention was made of the fact that the police investigated and brought a colleague before court.

Many an accused is actually assisted in court by media reports concerning alleged offences. He reads the report concerning him and obtains a good idea of how to conduct his defence. In the past, questions regarding many of the allegations mentioned have been furnished to *The Weekly Mail* and it cannot be expected that a day-to-day account of the investigations be supplied.

his injuries. The attorney-general declined to prosecute.

In 14 of the alleged incidents, the complainants say in their affidavits that they would be able to name or recognise the policemen they claim assaulted them. A total of 19 of those who made statements were treated either by private doctors or in hospital.

The majority of statements point fingers at the Brixton Murder and Robbery Unit — Brixton is named in eight of the documents. There are six matters that relate to the Soweto Murder and Robbery Unit at Protea, and three more that deal with other Soweto police stations. Krugersdorp is named in three affidavits, and has recently been the focus of an inquest into the death of a 25-year-old man who died soon after being taken in as part of an investigation into a robbery.

Other police stations named include Alexandra, John Vorster Square, Parkview, Halfway House — where a black policeman is charging two white colleagues with assault — and Rustenburg. And LHR offices in Durban and the Eastern Cape say they have dealt with a number of similar complaints.

In 11 cases, the complainants allege torture by electric shocks — all but one of these alleged incidents took place at either Brixton or Protea. Last month, members of the Soweto Murder and Robbery Unit, without acknowledging the allegations against them, undertook to refrain from torturing and threatening six residents of the townships. This followed a court application in which the allegations against the unit included torture by electric shock. A relative of Maphumulo's has charged that both she and the deceased were subjected to shock treatment.

A police representative said complaints against policemen were first

investigated at station level, but a detective branch of another station might be called in "depending on nature of the case, assault with intention to cause grievous bodily harm for instance". He said the station commander would then report the findings of any investigation to his superiors, who would decide on what action to take.

Police representative Captain Ruben Bloomberg said all dockets involving complaints against the police had to go to the attorney-general once complete. He said this process was frequently held up because witnesses refused to come forward, or because complainants went to lawyers instead of laying charges. "All cases where crimes are alleged are investigated with the same thoroughness, whether policemen are involved or not," Bloomberg said.

The LHR's director of litigation, Ahmed Motala, disagrees. "We have found that the police can't be expected to investigate themselves. The investigations take a long time before they are even referred to the attorney-general, and the cliché 'justice delayed is justice denied' is very real here."

"A further problem is that where there is a prima facie case of a policeman being involved in unlawful activities, he is not suspended while investigations are under way. And where there are recurring complaints about particular stations like Brixton, and a pattern has emerged, nothing is done about that."

The LHR proposes an independent ombudsman "who will be acceptable to all communities. He will have authority to subpoena witnesses, access to police documents and the power to prosecute. He should be backed up by a team of investigators, who would not be policemen," Motala says.

Under present circumstances, some complainants have turned to civil claims against the police to seek redress. But such a claim has to be filed within five months of the alleged incident, and gathering documents sometimes takes longer, according to the LHR. In some instances the damages being sought will scarcely cover legal costs, as in the case of a Soweto man who is claiming about R3 400 from police who, he claims, damaged two doors and a fence and broke three windows while entering his house, and then left without even questioning him.

A further problem arises from precedents in case law and an appeal court decision which states that any income derived from illegal activity cannot be claimed by dependants of the deceased. Last July, Lesley Majola drowned in the Vaal River allegedly after running away to escape from police custody. The post-mortem, however, found that Majola's hands and arms were secured so that "virtually no movement was possible" and leg irons limited his movements to "the length of the connecting chain". But Majola's family has not pursued a claim against the minister of law and order. The dead man had made his living from driving a private taxi and selling beer without a licence.

mediators being appointed by the legal profession. They would have at least five years' experience and would be entitled to "take any steps which may result in the expeditious and cost-saving disposal of the case, including the abandonment of the rules of evidence." If the process fails, it can then be referred to a higher court. But an order of the short process or mediation court will be final.

One of the men who met Coetsee this week was Moses Mayekiso, chairman of the ACO. He was charged with treason in 1986 for his involvement in people's structures, including people's courts. Mayekiso says it is necessary



Coetsee closer to 'community courts'

that the "content of laws changes to reflect a just dispensation. Legal institutions must be made more accessible. There needs to be more free or low-cost legal services."

The ACO submission (drawn up by advocate Paul Pretorius) notes that the adversarial litigation procedure is the most common in SA. "A democratic and effective system of justice needs to have legitimacy in that the community must be involved, not only in the establishment of the laws and its institutions, but also in the execution of justice."

It recommends that, as a pilot project, a community courthouse be established in Alexandra. Disputes will be brought before a registrar, who will identify the essential characteristics of the dispute and categorise it. Trained community leaders and members of the legal profession would be available to mediate or arbitrate disputes. Funds for the project would come from the community and from donors.

Mayekiso says such a court could be valuable for mediating serious disputes, even rape cases — which often never appear in a conventional court because victims fear the humiliation of a court appearance. It's estimated that only one in six is reported.

"In rural areas, in particular, a rapist is not always taken before a court of law," says Mayekiso. "The community may demand he pay a cow, for example, he would have to pay acceptable damages. The issue of rape is complicated, but this process could at least ensure that more rapists are punished and

subject to community censure" (252)

Mayekiso says kangaroo courts are unacceptable, as are sentences such as flogging.

The registrar of such a court would be answerable to the community and the community courts would be an extension of the legal system. FIM 15/2/91

There would be no compulsion on a defendant to appear before a community court, however. "The defendant would need to be

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FIM 15/2/91 (252) made aware that he or she has the opportunity to resolve the dispute amicably with the complainant — or that person may take it before a higher court that could, for example, impose a prison sentence."

Charlene Smith

THE LAW FM 15/2/91 (252)
NOT ALWAYS AN ASS

What became known as people's courts may not turn out to be such a bad thing after all. Government and the Alexandra Civic Organisation (ACO) in Johannesburg seem to be surprisingly close to accord on how to run "community courts."

Members of the ACO met with Justice Minister Kobie Coetsee in Cape Town on Monday to discuss a proposal for community courts. But government had already given notice last week of a new law — the Short Process Courts and Mediation in Certain Civil Cases Bill — which contains much that is similar to the ACO's views. Now a working group has been set up to look into the proposals.

The new Bill "provides for the establishment of an alternative dispute adjudication procedure (mediation procedure) and an alternative forum (short process courts) for the inexpensive and expeditious adjudication of civil actions, aimed at increasing the accessibility of the courts," said Coetsee in a statement.

Government envisages adjudicators or



People's Court shows 'thieves'

I AM at a People's Court in Rockville, Soweto, seated on the floor

There is no space in the crammed sitting room of this large house. Everyone is there to decide the fate of two young boys accused of house-breaking and attempted theft.

For a while, it seems as if the decision as to whether the boys will live or die will be left to the mob.

"Kill the bastards," demands an elderly man seated on the carpet.

Deafening roar

The room of 120 to 150 people erupts into a deafening roar.

The crimes are alleged to have taken place at the house now being used to accommodate the People's Court.

It's almost 8.15 pm and the boys, both aged 13, are tired. The hearing has been going on since about 6 pm.

"Comrades, we're running out of time. Please let's finally decide what we do with these boys," said a man in his 50s whom I called "The Speaker".

The boys were allegedly caught

"red-handed" at 8 am and have been locked in a garage all day.

Residents of the area had come back from work to see "the thugs responsible for several thefts in our neighbourhood".

Commotion erupts again, this time threatening to get out of hand. "Order! Order please, comrades!" pleads a man in his late 30s.

Order is restored, allowing a man I labelled "The Kicker" to take advantage of the silence. "If you don't allow us to kill these little criminals, then at least allow us to chop their fingers off!"

The crowd roars again. "The Kicker", living up to his name, delivers a powerful blow to the jaw of one of the boys, much to the dismay of the few local civic association leaders present.

Most of those present in the cigarette smoke filled room are men — except for a woman seated behind me. Their ages vary from 16 to 60. Outside other women are ululating, rejoicing at the "remarkable" capture of the "thieves".

Said "The Speaker": "Comrades, let's not be controlled by emotions

AS the controversy surrounding People's Courts continued this week, ABBEY MAKOE attended one such "trial" in Soweto. This is his report.

I want us to weigh the pros and cons before we do anything to these boys."

One of the boys shouts, no longer able to contain his terror. He screams.

"Shuddup! You little..." shouts a man in his late 20s. The other boy, equally terrified, was about to scream too, perhaps hoping that a pitiful cry may spare his life. But he remains silent.

Locked door

Then another man, a grandparent, offers this gruesome contribution: take the boys' eyes out with a poker, he suggests.

Everyone wants to be judge, jury and executioner. No one speaks up for the boys.

Then there is a loud knock on the door. "House full," says a self-appointed "court official", who is

then instructed by "The Speaker" colleague to lock the door.

The voice of a child from the side explains: "They are civic people." The door is opened and visitors are welcomed.

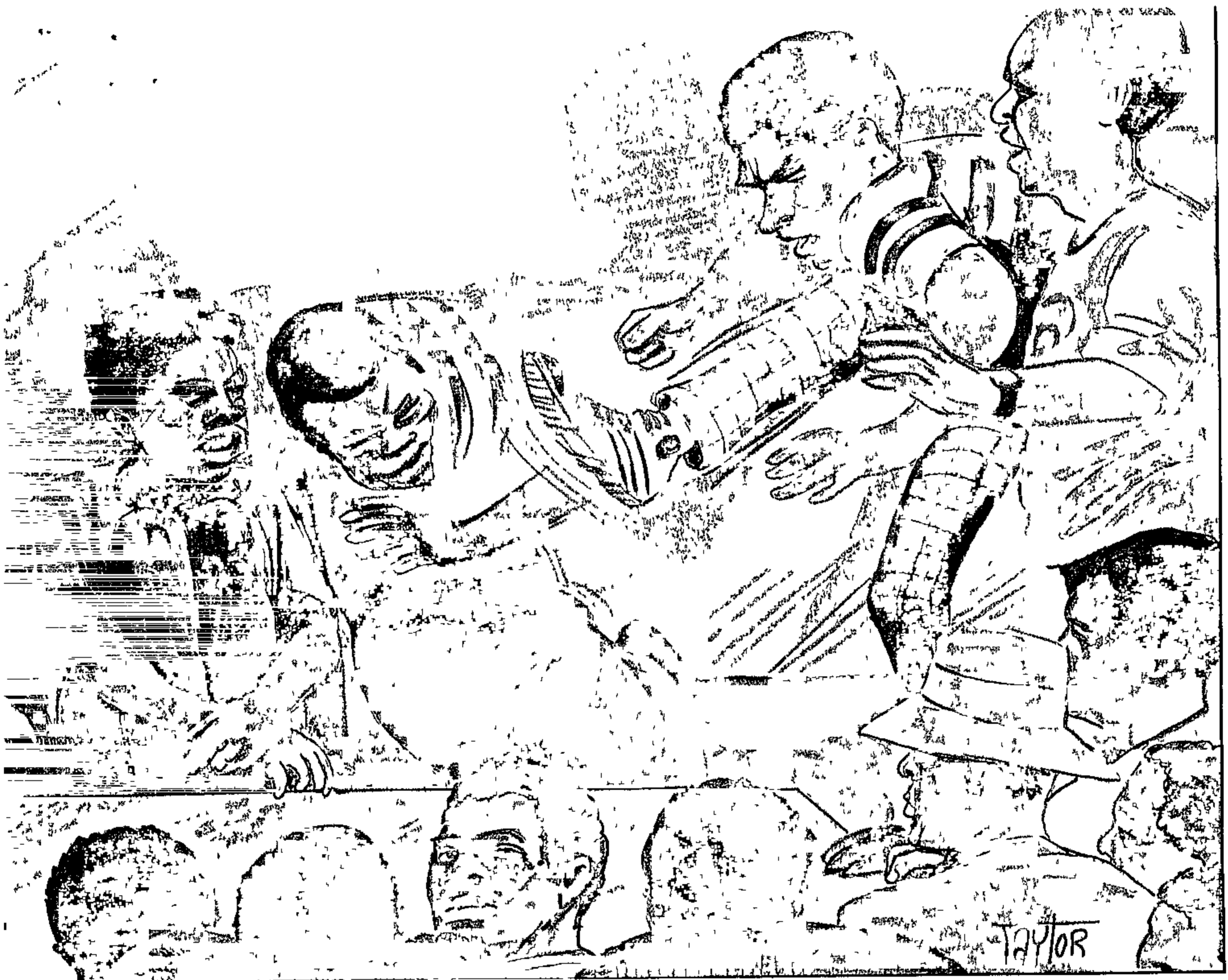
"Comrades," says the newly rived leader — "The Visitor" — "have you contacted the parents of these boys? Have they been given anything to eat?"

"The Kicker" says he has "talked" with the boys since morning. They have had bread. No... One of the boys tries to feebly object, saying that someone has taken his bread away, but he is silenced.

"The Kicker" reveals that the boy's parents gave the "court" permission to do whatever pleases with him. "We are sick tired of him," said the boy's parents — according to "The Kicker".

But he concedes that the boy, already declared a "criminal" by the "court", was taken to his parents.

The crowd, tiring of all the procedural rhetoric, is growing. Members raise their voices again in favour of execution. There are more calls for order.



Art shows 'thieves' little mercy

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The voice of a child from outside explains "They are civic people." The door is opened and the visitors are welcomed
"Comrades," says the newly arrived leader - "The Visitor" - "have you contacted the parents of these boys? Have they been given anything to eat?"
"The Kicker" says he has been with the boys since morning and they have had bread. No elaboration. One of the boys tries feebly to object, saying that someone took his bread away, but he is rapidly silenced
"The Kicker" reveals that the boy's parents gave the "court" permission to do whatever it pleases with him. "We are sick and tired of him," said the boy's parents - according to "The Kicker"
But he concedes that the other boy, already declared a "hardened criminal" by the "court", was not taken to his parents
The crowd, tiring of all the procedural rhetoric, is growing bored. Members raise their voices once again in favour of execution. There are more calls for order

The two boys, dressed in tattered clothing, are now obviously losing hope that they will survive this ordeal. Seated close to each other on the carpet, their bodies are visibly shaking and their eyes are wide in faces swollen from repeated assaults
The "court room" has grown tense, the mood is pensive. The atmosphere is funereal
"The Visitor" reveals his standpoint. "Comrades, although I'm a member of the 'civic', I also work for the ANC's Health and Welfare department. I doubt whether these boys have had something to eat. Besides, it is clear they are minors

Near blows

"I'm not against anyone wanting these boys killed" but before he can continue he is interrupted by another elderly man in the far corner. "Then we must start by putting out their eyes!"
It now emerges that not everyone in the room is in favour of the death penalty and an argument ensues between those for and against killing them. It becomes so

heated that there is a real possibility of them coming to blows
"Order! Order Comrades!" shouted the now familiar voice
"Gentlemen," proposes a man in his late 50s. "I suggest their knees be broken"
Another heavy roar of approval.
"The Visitor" snaps "I and all civic leaders dissociate ourselves from the killings, comrades. But, mark my words, we are going to monitor the killings. Here's how we start: anybody participating must first write down his name and address, otherwise you won't do anything to these boys."
The owner of the house is asked to pronounce on whether the boys should live or die?
"Gentlemen" He pauses for what seemed like an interminable length of time. "All I want is my goods back."
"I agree that police be called to take these boys to whoever they sold my clothes to. They (the police) will decide what to do with the boys afterwards."
The police are called. They arrive at 9:40 pm. They drive away with the shaking boys, the house owner and a few neighbours

National Congress leader Winnie Mandela appears to be in the balance, the prosecution — and perhaps the cause of justice — having suffered major setbacks because of events outside the courtroom.

The impact of these events on the hearing have been so dramatic that some observers have warned sombrely that the course of justice is in danger of being subverted by the machinations of a South African-style Mafia

Mr Justice MS Stegmann is acutely aware of that peril, judging by his comments from the bench during argument by Paul Kennedy, counsel for two state witnesses, Kenneth Kgase and Barend Mono, who refused to testify because they were too afraid to do so

It was clear by then that their fear of testifying against Mrs Mandela had been induced by the disappearance of Gabriel Pelo Mekgwe, he, like them, was a potential witness for the state and a victim of kidnapping and assault, allegedly carried out at the behest of Mrs Mandela in December 1988-January 1989

The refusal of Mr Kgase and Mr Mono to testify "threatened the very existence of justice", the judge said "That can't be tolerated," he said

Mr Justice Stegmann had earlier referred to "lawless elements" outside the courtroom trying to frustrate attempts by the court to find the truth. The process of justice cannot bow to lawless elements that threaten it, he said

The Times of London said in a report on the trial "A psychosis

requires the truth, no man has the right to withhold it.' —
Quoted by Mr Justice Stegmann in the Mandela trial.

PATRICK LAURENCE

of fear now surrounds proceedings in the wood-panelled courtroom, number 4E at the Johannesburg Supreme Court, where Mrs Mandela sits demurely on a front bench with her three remaining co-accused"

Recalling that the Attorney General for the Witwatersrand, Klaus von Lieres und Wilkau, had warned that any attempt to intimidate witnesses would be met with the "fullest vigour that the law can command", The Times said "That stern warning has been ignored with impunity, the law's response has been negligible and a mockery is being made of the South African judicial system"

These comments came after the disappearance of Mr Mekgwe, who, according to an impeccable source, left the Methodist Church manse in Soweto last Sunday in the company of three ANC men. One holds a senior position in the ANC. Another is said to have developed specialist skills when the ANC was a banned organisation

It is not known whether Mr Mekgwe accompanied the men voluntarily. Mr Kgase and Mr Mono, however, told the court that they believed their friend had been taken from the manse against his will

The disappearance of Mr Mekgwe — the police believe there is a prima facie case that he has been kidnapped and have opened a kidnapping docket — is the most dramatic event to have influenced court proceedings

But even before that four of Mrs Mandela's co-accused, Joseph Sithole, Katiza Cebekulu, Mpho Mabelane and Sibusiso Mabuza, skipped bail and went into hiding. Their reasons for doing so are not known. Warrants have been issued for their arrest

Their non-appearance complicated the state's case against the accused, forcing a separation of trials

During preliminary argument there were hints that the state may have been hoping for a "windfall," that one or more of the four missing men might turn state witness and provide a first-hand account of what happened during the alleged kidnapping and assault of 1988-89

The effect of Mr Mekgwe's disappearance on Mr Kgase and Mr Mono was graphically spelt out to the court by their counsel, Mr Kennedy

Before Mr Mekgwe disappeared Mr Kgase and Mr Mono were torn between a fear of tes-

tifying and an obligation to give evidence. Their conflict was resolved and, while still having a "residual fear", they decided to testify. But then Mr Mekgwe disappeared and the residual fear became "overwhelming" and reached a state of "acute irreversibility"

They believed that if they gave evidence they might suffer the same fate as Mr Mekgwe and, the judge accepted, Stompie Sepele, the 14-year-old boy who was kidnapped, assaulted and murdered by Jerry Richardson, the coach of the Mandela United Football Club

Mr Kgase expressed his fear simply. Explaining his refusal to testify, he said "I fear for my life. I want really want my life. I like my life"

The judge, however, did not accept Mr Kennedy's argument that Mr Kgase and Mr Mono preferred imprisonment to the risk of giving evidence for the

state. He remarked "The proof of the pudding is in the eating"

Mr Justice Stegmann had earlier outlined the penalties for refusing to testify in a kidnapping case: recalcitrant witnesses — and Mr Kgase and Mr Mono fell within the definition — can be sentenced to repeated periods of jail for five years until they were no longer recalcitrant

As the judge said "Unless he (a recalcitrant witness) relents, he could spend the rest of his life in prison."

Mr Justice Stegmann accepted that the Mr Kgase and Mr Mono genuinely feared that "death will be their penalty if they testify". But he added "The course of justice should not be thwarted by terror in their minds"

Fear boos down Mandela trial

194 get indemnity

STATE President FW de Klerk has extended temporary indemnity from prosecution to ANC president Mr Oliver Tambo, SA Communist Party general secretary Mr Joe Slovo and Umkhonto we Sizwe chief of staff Mr Chris Hani.

Government 18/3/91
The names of the three leaders appear in a list of 194 people - published in a special *Government Gazette* on Saturday - who have been granted temporary indemnity until April 30 this year. - Sapa. *(209) (252)*

Cleaned-up courts

Set for comeback

ON FEBRUARY 15 1986, Alexandra township, north of Johannesburg, exploded

What later came to be described as the "six-day war" was one of the most terrific waves of unrest experienced in the Transvaal during the violence between 1984 and 1986. Twenty people had died and the "comrades" took control.

These local political activists rejected any form of Government administration and ran the affairs of the township themselves. Street committees replaced the unpopular local town councillors who had resigned en masse, and "people's courts" were set up.

According to Lloyd Vogelmann, director of the Project for the Study of Violence, at the University of the Witwatersrand, "white" courts were not credible institutions — they were not seen as just by the black community.

"The consequence was an alternative forum for conflict resolution at a community level."

And, although their presence has declined due to the collapse of local community structures, the roots of the people's courts of the mid-'80s still exist in most townships.

"The police are seen as unfair and racist," Mr Vogelmann said. "We require greater commu-

nity participation in legal systems so that people can accept the potential for just judgments," he added.

With the battle lines drawn between Alexandra residents and the SAP in the mid-'80s, Government structures were circumvented in every possible way and residents were encouraged to report their cases to the community "judges" instead of the police.

Accounts of what really happened in the people's courts are rare, but horrific stories of sentencing to "death by necklacing" and up to 200 lashes with a sjambok abounded during this time.

Screened

Residents denied that the courts had ordered death by means of the necklacing method as punishment, but it was believed that police informers paid the ultimate price and were either stoned or else burnt to death by the brutal necklacing.

Gruesome images of this township "justice", in which a car tyre filled with petrol was placed around the victim's neck and set alight, were screened around the world.

Mr Vogelmann said the chief problem was that young children were taking decisions and perpetuating violence without understanding the complexity of the situation.

8-11 19/1/91

Four years ago Justice Minister Kobie Coetsee described "people's courts" as medieval. Last week he held discussions with Alexandra Civic Organisation chairman Moses Mayekiso about re-forming them. **JACQUELINE MYBURGH** traces the history of these township tribunals.

By mid-1986 there was at least one people's court in nearly every black township throughout the country. In larger townships there were several.

The only accounts of what happened in these "trials" were given in later criminal court cases involving the self-appointed "judges".

● In 1985 a pregnant woman and her friend received 100 lashes with a sjambok after they forbade their children from taking part in school boycotts and unrest violence.

● In 1988 a group of youths armed with sjamboks and pangas forced a Soweto man to attend a sitting of the people's court and to explain why he

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was not caring for his children. ● A 32-year-old Alexandra woman was ordered to pay a R200 fine or face 100 lashes for stabbing a man in the arm when he tried to rape her. After giving her 42 strokes on the buttocks, youngsters said she would receive the remaining 58 when her wounds healed.

● A 40-year-old Alexandra man was seriously injured when youths whipped him more than 200 times as punishment for having tried to stop a love affair which his common-law wife was having.

● One man, on trial in the Alexandra people's court in 1986, had petrol poured over his face and was made to drink some.

Mediate

Alexandra residents said the people's courts dealt with domestic affairs which were beyond the "white man's law" and that "judges" within the community were best equipped to mediate.

The same rationale was used recently when Alexandra Civic Organisation (ACO) chairman Moses Mayekiso announced that the Alexandra Community People's Court was to be re-formed.

The "negative" reaction of Alex residents to the "white" judiciary and concerns about the escalation of crime in the township had prompted the decision.

He has given the assurance that the courts would be controlled by a body of adults, would follow the rules laid down by the community and that Wits University's law faculty would be approached for help in training those involved in the courts.

These courts are not intended to replace, but rather to supplement, the existing system, Mr Mayekiso says.

And their implementation will go ahead with or without the Justice Minister's approval.

Addressing a medal parade at the Victor Verster prison in Paarl in 1987, Minister of Justice Kobie Coetsee said the sentences by the people's courts were "arbitrary and cruel and reminiscent of the Middle Ages, when witchhunting was still the order of the day."

Last week he said the Government and the ACO had found "much common ground" during discussions about re-forming the courts.

Mr Vogelmann believes the re-formed people's courts can work. The attempt to set them up with more training and greater accountability has the potential of a "very exciting enterprise", he says.

The Justice Ministry said a working group representing the Alexandra community, the resources group and the Department of Justice would be formed. □

(a) How many prisoners have been released from prisons in the Republic since 2 February 1990 before serving the full terms of imprisonment imposed on them for crimes against the security of the State and (b) for what reasons were the prisoners concerned released?

The DEPUTY MINISTER OF CORRECTIONAL SERVICES
(a) and (b)

In reply to the Hon Member's question, I quote the following applicable passage from notes on the process of indemnity and release which was released by me during a press conference on 15 February 1991

"In view of the progress made with finalizing the issues in terms of paragraph 3 of the Pretoria Minute, it is now possible to proceed with further implementation of paragraph 2 of the Pretoria Minute in a phased manner. This paragraph relates to indemnity and release.

The current number of security prisoners administratively released since 1 February 1990 is approximately 262.

The processing of some 760 applications for release from prison is now in an advanced stage. Some may be released because they fall clearly within the guidelines for political offences. The State President has in fact today confirmed that he has granted a special remission of sentence to 7 such individuals presently incarcerated on Robben Island who would be released within the next few days. Where applicable applications will be referred to the indemnity and release committees who may advise the State President.

It must be borne in mind that the facilities of indemnity and release are not only confined to the ANC, but it is also available to other individuals and organizations depending on course on the status of their involvement with the negotiation process and the process of seeking peaceful solutions."

The special remission of sentence which made the release of the number of 262 possible, did not exceed a period of 1 year. In terms of normal release procedures ordinary remission of sentence was also allocated.

Further releases will in future obviously require longer periods of special remission—the crime involved will also be of a more extensive and serious nature. It is therefore clear that no one will be able to automatically lay claim to release.

†Adv J J S PRINSLOO Mr Speaker, arising out of the hon the Deputy Minister's reply, were any of the approximately 262 persons who were released, released under circumstances other than those relating to the implementation of the agreement between the Government and the ANC?

†The DEPUTY MINISTER Mr Speaker, 222 of the 262 who were released, were released in accordance with the normal release procedure. In other words, it was not necessary to grant them a special reduction of sentence. Of those 262 only 127 were granted a special reduction of sentence in terms of section 69, and a large number of them received less than a year's reduction of sentence.

†Adv C D DE JAGER Mr Speaker, further arising out of the hon the Deputy Minister's reply and the fact that a request was made last week on 12 February for this question to stand over till today, and in view of the fact that a statement was released to the press on 15 February, I wish to know if the request for the question to stand over was made so that the announcement could be made in the press rather than in Parliament.

†The DEPUTY MINISTER Mr Speaker, a special press conference was called so that the matter could be placed in full perspective [Interjections].

†Adv J J S PRINSLOO Mr Speaker, further arising out of the hon the Deputy Minister's reply, should we deduce from this that 222 of the prisoners who were released, were released on grounds other than those stipulated in the agreement between the Government and the ANC?

†The DEPUTY MINISTER Mr Speaker, all these persons were released in consequence of the Pretoria Minute.

†Adv C D DE JAGER Mr Speaker, further arising out of the hon the Deputy Minister's reply, have any other persons other than only those belonging to the ANC, PAC or left-wing political groups been released?

†The DEPUTY MINISTER Mr Speaker, I take it the hon member wants to ask if members of right-wing organizations have been released [Interjections].

†The ACTING SPEAKER Order!

†The DEPUTY MINISTER Mr Speaker, no persons belonging to the right-wing organizations were released because they did not qualify in terms of the guidelines I have defined [Interjections]. In other words, that they would be released after the usual mitigation of sentence plus approximately one year, and not one of them qualified.

As far as the other question is concerned, not only the ANC and the PAC but also Cosatu and various other organizations were involved.

Indemnity granted

*4 Mr J H VAN DER MERWE asked the Minister of Justice †

(a) How many persons have been granted indemnity against prosecution in terms of the Indemnity Act, No 35 of 1990, by the State President since 2 February 1990 and (b) in respect of what date is this information furnished?

†The DEPUTY MINISTER OF JUSTICE

(Reply partially laid upon the Table with leave of House)

(a) and (b)

On 15 February 1991 during a press conference the Minister of Justice made a statement pertaining to the matters which are being dealt with in the question. With leave of the House I shall lay it upon the Table. The relevant portions read as follows:

Notes on the process of indemnity and release Mr H J Coetsee MP, Minister of Justice and of Correctional Services

In view of the progress made with finalizing the issues in terms of paragraph 3 of the Pretoria Minute, it is now possible to proceed with further implementation of paragraph 2 of the Pretoria Minute in a phased manner. This paragraph relates to indemnity and release.

1 The current number of security prisoners administratively released since 1 February 1990 is approximately 262.

2 The processing of some 760 applications for release from prison is now in an advanced stage. Some may be released because they fall clearly within the guidelines for political offences. The State President has in fact today confirmed that he has granted a special remission of sentence to 7 such individuals presently incarcerated on Robben Island who would be released within the next few days. Where applicable, applications will be referred to the indemnity and release committees who may advise the State President.

3 2 092 persons have received indemnity in respect of the unlawful leaving of the country.

4 Another three offences were previously identified in respect of which persons automatically receive indemnity without applying therefor. These offences are membership of a previously unlawful organization, the exhibiting or possessing of an emblem of previously unlawful organizations and the contribution to or collection of anything on behalf of a previously unlawful organization. There is therefore unconditional indemnity for those who become or continue to be office bearers, members, or are in possession of articles of previously unlawful organizations, or contributed or solicited or gave anything as a subscription to benefit an unlawful organization. And this could be tens of thousands of people.

5 It has been rumoured that very large numbers of people will require indemnity. Thus far only approximately 3 500 applications have been received.

6 At present I am liaising with the ANC to find a suitable formula for indemnifying those people who have received military training before the cut off date, but who for a considerable time have not been military involved. This may effect beneficially up to approximately 80% of the exiles according to an informed estimate.

7 It must be borne in mind that the facilities of indemnity and release are not only confined to the ANC, but are also available to other individuals and organizations depending on the status of .

their involvement with the negotiation process and the process of seeking peaceful solutions

Mr J H VAN DER MERWE Mr Speaker, arising from the hon the Deputy Minister's reply, I would like to ask him whether since the day on which this question stood over—the 12 February—to 15 February when the press conference was held, there were negotiations with the ANC on this matter

The DEPUTY MINISTER Mr Speaker, as far as I know

Mr J H VAN DER MERWE Mr Speaker, further arising from the hon the Deputy Minister's reply, can he tell us whether the reply to the question was already available on the 12th?

The DEPUTY MINISTER Mr Speaker, I doubt whether all this information was available at that stage [Interjections]

Adv J J S PRINSLOO Mr Speaker, arising from the hon the Deputy Minister's reply, I would like to know by what date the indemnity in respect of the numbers of persons he mentioned had already been finalized The hon the Minister mentioned 92 plus another three Before what date did the numbers he mentioned receive their indemnity? [Interjections]

The DEPUTY MINISTER Mr Speaker, on 15 February

Mr J H VAN DER MERWE Mr Speaker, I want to ask the hon the Deputy Minister whether it is true that this information first had to be cleared with the ANC and their consent obtained before the press conference could be held and that the Government thus regards Parliament as being subordinate to the approval of the ANC

SDA audit

Mr J J WALSH asked the Minister of Finance

(1) Whether he has received a report from the Auditor-General dealing with the further audit of the Special Defence Account concerning activities of the Civil Co-operation Bureau in respect of the

the time the hon the Minister received a signed report from the Auditor-General to today?

The MINISTER Mr Speaker, the reason was that we dealt with it according to its priority at that particular moment in time If the hon member studies the section 63 procedures properly, he will see that the Minister of Finance deals with it, the State President has certain obligations, and, in fact, a whole host of actions takes place internally before the report is finally ready for submission There was no inordinate delay We were completely free in terms of the Act to deal with it according to our own assessment of the priorities in dealing with matters of State at that particular stage

Mr J J WALSH Mr Speaker, further arising out of the hon the Minister's reply, in terms of the relevant Act three people have to be involved in approving that report the State President, the Minister of Finance and the Auditor-General Do I understand him correctly that it has taken since 24 October for those three people to do that?

The MINISTER Mr Speaker if we had received it earlier last year we still would have dealt with it in the way we did I repeat that, in terms of our own assessment of priorities, that is how we chose to deal with it and there is no compulsion on any one of the three parties involved to deal with it at any other pace Secondly, and I might as well alert the hon member to that, the reference to the involvement of the State President is not a reference to the State President in his personal capacity It is a reference to the State President according to the Constitution in terms of the State President dealing with a matter in consultation with his Cabinet

In other words, it is not merely a matter of the Auditor-General, the State President and the Minister of Finance deciding on a matter such as this over a cup of tea We deal with it according to our responsibilities and our own assessment at the time of the priorities that need to be dealt with

Finally, I wish to remind the hon member that that was a particularly busy time At that time I certainly did not intend at all to try to put that particular matter, which was not urgent, at the top of the list of priorities of the hon the State President

Mr K M ANDREW Mr Speaker, further arising from the hon the Minister's reply, are we to believe that quite clearly the priority of cleaning up the CCB and the scandal surrounding it enjoyed very low priority with the hon the Minister and the Cabinet as a whole?

The MINISTER OF FOREIGN AFFAIRS Removing the Group Areas Act did

The MINISTER OF FINANCE Mr Speaker, the hon member should know better than to try to attach that kind of interpretation to it The cleaning up of the CCB and the handling of the report are two matters entirely divorced from each other We need not wait until we have agreed upon the contents or have properly taken note of them before we take the necessary action Surely the hon member knows that without asking such a silly question

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

SADT: shortcomings

Mr J J WALSH asked the Minister of Development Aid

(1) Whether any shortcomings in procedures and control measures in the South African Development Trust, as revealed in the Report of the Auditor-General for 1988-89, have resulted in substantial financial losses, if so, (a) what is the nature of these shortcomings and (b) what steps has he taken to rectify them,

(2) whether any irregularities connected with the allocation and recommendation of housing loans under the individual self-building schemes have come to light, if so, (a) what is the total amount outstanding in respect of such irregularities and (b) what total amount has been identified as being the cost of construction defects attributable to poor material and workmanship in the above-mentioned self-building schemes?

B21E

The MINISTER OF DEVELOPMENT AID (1) The Government has on request of the Director-General of the Department of Development Aid decided to appoint a commission of inquiry in this regard and—

19/2/91

Dale accused impulsive, court told

Own Correspondent

EAST LONDON — The youngest of four Dale College boys who beat a 70-year-old vagrant to death had poor verbal abilities, a low self-image and did not achieve his potential at school, the Supreme Court heard yesterday

Francie Schnell, a clinical psychologist, was giving evidence on behalf of the youth, who was 15 at the time of the assault

Richard Bester (18) and three minors, all former boarders at the college in King William's Town, have admitted assaulting Tom Reuters on February 28 last year

He died from his injuries

They were also convicted on two charges of assault with intent to do grievous bodily harm

All were members of the "Frank Joubert Kafir Bashing Society", headed by Bester.

The boys regularly left the hostel at night to beat up black vagrants

Masks 252

They wore black-stockings masks and carried an assortment of weapons.

The youngest boy sat with his head bowed yesterday as he heard his father describe the communication problem be-

tween them

The father said he had had only superficial contact with his son after a divorce when the boy was four

When his ex-wife told him she was having problems, it was decided the boy would be sent to Dale

He was shocked when contacted by the headmaster and asked to fetch his son

"I think it is horrible I feel it is not something that could possibly happen in our family," he said.

He had immediately set up psychological counselling for his son

On Sunday night, for the first time, the boy

had wept about what had happened

Mrs Schnell said the boy had never really had a father figure to relate to and saw being sent to boarding school as a form of punishment

Psychotherapy

He had a low regard for conventional moral standards and was given to impulsive behaviour

He should not be treated as a juvenile delinquent but should continue with psychotherapy within the confines of his family. She recommended a suspended sentence with some form of community service

The hearing continues;

Confidence in ANC law 'is on trial'

6/10 am 20/2/91
LESLEY LAMBERT
CAPE TOWN A high-ranking ANC official conceded yesterday that the outcome of the Winnie Mandela trial could determine SA's confidence in a future legal system if the ANC came to power.

Responding to questions about the disappearance of one trial witness and the refusal of others to testify in the case of alleged kidnapping and assault, ANC Western Cape publicity secretary Trevor Manuel said "We take a very serious view of what has happened.

"I am not prepared to comment on the disappearance of a witness and there is nothing to suggest that the refusal of two witnesses to testify is any different from other political cases where this has happened

"But we stand by our view that anyone guilty of excesses and abuses of power should be brought to justice."

Tampering

Manuel, a speaker at a meeting in which the ANC and PAC aired their views on President F W de Klerk's opening of Parliament address on February 1, said the outcome of the trial would "affect South Africans' confidence in a legal system under an ANC government"

Responding to a suggestion that the activities of the witnesses allegedly amounted to "tampering with the legal system", Manuel said the television appearance of Attorney-General Klaus von Lieres und Wilkau to discuss the trial could also be regarded as "most irregular".

"I would suggest that could also be interpreted as tampering with justice," he said.

"The SA judicial system should be allowed to return to its heritage

"The people of SA should be instilled with confidence in the legal system and know they will be equal before the law and that the law will protect them," he said

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29 2/91
2 rightwingers (252)
ask for indemnity

Leonard Veenendal and Darryl Stopforth have requested indemnity against prosecution, Minister of Justice Kobie Coetsee confirmed in the House of Assembly yesterday.

Both men are wanted in connection with the murder of Anton Lubowski in Namibia in September 1989

Replying to a question from Lester Fuchs (DP, Hillbrow), Mr Coetsee said the applications were being considered but no final decision had been taken — Sapa

FW to oppose journalist's action

STATE President Mr FW de Klerk is to oppose the Supreme Court action brought against him by freelance journalist Mr Solomon Tsenoli.

Tsenoli, backed by the Legal Resources Centre, is attempting to have the amended version of the Natal Code of Zulu Law declared invalid.

The Natal Code was amended by De

Klerk in August last year when he deleted the paragraph stating it was illegal for "any person" to carry assegais, knobkieries, axes, or other dangerous weapons and replaced it with a paragraph allowing seven exceptions, including being able to prove the weapons were traditional Zulu weapons. - *Sowetan Correspondent*

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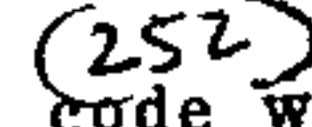
Star 20/2/91

FW to fight bid to invalidate

Zulu arms law

Own Correspondent 

DURBAN — President de Klerk is to oppose the Supreme Court action brought against him by freelance journalist Solomon Tsenoli.

Mr Tsenoli, backed by the Legal Resources Centre, is attempting to have the amended version of the Natal Code of Zulu Law declared invalid .

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Mr Tsenoli claimed the "special dispensation to those who adhere to Zulu usages, customs and religions is and will be perceived to be a form of political favouritism which will only exacerbate the existing violence and widen the cleavages in our deeply divided society"

SOUTH, FEB 21 TO 27 1991 '3

HRC wants prison records on 'unrest' political prisoners

THE Department of Justice should make available court and prison records to the Working Group on Political Offences for it to get true figures on "unrest" political prisoners and ensure no one is forgotten in the process of releasing political prisoners. *Su 12/2-27/2/91*

So says the Human Rights Commission (HRC) in a press statement

"It has been the experience over the years of the state of emergency that the veil of secrecy drawn across political detentions and arrests has had the effect of severely limiting the ability of monitoring groups like the HRC to record

political incarcerations," it said. *252*

The HRC estimates the current number of political prisoners to be between 2 500 and 3 000, of which about 250 are "security" political prisoners convicted of contraventions of the Internal Security Act, treason or sedition. The rest are "unrest" political prisoners convicted of common law offences such as public violence, arson, malicious damage to property or murder. *253*

On Wednesday this week, there were 62 prisoners held under Section 29 of the Internal Security Act in South Africa, 52 under the Public Security Act in Transkei and 11 under the National Security Act in Ciskei.

Court told of inherent white racism

Own Correspondent

EAST LONDON — White South African households are crucibles of racism, the Supreme Court in Grahamstown was told yesterday.

This, in turn, was an important underlying aspect of the case involving the killing of an elderly vagrant by four former schoolboys of Dale College in King William's Town, a psychologist said.

Richard Bester (19) and three minors were found guilty of culpable homicide arising from the death of the 70-year-old Tom Ruiters on February 28 last year.

He was beaten with a hockey stick, truncheon, cricket wicket and knuckle duster when the boys, members of the Frank Joubert Kaffir Bashing Society, bunked out of their hostel late at night looking for vagrants.

Research

Christopher Giles, a clinical and community psychologist from Cape Town called by the State, said the development of racist attitudes by the boys was underscored by the name of the society, statements made by Bester regarding his hatred of blacks and a remark by another member of the group that he would not have beaten the man if he was white.

In white households, personal contact with blacks was relegated to the situation where blacks were always the domestic servants.

Black people were expected to take great responsibility for the well-being of white children without the concomitant authority or right to establish a relationship with the child.

There was no basis of mutual obligation. The development of empathy or the capacity to see others as separate individuals with their own legitimate feelings, needs or wants was based on these early re-

relationships.

The child's sense of care and compassion for his elders was not developed where employees were not allowed to assert their right to be treated with respect or enter into reciprocal relationships.

This did tremendous damage to a developing child.

It had all four suffering from a socialised conduct disorder of varying degrees.

They suffered frustration, perceived rejection and inconsistent parenting. This often emerged as aggression in stronger boys and truancy in the young ones.

They were also inclined to lie, steal, swear, abuse alcohol and drugs and were destructive.

"Their future is saturated with hazards and violence and they anticipate violence and defeat," he said.

Earlier yesterday director of the National Institute for the Prevention of Crime and Rehabilitation of Offenders Elizabeth Richter, under cross examination by Attorney-General of the eastern Cape Dr J D'Oliviera, suggested that the four boys be sentenced to community service as opposed to jail.

Mrs Richter suggested that Bester be given a suspended sentence and serve 1 000 hours spread over a 30-month period doing community service at a coloured old-aged home in East London.

She suggested two of the other boys also be given suspended sentences and do community service of 1 000 hours at the SPCA.

The fourth boy, it was recommended, would work at a hospital at Stutterheim where he was a border.

Mr D'Oliviera asked Mrs Richter whether Nicro thought it was fitting reparation to the black community that the youth should be saving animals.

Mrs Richter said there were not many places in East London where they could work.

The trial continues.

Why don't the AGs use their appeal rights?

w/ Mail 22/2 - 28/2/91

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ANYONE wanting to understand the rise of the kangaroo-type "people's courts", with all their excesses and their rejection of the existing legal system, should consider public response to the horrific case recently heard in the supreme court sitting in Ladysmith.

The two accused, joint owners of a garage in Vryheid — where race relations are already strained through years of white racism — were charged with the murder of William Mdladla.

The two accused believed Mdladla and Vusi Dlamini were involved in thefts from their garage.

By their own admission they "prodded" their two suspects with a pickhandle. Then they pushed Mdladla into an industrial cleaning machine "to frighten him". He landed in scalding water and was horribly burnt, dying later of his injuries.

Passing judgment, Mr Justice Combrink acquitted the two accused of murder and culpable homicide, but found them guilty of assault. He said the court could not rely on Dlamini's evidence of what happened and there was no proof that the accused might have foreseen Mdladla could be injured as there was no evidence they knew the water in the machine was hot.

One of the accused was fined R500 or three months, the other R200 or six weeks.

These sentences are lighter than the jail term being served by Dlamini for the theft of parts from the garage of the accused.

Reports on court cases must always be general overviews of what occurs in the case, and much of the detailed technical argument on which a conviction could hinge, is not given.

LAW & THE COURTS CARMEL RICKARD

But the story which has emerged would be enough to fuel the anger of people already alienated by the legal system.

It's not surprising if they read reports of the case and concluded that the life of Mdladla was considered worth less than the gearbox or other motor spares stolen by Dlamini.

Obviously the judge hearing the case had a number of factors to consider, for example, the weight to be attached to Dlamini's evidence about the incident and other details which would not be included in a news report. But many members of the public might not think about this. They might draw their own conclusions about the reports they read and decide — wrongly — that their local "court" would dispense justice more fairly, or at least in a way which was more satisfying to an aggrieved party.

The Mdladla case is, some lawyers believe, exactly the kind of case which would benefit from an appeal to a full bench of the Natal Supreme Court or to the Appellate Division.

New changes to the Criminal Procedure Act passed last year, section 310 A (1), gives an attorney general the power to appeal against the finding of a court in a criminal matter. So far no AG has done so although in at least one other case, *S v Bezuidenhout* in the Wekom Regional Court, there has been a call for conviction and sentence to be reviewed.

Ahmed Motala, of Lawyers for Human Rights in Johannesburg, believes the

Mdladla case would be ideal as a legal "first". He said this week he believed the AG should exercise this right and take the case on appeal.

Motala said that LHR was basing its call on media reports, and acknowledged that they had not seen the full court record. But he was organising to receive a copy of the record as soon as possible, to check more fully the details of the case.

Motala said he would be drafting a memorandum to Natal's AG Mike Imber this week in which he would urge that Imber too obtain a copy of the record, and then, if appropriate, act by noting an appeal.

He said sentence should act as a "deterrent" effect in a community, while the light sentence passed on the accused in this case would be no deterrent at all.

The "leniency" of the sentence left the community with a deep sense of injustice. "The perception is that there is one law for prosecuting blacks and another one for prosecuting whites.

"It is important that justice be seen to be done — the credibility of the entire legal system is at stake.

"A more severe sentence was definitely called for — as it stands now the accused shall not be required to spend any time in jail."

Any reply from Imber to Motala's call could take some time, as the transcript of the record must first be finalised and then examined.

But whatever the full record of the trial shows, the AG should still seriously consider sending the case on appeal, even if only to ventilate the issues more fully — and to satisfy the public on the correctness of the conviction and sentence.

-POLITICS

BUSINESS DAY, Friday, February 22, 1991

Political Staff

CAPE TOWN — The four lawyers used by the SADF for the Harms Commission inquiry were paid R2,25m, Defence Minister Gen Magnus Malan said yesterday.

One of the advocates was paid a total of R900 000 for six months of work between February 7 to August 31

Inquiry: R2,25m paid to SADF counsel

By Day 22/2/91

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last year, as well as for retention and closing fees. The others were paid R754 288,56, R457 500 and R295 000, Malan said in reply to a question tabled in Parliament by Tony Leon (DP, Houghton). Leon said even more dis-

turbing was that these counsel were paid in excess of R400 000 after the commission had finished its work. "There is growing concern about the Treasury being used as a 'milk cow' in regard to various ministers' briefing of legal coun-

sel for various commissions and court cases." Although Malan named the four advocates retained by the Defence Force, he refused to say how much had been paid to each because, "I do not consider it in the public interest or in

the interest of the advocates to attach an amount to each individual name." Asked why the advocates were paid after the commission concluded its activities, Malan replied "The amounts were negotiated as retention and clos-

ing fees". Leon said this "retention" fee had the "meaning that the advocates would be paid for two or three months after their work was completed simply because of anticipated difficulty in receiving other briefs or work". "This is highly unusual, if not extraordinary," he said.

Dale boys should be jailed — psychologist

Own Correspondent
Skw 22/2/91

EAST LONDON — Four former Dale College, King William's Town, boys who beat a vagrant to death should be sent to jail, a psychologist told the Grahamstown Supreme Court yesterday

Chris Giles, a clinical and community psychologist, was called by the State in the trial of Richard Bester (19) and three juveniles who have been convicted of culpable homicide and two counts of assault with intent to do grievous bodily harm

Mr Giles said the juveniles needed a short, sharp shock to jolt them out of their complacency. He felt a short term of imprisonment followed by community service, and a longer suspended sentence which would overlap the community service, would have the desired effect

He called for a much longer term of imprison-

ment for Bester, who had a history of marked aggression.

He said Bester had had an unhappy childhood and a tendency to act in an extreme way, and was the least stable of the four. He was also leader of the "Frank Joubert Kaffir Bashing Society" and controlled membership.

He had been instrumental in turning that society into what it was and should therefore be dealt with more severely.

Mr Giles felt Bester's family would not be able to afford private psychotherapy and recommended that he be sent to an institution where he could have treatment

He was opposed to the idea of two of the juveniles doing community service at the SPCA.

He said the three juveniles had all bunked out of the school hostel regularly and shown personality disorders.

The hearing continues



CITY



COURTS

The Argus, Friday February 22 1991, 5

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US witness protection plan

Lesson for SA

The Argus Foreign Service
NEW YORK — The frightened young witnesses reluctant to give evidence against Mrs Winnie Mandela and her three co-accused would, in the United States, have little to fear from anyone who might wish to threaten them.

Like 5 400 other witnesses and 8 000 family members in the US who have been given sanctuary under a Federal witness protection programme that has been in operation since 1971, they would simply "disappear".

But these people vanish not by le-
thal means to dispose of them by those who fear their evidence but under the kindly hand of the government.

In exchange for their court testimony, they would be issued with new government ID cards, new passports,

new driving licences, new tax numbers — officially becoming "someone else".

They would be relocated, with their families, in a city or town — partly of their own choice — a long way from any detection by those bearing a grudge against them for any damaging State evidence they might have provided.

So, meticulous is the programme that, according to the US Justice Department, most of the relocated, protected witnesses would be unable to recognise themselves.

Miss Rasheeda Moore, a former sexual and drug partner of former

Washington mayor, Mr Marlon Barry, is the most noteworthy witness to vanish into thin air under the US government's benevolent protection programme.

She was involved in a trial as controversial as Mrs Mandela's because, like hers, it involved a prominent political personality and in which accusations were freely made of justice being subverted for racial or political reasons.

Miss Moore acted as a "trap" in a hotel room that had been wired by the FBI.

The resulting video and audio tape of her meeting in the "privacy" of

that room with Washington's discredited mayor, during which he "snorted" cocaine and made sexual overtures to her, became a central part of the prosecution's case — and one of the best-watched "movies" on US TV screens during the trial.

But today, the attractive Rasheeda Moore no longer exists. Only the Department of Justice knows her new identity, or where she lives.

She is just another important State witness who officially "vanished".

In trial cases across the US, there are scores of others who have been given sanctuary.

The US Marshals Service, which administers the programme, describes it as "the government's most effective way to obtain testimony against accused drug dealers, major organised crime members (the Mafia) and terrorists."

11641 22/2/91

Vlok lets lawyers in on Mlangeni murder probe

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Political Staff

Law and Order Minister Mr Adriaan Vlok has taken the highly unusual step of allowing human-rights lawyers to play a role in the police investigation of the murder of their colleague, ANC official Mr Bhekí Mlangeni, who was killed by a booby-trapped tape cassette player on Friday.

The apparently unique decision to involve independent lawyers in a police investigation seems to be a result of the circumstances.

The explosives packed into the earphones of the cassette player which killed Mr Mlangeni were apparently intended for controversial rogue policeman Dirk Coetzee before he flew to London last year to testify against SAP forensic expert General Lothar Neethling.

This has raised doubts about the police ability to conduct a completely objective investigation.

Mr Vlok's spokesman, Brigadier Leon Mellett, said yesterday that the minister had taken the unusual step of allowing the lawyers a role in the in-

vestigation "to show his and the Police Commissioner's determination to solve this crime and find the culprit".

Mr Peter Harris, an attorney from the Johannesburg firm Cheadle, Thompson and Haysom where Mr Mlangeni used to work, said yesterday that Mr Vlok had agreed to grant the firm access to the forensic evidence.

A forensic expert that the firm would be bringing to SA from Britain would have the same access.

And Mr Harris and two other attorneys from the firm would liaise with the police investigating team.

Mr Harris said his firm would be acting for Mr Mlangeni's family and in its own capacity.

He said he, senior partner Mr Halton Cheadle and Mr Clive Plasket had flown to Cape Town on Tuesday to express their concern to Mr Vlok about the investigation.

Mr Harris did not elaborate but it is understood that the attorneys expressed doubts about the capability of the police to conduct an objective investigation.

JUSTICE

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FM 22/2/91.

THE MOTHER OF ALL TRIALS

There is a view that life would be a lot easier for everyone if the Winnie Mandela trial could be called off without any further ado.

The National Party government would not have to endure accusations that it is trying to undermine the ANC by harassing the wife of the organisation's deputy president, Nelson Mandela.

The ANC would be able to concentrate on the job in hand — negotiations, finding out about economics — instead of becoming confused and divided against itself over the trial (see *Current Affairs*).

And Nelson Mandela, the ANC's trump card as well as the great hope of the white man, would be freed of a painful and distracting sideshow that will steadily weaken his position the longer it goes on.

It is a tempting option — so tempting that there are suspicions among otherwise sceptical people that government and the ANC, or elements within each, have come to an informal agreement to find a way of allowing the trial to lapse.

But such alluring temptations are the work of the Devil.

Of course it is of interest, and of political importance, whether Winnie Mandela is innocent or guilty of kidnapping and assault as charged. She is in many ways a considerable figure, drawing adulation in some quarters and hatred in others.

The story of Winnie and Nelson has more than traces of classical tragedy in it. But there is a more important principle at stake.

It is that justice must take its course.

Charges have been put, and they must be answered. If not, Winnie Mandela will not be guilty, but nor will she be innocent. Nelson Mandela understands this very well, which is why he himself called for his wife to be tried.

By sitting in the Supreme Court, he lends legitimacy to the proceedings — and therefore to whatever verdict might be

handed down.

Why must justice take its course? Because if it does not, the law will have been exposed as selective. And as soon as it becomes selective, the law ceases to be fair and becomes whimsical, a weapon in the hands of those who can manipulate its instruments and intimidate its officers. Without equality before the law, decay and barbarism are a short step away.

The reaction of the ANC as an organisation to this case leaves the impression that it does not understand the importance of upholding the law; that those of its members who eventually come to power will be just as cavalier in their contempt of the law as the worst of their Nationalist predecessors. We hope that ANC leaders will dispel this impression by doing all in their power to see that this trial goes ahead.

If the abstract argument is not compelling enough, consider the practical effects. Western governments, businessmen, editors — few of them are not puzzled and alarmed by what has happened. Even members of the US Congress who were previously blindly sympathetic to the ANC as the democratic movement of the oppressed, groaning under the yoke of apartheid, are asking questions.

To be quite blunt about it: SA's future depends on investment from the great Western democracies. But even hard-nosed British and American businessmen know very well that prosperity depends on long-term stability, which depends on human rights, which depend on the Rule of Law.

Already we are counting the cost.

This is why the trial of Winnie Mandela is more important than sanctions and the entrenched inequalities of our society.

It goes to the heart of what kind of country we are, and where we are going to end up.

If it is called off, whatever the reasons, we will all be the losers. ■



IS there a future for 252

Rev 2/3/19

23/29/52

IS WIN SA?

...doubt that 40 years of National Party repression have done irreparable damage to the legitimacy of the South African legal system

Yet Nationalist leaders showed a reckless disregard for the consequences of their actions

It is perhaps ironic that many white Africans who did so little to defend the legal system against the rapacious repression of the National Party are now concerned that a future government will act as a better guardian of legal values than the National Party

There are, however, legitimate grounds for concern. Violence which has engulfed South Africa in recent years hardly provides a basis for the reconstruction of a society based on law and legal accountability

Indeed, to talk of a society governed by law when thousands of people have been killed and injured in violence throughout South Africa seems somewhat unrealistic

A legal system can only operate effectively within the context of a rights practice. In other words, the society must recognise that conflict is better resolved through argument, peaceful protest and ultimately resolution of conflict by legal tribunals, mediation and arbitration than through violence, vigilante action and unauthorised police activity

Apartheid destroyed whatever rights culture existed in South Africa. The very purpose of apartheid was to divide the country, to fragment it and accentuate the racism which divided South Africans rather than the humanity which united them. Consequently there remains little commitment other than rhetoric to build a meaningful rights practice

A further important requisite for the operation of a legal system is official recognition of accountability of government and its agencies to the citizenry. Unfortunately the National Party has considered itself accountable to no one other than its small constituency

Even today, the debacle surrounding the Harms Commission, the CCB and vigilante activity indicates that the issue of police and army accountability does not appear high on the Government's agenda.

It is significant that when he opened Parliament, President de Klerk made no mention of the security forces, death squads or the need to introduce radical measures to render the police and the army accountable to the public

If the present South African

40 years of damage must be undone

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23/5/91

By DENNIS DAVIS, new Director of Applied Legal Studies at the University of the Witwatersrand.

Government is engaged in a project to de-racialise South Africa without democratising it, there is little hope that the South African legal system will regain the legitimacy needed to render it an effective instrument of democracy

But it is not only the South African Government which appears to consider itself above the law. The recent events surrounding the trial of Winnie Mandela have given rise to grave concern that there are elements within the ANC who consider themselves to be above

"One day there will be change in South Africa. Those who then come to rule may have seen the process of law in their country not as protection against power but as no more than its convenient instrument to be manipulated at will... it may then be said of those who now govern that they destroyed better than they knew." — Sydney Kentridge QC in an article entitled "The Pathology of the South African Legal System"

the law. Granted that the present South African legal system has little legitimacy, that the state appears to have behaved in an extraordinary fashion in bringing Mrs Mandela and others to trial, but the point remains that a trial of an individual has been portrayed by some as a trial of a movement

If widely followed, this attitude undermines the fundamental principle that no one is above the law and public control of government, its leadership and other important organisations is completely destroyed

It is for these reasons that the question of the future of the South African legal system has been elevated to a central position on the political agenda. Cynics will doubtless say that recent events support the notion that South Africa is a third-world country which cannot expect to have a first-world legal system. But there remain cer-

The demise of apartheid and Stalinism have given rise to a discourse in which rights, the rule of law and democracy have become crucial components of the vocabulary

Very few if any political movements in this country, other than the Conservative Party and the ultra-lunatic Right do not claim to place the rule of law, a rights culture and other instruments of democracy at the head of their political programmes. To argue in favour of any other system than democracy is to commit political suicide

While discourse only operates at the level of ideology, the fact that every significant political movement is in favour of a Bill of rights, the rule of law and a multi-party democracy means these concepts are now widely supported. Further, the ANC's longstanding commitment to the Freedom Charter, which approximates the Universal Declaration of Human Rights, should not be underestimated

In addition, South Africa has viable legal institutions. Notwithstanding the damage which apartheid inflicted upon the institution of the judiciary, the institution has survived. The legal profession, conservative as it is, maintains strong traditions of independence which can only be valuable in the development of a project of a legitimate legal system

Whilst these institutions are necessary they are not sufficient conditions for a viable legal system for a future South Africa. The judiciary is all white (and with one exception all male), the magistrary is predominantly white with no tradition of independence, access to the law is almost impossible for most South Africans and the state

legal aid system is hopelessly inadequate (some 150 000 people were convicted without legal representation last year). In short, the legal system has been badly tarnished

When Sydney Kentridge issued his warning, it appeared inevitable that the National Party would totally destroy the South African legal system

This has not completely happened and the new discourse, together with a transformed legal infrastructure and the potential for widely supported forms of informal justice, initially created during the period of protest politics, holds the hope that the South African legal system can play an important role in a future society

Ultimately, however, the future of the legal system will depend upon the possibility of political pluralism restraining any one organisation from becoming intolerant of the politics of competitors

SA to get public defenders

SOUTH Africa is to get a public defender system for people who cannot afford legal fees in criminal cases.

Minister of Justice Kobie Coetsee announced in a speech, at the opening of the new magistrate's court in Kimberley, that a two-year pilot scheme to assess the new system would be launched in Johannesburg in June with 10 public defenders recruited from the law profession

The Legal Aid Board would finance the first project, but the private sector would be approached "for substantial contributions aimed at the maintenance and expansion of the system"

He said the system should "not be seen as an extension of Government machinery". The committee overseeing the project aimed at functioning independently at all times.

Mr Coetsee said he had asked the Legal Aid Board to investigate a public defender system for South Africa, "mindful of the facts that we have

8/23/91
MICHAEL MORRIS

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an inadequate number of black people practising law and that a large number of accused are not represented in criminal cases".

The board formed a "launching committee" last month, chaired by Mr Justice C F Eloff, and including representatives of the General Bar Council of South Africa, Lawyers for Human Rights, the National Association for Democratic Lawyers, the Black Lawyers Association, the Legal Resources Centre, the Legal Aid Board and the Association of Law Societies of South Africa. The Department of Justice was represented by Mr J H Breyl

Mr Coetsee noted that the objective in appointing established legal practitioners as public defenders was to prevent the development of the perception that "inferior" legal aid would be rendered.

No justice for blacks — angry dad

By MARTIN NTSOELENGOE

AN angry farmworker stormed out of the Zeerust Regional court this week after a farmer who shot dead his 12-year-old son was found not guilty on a charge of culpable homicide.

"There is no justice for blacks in this land," a bitter Frans Thokwe said outside the court. "It is strange that I made a statement to the Groot Marico police but not called to testify."

Magistrate J. Carsten earlier ruled there was not enough evidence to convict farmer Hendrik Frederick Mathee, whom he said had not intended killing the boy. A W. The Klerksdorp branch of Lawyers for Human Rights is also unhappy about the verdict and will investigate the case.

Mathee pleaded not guilty. He said that on July 16 he tested his gun while sitting on the stoep with his wife.

He said the first shot was fired successfully, but the gun jammed when he tried to fire another shot.

He put another bullet into the chamber and aimed at a patch of soil near a small dam. He saw no one before pulling the trigger. But when he fired he saw Jan Thokwe, who was near the dam, fall.

He rushed Jan to the Groot Marico police who told him to take the boy to the Zeerust Hospital.

Killings: Farmer free

Justice shivers in the winds of change

Star 24/2/91

THE past two weeks have been marked by the furor over the Winnie Mandela trial and bomb murder of ANC lawyer Bheki Mlangeni. **BARBARA BUNTMAN**, chairperson of the Five Freedoms Forum, looks at their implications for justice

RECENT events have highlighted the fragility of justice in the emergent new South Africa. The death of Bheki Mlangeni and the incidents surrounding the "Winnie Mandela case" have raised important questions about the current state of justice in South Africa. The Five Freedoms Forum is concerned that some of the principles and practices which underlie justice are being undermined, and the handling of justice in these cases sets a disturbing precedent for the future.

The above-mentioned events and the turnabout in the Neethling libel case highlight the need for the acceptance of certain principles of

justice to which political leadership from across the political spectrum should be accountable.

There is little doubt that Bheki Mlangeni was a victim of a hit squad which aimed to kill Dirk Coetzee. The former police captain's testimony was recently vindicated by the Neethling case. Mlangeni might not have been the target of the hit squad, but his death serves to remind us of the inconclusive investigation of the Harms Commission. It also prompts the question who stood to gain from Coetzee's death?

What seems to be preventing the prosecution of those responsible for the many unsolved hit-squad murders is the fear that justice will be detrimental to several powerful entities and groups. This could include the SAP, the Defence Force and of course the relevant Ministers and the Government itself.

It is this fear and the power structure that surrounds it that has probably prevented witnesses at the Harms Commission from

speaking out. It probably also prevented many CCB operatives from speaking out about their activities.

It is however in the interest of the future of justice that justice is seen to be done. Where there is evidence that State employees have been involved in criminal activities, they should be suspended and charged.

Charged

An obvious example is General Lothar Neethling. He, as well as his superiors if they authorised his actions, should be charged. It is unacceptable that he remains a senior member of our law enforcement system.

Another example is the controversial Winnie Mandela case. The ANC has not clearly and publicly put its weight behind the due process of law as the appropriate channel for the pursuit of justice, despite Nelson Mandela's earlier statements. Instead there seem to have been attempts to politicise

the trial with the ANC's overt support of the accused and her presumed innocence.

The ANC's stance lends support for the false notion that the investigation and hearing of this case are motivated by a desire to discredit the ANC. The failure of the ANC to make clear its support for the principles of a fair trial may be uncomfortable to some, but ominously it serves as a signal that extrajudicial tactics to disrupt the presentation of evidence may be acceptable.

If the ANC is to clear its name, it should take a public stand against the abduction and intimidation of witnesses in this case. Better still, they could participate in a public inquiry into these matters.

Intimidation of witnesses is nothing new in South Africa. In most cases it has worked against members of the ANC. But the stature of the Mandelas and the nature of the case makes it imperative that the ANC is more convincing.

These events highlight the diffi-

culty of achieving justice during a period of transition from a system where justice was clearly absent. A bill of rights, independent judiciary, fair and accessible courts and an effective police force may go some way to providing the kind of justice that most citizens want. But they do not guarantee it.

A system of justice and law enforcement are merely the mechanisms whereby justice can be realised. To be effective, these mechanisms should exist in an environment which is conducive to the pursuit of justice.

Principles

The creation of such a climate could be aided by the acceptance of several important principles and practices, including:

- A general consensus that the formal justice system is the legitimate and appropriate channel through which justice is achieved
- Consensus that criminal suspects should be protected as individuals?

by a bill of rights and have the right to a fair trial

● Witnesses should be allowed to speak out without fear of reprisals or victimisation

● Those in positions of power are accountable to the process of justice

● The police force should be consistent in its investigation of charges, regardless of the affiliation of the suspects and victims

We are in a period of transition and negotiations in which we hope to see a development of tolerance for the other side.

The examples outlined above illustrate major political actors and leadership elites being protected through the frustration of the principle of justice.

If these principles are not to be upheld, how is a bill of rights to be enforced? How is corruption and oppression of political opposition to be prevented?

The struggle for the soul of justice requires courage and determination from all South Africans.

Bid to sue businessmen cleared of boiling man

24/2/91

By S'BU MNGADI (252)

A BID by Lawyers for Human Rights to sue two Northern Natal businessmen recently acquitted of boiling a man alive in an industrial cleaner are being frustrated by an inability to trace his next of kin

Ahmed Motala of the LHR said in Johannesburg this week the organisation planned to send a representative to Vryheid to trace the family of the dead man, William Mdladla, so as to be able to institute proceedings

Kenneth Westermeyer, 35, and his nephew, Johannes Westermeyer, 23, were acquitted of murdering Mdladla by Judge Combrink

The judge, who found the killing to be a "freak accident", sentenced Kenneth and Johannes Westermeyer to a fine of R500 or three months and R200 or six weeks, respectively

Motala said the LHR - which has expressed "shock and disgust" at the acquittal - is not convinced by a statement of the investigating officer in the case that Mdladla had no family.

He said the LHR would like to sue the Wes-

termeyers for loss of earnings on behalf of Mdladla's wife and children

The LHR sent a memorandum this week to Natal Attorney-General Mike Imber, requesting him to apply for an appeal against the conviction.

Combrink, assisted by two assessors in the Ladysmith Supreme Court, found the Westermeyers guilty of assaulting Mdladla by forcibly pushing him into the machine

He found the state had not proved the accused intended to injure Mdladla, whom they suspected of being involved in burglaries and thefts at their business, Northern Natal Gearbox

Earlier Vusi Dlamini testified that the two accused forced Mdladla into the machine and pinned him down in scald-

ing water with a pick handle.

Giving evidence for the state, Dlamini said when Mdladla emerged from the water pieces of his skin had peeled off as a result of the scalding

A post-mortem found that Mdladla died of first, second and third degree burns to 90 percent of his body

The accused claimed Mdladla fell into the machine, used to clean grease off motor parts, when they tried to push him inside "to frighten him"

A senior inspector of the Department of Manpower in Natal, Colin Murphy, this week said the water temperature in the machine was close to 90 degrees Celsius when he inspected it two days after the incident

Young killers show no remorse

CP news 24/2/91

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THREE of the four white schoolboys who viciously assaulted and killed vagrant Tom Ruiters in February last year are "still unconvinced of the seriousness of their wrongdoing" according to psychologists

The four former Dale College pupils, Richard Bester, 18, and three minors, were convicted in the East London Supreme Court last week of culpable homicide and two counts of assault with intent to do grievous bodily harm

At the hearing on Friday, Attorney-General of the Eastern Cape Dr Jan d'Olivera asked the court to jail the four former Dale College pupils. Sentencing is due to take place on March 6.

Earlier, community and clinical psychologist Chris Giles said that racism was a central issue to the trial and that the legal representatives had not paid enough attention to it.

The boys had belonged to a "Kaffir-Bashing Society", the purpose of which was to assault vagrants, but the boys admitted they would not have assaulted white va-

grants

Bester, who kept a register of the members of the society, had expressed his hatred for blacks on more than one occasion

When Ruiters, who was bleeding on the head, pleaded with Bester during the attack, saying "Nee baas, ek is nie 'n kaffir nie, ek's 'n kleurling", Bester kicked him in the face and answered, "Ek haat julle almal"

Former pupil and boarder at Dale College, George Smith, said Bester's views became "more harsh" after political parties were unbanned last year. Smith said Bester would often draw AWB symbols in class and had made an AWB insignia on his red desk pad.

Giles commented that the boys showed concern for Bester, who was superficially injured in a "kaffir-bashing" incident two nights before the fatal attack, but disregard for

Still unconvinced of seriousness of their wrongdoing, say psychologists

Ruiters, who was severely wounded.

After assaulting Ruiters more than 10 times with weapons, including a police truncheon, cricket wicket and hockey stick, the boys left him coughing blood to die painfully overnight.

The boys did not recognise that Ruiters had feelings and rights, said Giles, while they recognised Bester's.

Giles said research has shown white households to be "crucibles of racism" where racist stereotypes were learnt. Richard Bester must have picked up "anti-black" sentiment from his father, said clinical psychologist Jean Fielding.

Giles testified that Richard Bester had an unhappy childhood with racism, violence, anger and despair about the political environment. He said Bester had shown "serious aggressive be-

haviour" in 1989 before the killing of Ruiters. Bester was the least emotionally stable and the least mature in times of stress, said Giles.

Giles said three of the four boys had not showed signs of remorse and none of them attempted reparation to Ruiters' family.

Mitigating factors were that the boys were first offenders and were capable of making a contribution to society.

Giles said that although the headmaster of Dale College, Malcolm Andrew, had, in his opinion, endorsed acts of violence against vagrants it did not significantly reduce the boys' "moral blameworthiness".

Giles recommended that the boys be given a sentence with a prison term, community service and a suspended sentence that would see them safely through the next developmental stage - Elnews

By S'BU MNGADI

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Law commission finishes three studies for De Klerk

THE SA Law Commission has completed three major projects on group and human rights, constitutional models and administrative law, which will be released soon at a critical stage in SA's constitutional development.

The commission's reports are expected to make a major contribution to the constitutional debate on the eve of an anticipated breakthrough to full-scale negotiations.

Commission chairman Mr Justice Pierre Olivier said at the weekend the working group on the group and human rights project had approved the final draft of the document, which would be handed to government about the middle of March

TIM COHEN

A working paper, on which the final report was based, was hailed as a highly significant document by a wide range of political commentators when it was released about two years ago.

It proposed a Bill of Rights guaranteeing all citizens participation in all legislative institutions, but added such a system would not be credible unless blacks had the vote.

The long-awaited final report, which is a "substantial advance" on the draft, will be tabled in Parliament during the current session.

The commission has considered more than 400 submissions since it published its draft report. It will be

about 700 pages long

The commission was asked by President F W de Klerk to investigate constitutional options during his February 2 speech last year.

Mr Justice Olivier said this report also had been approved by the commission and would be handed to government by June

The commission, which visited several African and European countries to study their constitutions, had produced a report about 300 pages long

Mr Justice Olivier said a major study of about 1 000 pages had been produced on administrative law, and a draft report would be published for comment by the end of April

'FW to stay central political figure'

PRESIDENT F W de Klerk will remain a central figure in SA political life, his brother Wimpie de Klerk says in a new book about him

De Klerk will play the role of a transitional figure,

TIM COHEN

chief negotiator and bridge-builder, says the book, to be published this week.

The book, F W de Klerk — The Man in His Time, predicts the National Party will continue to play an important role

As a transitional figure, De Klerk will have to engineer a change from white domination to black participation. "This is an unenviable role, alien to the laws of politics, requiring great strength, self denial and conviction

"He will become the prime negotiator, advocate, watchdog and entrepreneur of white interests. He has to redefine the role of whites in the face of growing scepticism

"He will have to transform the tradition of mistrust to introduce the art of creative political association"

De Klerk writes that negotiating parties should have more or less evenly balanced power bases, because negotiation is about weighing up power.

"The government, fortunately, restored the balance of power when it unbanned the proscribed organisations."

De Klerk also warns that SA should be prepared for negotiation to proceed in fits and starts.

Partition as an ultimate solution to SA's constitutional dilemma is not necessarily far-fetched, but it could not be along the lines of a "boerestaat", the book says

It would have to be a ne-

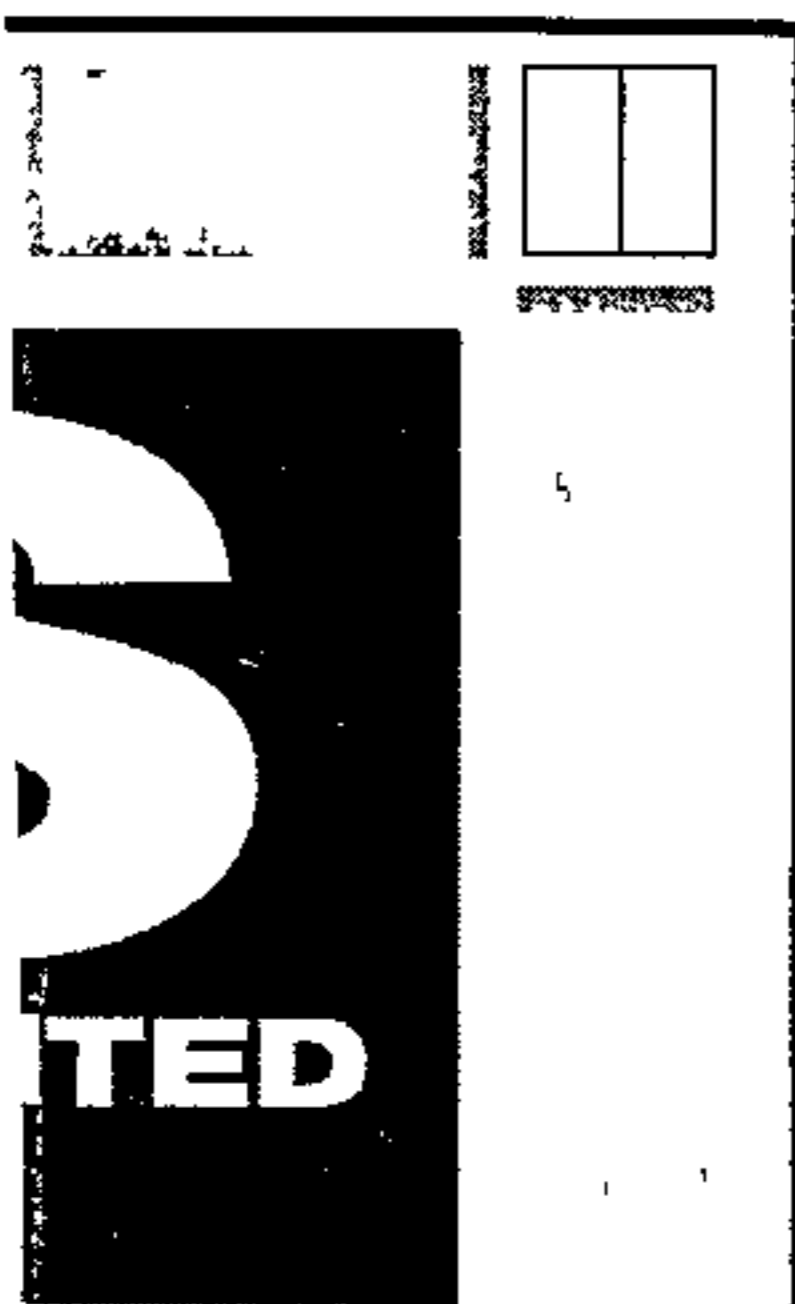
gotiated solution with general concurrence among black and white and the international community

Rather than a "boerestaat", the country could be divided into a northern and southern state, with full civic rights granted to all groups in each of the two states.

The states could differ in their political and economic systems but "population groups could hardly be relocated", De Klerk writes

"No white-dominated state, unless it was a province in a federation, would be tolerable"

However, De Klerk favours the alternative compromise of power-sharing in an undivided SA "since the opposing parties have often expressed their willingness to accept it", the book states.



NEWS

Winnie case: CP man ⁽²⁵²⁾ ⁽³³⁰⁾ 'should have same rights as MPs' ^{star 26/2/91}

The legal team for Andries Beyers, Conservative Party general secretary, yesterday argued in the Pretoria Magistrate's Court that their client should be afforded the same privilege on information that parliamentarians enjoyed.

Mr Beyers was charged under Section 189 of the Criminal Procedures Act after refusing to identify a source who allegedly told him National Intelligence Service (NIS) members had been responsible for the apparent kidnapping of a witness

in the Winnie Mandela trial

In the CP newspaper Die Patriot, on February 15, it was claimed that Gabriel Mekgwe had been kidnapped to stop the Winnie Mandela trial

J de Vos, for Mr Beyers, argued his client had a common

law privilege, evolving from the privilege parliamentarians enjoyed, not to divulge his sources JF van Eeden, for the State, argued Mr Beyers was merely a party official

The magistrate, Mr M Kilian, has reserved judgment — Sapa

Ministers

Questions standing over from Tuesday, 19 February 1991

Executions

* 1 Mr D J DALLING asked the Minister of Justice

How many persons in the Republic were (a) executed in 1990 and (b) awaiting execution as at the latest specified date for which figures are available?

B12E

†The MINISTER OF JUSTICE

(Reply laid upon the Table with leave of House)

(a) No persons were executed in 1990. For the hon member's information it can be mentioned that the State President commuted the death sentences of 12 persons who were sentenced prior to the commencement on 27 July 1990 of the reform measures which were enacted in respect of the death penalty.

(b) To date 341 persons are in custody after they were sentenced to death. Of this number, 298 persons were sentenced to death prior to the coming into force of the said legislation on 27 July 1990 and 43 persons thereafter.

I now deal with the respective positions of persons sentenced to death after and before the commencement of the said legislation (namely 27 July 1990)

After 27 July 1990

During the opening of Parliament on 2 February 1990 the State President announced that all executions are suspended until Parliament takes a final decision on new proposals which were made in respect of the death penalty. These proposals were approved finally by Parliament last year and are contained in the Criminal Procedure Amendment Act, 1990 (Act 107 of 1990), which came into operation on 27 July 1990.

The most important provisions of the new measures do away with the compulsory imposition of the death sentence and vests the Supreme Court with a wider discretion to impose the death sentence in appropriate cases. A person who is sentenced to death now has an automatic right of

appeal to the Appellate Division. Measures were also introduced to expedite the appeal procedure. If a person's appeal is dismissed he still has, as in the past, the right to submit a petition for clemency to the State President for his consideration.

The first execution after the expiry on 27 July 1990 of the moratorium on executions will take place shortly. No announcement will be made about the exact date.

Since the commencement of the above-mentioned legislation on 27 July 1990, 531 persons were convicted of murder, 43 of whom were sentenced to death. In the cases where the death penalty was not imposed, appropriate sentences of imprisonment were imposed. The following statistics in this regard are of importance:

Imprisonment for life	8
Between 20 and 25 years	8
Between 15 and 20 years	23
Between 10 and 15 years	54
Another person, who was convicted of rape, was also sentenced to death	147

As far as life imprisonment is concerned, the principle was established by legislation last year that persons upon whom these sentences are imposed, are incarcerated for the rest of their natural life, unless special circumstances are present. The interest of society is the most important norm in this regard.

Before 27 July 1990

In accordance with the new legislation, provision is made that the cases of each person at present under sentence of death who did not enjoy the benefit of the new criteria which is now applicable with regard to the imposition of the death sentence will be reviewed by a panel of experts. This includes persons whose appeals were dismissed prior to the commencement of the new criteria. The Panel for the Consideration of Sentences of Certain Persons under Sentence of Death already commenced with its activities last year and will have its first session during March of this year.

Where the panel finds that the death sentence would probably not have been imposed by the trial court, the case is to be submitted to the State President with a view to his possible extension of mercy to the convicted person. Where the panel

finds that the death sentence would probably have been imposed by the trial court the matter will be referred to the Appellate Division for consideration in accordance with the said criteria. If the person's appeal is dismissed he still has the right to submit a petition for clemency to the State President for his consideration.

The panel, under chairmanship of the Honourable Mr Justice G Viljoen, Judge of Appeal, consists of four appeal judges, two judges and three legal academics.

The Appellate Division has since 27 July 1990 dismissed the appeals of 12 condemned prisoners whilst the appeals of 20 persons have been successful.

I also announce that the State President recently decided to commute the death sentences of 8 persons who were sentenced to death before 27 July 1990.

* 2 Mr J A Jordaan — Law and Order † (Question standing over)

New questions

Edendale Hospital: administration

* 1 Mr R F HASWELL asked the Minister of National Health

- (1) Whether the Edendale Hospital is being administered by the KwaZulu Government, if so, in terms of what statutory provisions, *Answer 26/2/91*
- (2) whether the South African Government intends resuming control of this hospital, if so, when, if not, why not? *B108E*

†The MINISTER OF AGRICULTURAL DEVELOPMENT (for the Minister of National Health)

- (1) Yes, in terms of section 1(2) of the Self-Governing Territories Constitution Act, 1971 (Act No 21 of 1971), read with Proclamation R 275 of 1977,
- (2) no, the Edendale Hospital is being administered in its own right by the KwaZulu Government.

Mr R F HASWELL: Mr Speaker, arising from the reply of the hon the Deputy Minister, I wonder whether he is aware that Edendale Hospital is, in fact, a health time bomb which is

wanting to explode. Even though it is administered by KwaZulu, when that explosion takes place, it will have disastrous consequences for hospitals in Pietermaritzburg which are under the hon the Minister's control.

Aids: notifiable disease

* 2 Mr R F HASWELL asked the Minister of National Health

- (1) Whether she intends declaring Aids a notifiable disease, if so, when, if not, why not, *Answer 26/2/91*
- (2) whether she has received any representations in this regard, if so, (a) from whom and (b) what was the nature of these representations? *B109E*

†The MINISTER OF AGRICULTURAL DEVELOPMENT (for the Minister of National Health)

(1) No, the opinion till now was that AIDS should not be made notifiable as notifiability has never been shown to affect the course of the pandemic or made any difference to preventive efforts. No other venereal disease has ever been notifiable in the RSA. Infectious diseases are made notifiable to enable local authorities to take steps to protect the public, such as placing infected persons in quarantine, follow-up of contacts and immunisation. Infection with the Human Immunodeficiency Virus (HIV), however, does not lend itself to such measures. The follow-up of contacts is still dependent on the persons' willingness to divulge the information.

The spread of infection in South Africa is constantly monitored by all laboratories in the country doing HIV-testing, sending their information to an anonymous, confidential central national register kept by the South African Institute for Medical Research. It is unlikely that making the infection notifiable will provide additional information. The whole question of notifiability is at present being reviewed by the AIDS advisory group;

the impression that if we make the disease notifiable, we are going to obviate the problem. The question is what we then do with the information we have at our disposal.

In the second place I want to refer to the effectiveness of the programme to which the hon member for Pietersburg referred, and I also want to deal briefly with exiles. Last year I made a special evaluation—I did so with reference to quite a number of media reports—about the effectiveness of the Aids Programme. I am satisfied that at the present stage we are making good progress with the educational programme, the protection of the blood bank is highly successful and in any case we have obtained the co-operation of all the various departments that are able to make a contribution towards dealing with this problem. There is close co-operation on a high level.

As far as the exiles are concerned, I think it is essential for me to ask the hon member on what grounds one can refuse persons who have been identified as citizens of this country access to South Africa because they are Aids sufferers.

Death squad activities: inquiry

2 Mr S S VAN DER MERWE asked the Minister of Justice

Whether, in view of the alleged attempted murder of Capt Dirk Coetzee which resulted in the death of a Johannesburg lawyer, the Government will consider instituting a fresh inquiry into so-called death squad activities? *Hansard 26/2/91*

B344E INT

*The MINISTER OF JUSTICE Mr Speaker, the Government wishes to state in the strongest terms that any murder or assassination is an abhorrent act that applies to every murder or assassination. It also applies to the murder of Mr Mbeki Mlangeni, whose next of kin we sympathise with. It also applies to any attempted murder on any person whatsoever. Whatever the motive for such an act or attempted act may have been, it remains utterly contemptible. Such acts or attempts must be laid open by way of thorough and vigorous investigation so that the guilty parties may be brought to justice.

With a view to this, an announcement was made this morning, namely that the Attorney-General of the Witwatersrand, Mr Von Lieres and Wilkau, is to head an investigation into the death of Mr Mbeki Mlangeni. He will be duly assisted by a senior investigating officer of the SA Police. Arrangements have been made between Mr Von Lieres and Wilkau and the police for forensic tests to be conducted on the premises of the CSIR and for a member of the CSIR to play an equal part in this. *Hansard 26/2/91*

If no accused are quickly identified in the very short term, the Attorney-General will request me to appoint a judge in terms of the amended Inquests Act to conduct that investigation. A regional magistrate could also be appointed, but I want to point out that in this instance it will probably be a judge if it comes to that. The hon the State President held out the prospect of these procedures on 19 September 1990, and they have already borne fruit and have already been drawn up because the evaluation was that commissions were inadequate for the purposes of a speedy investigation with a view to a criminal prosecution or the identification of an accused.

This announcement has produced results and borne fruit. In this way the combined action of the Attorney-General and the police led to the appointment of Mr Justice Stafford during September 1990 to conduct an inquest into the deaths that occurred during the second Sebokeng unrest situation last year. That was in public. All and sundry were invited to give evidence, and this was widely publicised as well. The investigation is in progress and Mr Justice Stafford's judgment is awaited. I could mention the case of the soccer stadium to hon members. Furthermore, I could mention the issue of Kaitliahong, as well as Khayelisha—these are cases in which people have been appointed to conduct lightning-quick investigations, and anyone who has any information may submit it to them.

The combined action of the Attorney-General and the police led to the speedy arrest and arraignment of five people in connection with the attack on train commuters on the Jeppe and Benrose stations on 6 September 1990. The case is presently awaiting trial in the Supreme Court. The instrument of the inquest and the instrument of co-operation between the police and the Attorney-General are more effective than any commission could hope to be. [Time expired.]

Mr S S VAN DER MERWE Mr Speaker, attorney Mbeki Mlangeni's death was caused by a parcel bomb that was meant for Dirk Coetzee. Could any one doubt that it had everything to do with an attempt to silence Coetzee because of his tales about death squad activities?

The hon the Minister has referred to the special investigation that has been instituted, headed by a Police general. Let me be frank with him. I am sceptical about the chances of ever successfully finding the murderer in that case, not because I doubt the competence of the general, but because the killers are too professional and too expert and have access to too many resources.

Killers lurk in this country, and some of them—for all we know—in official branches of Government. A few weeks ago another witness died, "Peaches" Gordon, who was hired to kill Mr Dullah Omar, was himself shot full of holes. Could anyone doubt that his death had something to do with the CCB revelations that he made in affidavits and in the Press?

How many people must die to prevent the truth about these ugly events from coming out? I say to the hon the Minister that a fresh investigation into this whole death squad issue is called for, an investigation that goes hand in hand with a promise of indemnity against prosecution for all people who give evidence to the satisfaction of the commission.

In considering this appeal I want the hon the Minister to answer just a few questions. First of all, is he prepared to accept that the vast majority of the 71 political murders that he placed before the Harms Commission remain unsolved? Secondly, can he really say that the hon the State President's promise to cut the death-squad issue open to the bone has substantially been kept? Thirdly, does the hon the Minister understand the enormous public implications of the murder attempt on Dirk Coetzee so soon after he himself, our Minister of Justice, had promised him protection and a fair trial? Fourthly, what is his Government doing to restore effective civilian control over the Defence Force when their instructions, as a Government, have been so flagrantly disobeyed when they told them to co-operate fully with the Auditor-General and Mr Justice Harms in his investigation?

I believe those questions need to be answered in consideration of our appeal for a fresh investigation.

tion, coupled with an indemnity offer, particularly for those who have been involved. We believe that is the only way we are ever going to get to the truth of this matter.

*Mr M J MENTZ Mr Speaker, it always amazes me to see how the DP unconditionally accept anything that comes from a different source, if it can in any way support their cause. The statements made by Coetzee were accepted here as if they were the gospel truth, without any prior investigation of them whatsoever. [Interjections.]

In our humble opinion this is a senseless proposal which will once again lead to a wastage of money on a grand scale. As a lawyer that hon member knows what happened at the Harms inquiry—no positive results flowed from it. [Interjections.] There were no positive results because after all, we know that what was submitted to the Harms Commission was already known, because surely nothing more can ever be submitted here than what competent detectives have put forward. For this reason it would be senseless to go along with this. No, I have an idea that this type of request is being made in order to oblige the ANC. [Interjections.] I say this because I think they ought to know better.

It is the Government's fault, however. It is they who are creating the opportunity for a continual insistence on this type of commission. The proper method of dealing with this matter would be for those political heads who were involved in this case, to come forward and reveal their knowledge of and involvement in some of these covert operations. Then we would not need these commissions of inquiry. If that were to happen, we would in a far better position to know where we were headed. Only then would the vilification of members of the force come to an end. [Time expired.]

ment to place us on the trail of the earphone bomb. Then it will be possible for Mr Dirk Coetzee to come to South Africa and to give evidence at such an inquest under indemnity and total protection, which I now offer him on behalf of the Government.

Otherwise, I invite him to come to South Africa at an earlier stage in order to make affidavits to the Attorney-General with regard to everything he knows, so that this may be thoroughly investigated. We guarantee his safety, and he may contact us immediately in this regard via his lawyers, etc.

If we were to appoint a commission, the hon member should look at the rules laid down by the Salmon Commission for such a commission. Such a person must testify in public and it must be possible for him to be cross-examined by all interested parties.

If Mr Dirk Coetzee hes low abroad, we will forever have to trail after him, and he will come forward with all sorts of obscure and other types of allegations. He is not subjecting himself to public scrutiny where he can be cross-examined. Surely this cannot be tolerated. It is for this reason that our instruments are being thwarted. Our instruments are available for his use, and I have said that we must pave the way for him completely in this regard.

I now come to the large number of unsolved murders to which the hon member referred. The hon member knows full well that Mr Justice Harms has laid those cases open to investigation. He has said that anyone who has a suspicion of any nature should come forward and he will deal with it. No facts have been forthcoming. [Time expired.]

Mr A J LEON. Mr Speaker, despite the unholy alliance that has developed between the Government and the CP [Interjections] the fact remains that the bomb which killed Mr Mlangeni was intended for Dirk Coetzee. It was addressed to him. [Interjections.] It was sent at a time and in such circumstances as to lead to an irresistible inference that this was done to harm him and prevent him from appearing before the Harms Commission.

The real issue, which the hon the Minister of Justice must address, is that what obstructed the Harms Commission more than anything else, more than any of the limitations on its rules or

HOUSE OF ASSEMBLY

proceedings, were in fact the activities of the CCB during the process and progress of that Commission. Let me quote to hon members from what Mr Justice Harms said:

The actions of the CCB contaminated the whole security of the State. Its conduct before and during the Commission created suspicions that it has been involved in more crimes of violence than the evidence shows.

That is from Mr Justice Harms.

All we have to rely on in Parliament is the say-so of Genl Magnus Malan, the hon the Minister of Defence. He, however, has misled this Parliament before, because he told us that he only became aware of the CCB in November 1989 and that he told President F W de Klerk of its existence a month later.

*Mr A L JORDAAN. Mr Speaker, on a point of order. Is it permissible for an hon member to say that the hon the Minister of Defence misled this House?

The ACTING SPEAKER. Order! The hon member for Houghton stated that the hon the Minister of Defence had misled Parliament before. Was the hon member for Houghton inferring that the hon the Minister knowingly misled Parliament?

An HON MEMBER. Say you do not know.

Mr A J LEON. Mr Speaker, I do not know whether he knowingly misled Parliament.

The ACTING SPEAKER. Order! The hon member must not try to play games with the Chair. The hon member must withdraw the remark.

Mr A J LEON. Mr Speaker, I withdraw it.

The ACTING SPEAKER. Order! The hon member's time has expired.

Mr S S VAN DER MERWE. Mr Speaker, the point that the hon the Minister is missing is that the Harms Commission was substantially unsuccessful because it had to fight against the stone wall of lies and deceit of the CCB. That is why it was unsuccessful. What on earth gives him the idea that a judicial inquest is going to be any more successful? That is why I suggest he should act in collaboration, should offer indemnity in exchange for all the information, because that is the only way he is going to get all the informa-

tion. Otherwise he will not I had a discussion with Genl Van der Westhuizen, who was the investigating officer for the Harms Commission and who has now been appointed to investigate the Mlangeni case.

I would like to take a bet with the hon the Minister. Without the participation of the people who were involved in that murder he will never get to the truth, and that is the tragedy. In line with what my hon colleague has said, I want to add that the hon the Minister could take some comfort from the fact that on this issue, for the first time in Heaven knows how long, he gets the support of the CP. It makes you think, doesn't it?

*The MINISTER OF JUSTICE. Mr Speaker, murder docket No 71, or whatever number it may be, will never be closed. If any evidence comes to light at any stage, people will be prosecuted. Hon members must know that [Interjections.]

Moreover, there were no witnesses. The whole world had an opportunity to submit that evidence to the Harms Commission—it was not available. Here we have a concrete murder. The Government condemns it in the strongest terms. We say we must have co-operation so that we may make use of the instruments in order to avail ourselves of the opportunity to bring the guilty parties to book.

As regards the attempt on Capt Dirk Coetzee's life, this took place in another country. That country also has its criminal law. It is a crime. If a request for extradition were made to this Government, and it complied with the normal rules pertaining to extradition, that matter would naturally receive the appropriate attention. In this regard we also welcome any co-operation with African countries in order to combat crime and murder, because we condemn it in the strongest terms. We do not condone it, and I reject any suggestion that this Government is involved in any cover-up whatsoever.

As far as the commission is concerned, Mr Justice Harms referred to Lord Denning. He said Lord Denning—

had led me to state previously that a commission is an unruly horse running a steepchase race and that the ultimate dilemma is that if a commission implicates, it is accused of being an inquisition and if it

exonerates it is accused of being part of a cover-up.

That is why we say a commission is not an appropriate instrument. [Interjections.]

*The ACTING SPEAKER. Order!

*The MINISTER. We want to make use of other measures and other instruments in this regard, and we have delivered proof here that this works. We ask those hon members for their co-operation. They should rather go and speak to Dirk Coetzee and tell him that he should come back to his country, and not simply wage a war of words with us across the border. [Interjections.]

Debate concluded.

QUESTIONS

†Indicates translated version.

For oral reply

General Affairs

State President

Gabriel Mekgwe: evidence

*1 Dr F HARTZENBERG asked the State President †

- (1) Whether any person or body in the service of the State or any Government Department gave instructions that one Gabriel Mekgwe be prevented, or was in any way involved in his being prevented, from being present in the Rand Supreme Court on 11 February 1991 in order to give evidence on behalf of the State in the matter of the State versus Mrs Winnie Mandela.
- (2) whether he will make a statement on the matter? *Answered 26/2/91* B253E

†The STATE PRESIDENT:

- (1) No.
 - (2) The Government will not tolerate any interference with the legal process and is determined to ensure the continuation of the process. This also applies in this particular case.
- As a result of certain allegations made in

HOUSE OF ASSEMBLY

the press pertaining to the abduction of a key-witness in the trial of Mrs Winnie Mandela, two persons have been subpoenaed in terms of section 205 of the Criminal Procedure Act to appear in Pretoria before a Magistrate for questioning. These persons are a Mr Z B du Toit, Editor of the Patriot, and Mr A S Beyers, Chief Secretary of the Conservative Party. Questioning in both cases commenced on 22 February 1991. Mr Du Toit identified Mr Beyers as the source of his information. Questioning in respect of Mr Du Toit has therefore been concluded. The questioning in respect of Mr Beyers was remanded until 25 February 1991 for argument. On completion of the arguments the matter was postponed until 12 March 1991 for the announcement of the magistrate's decision.

I wish to appeal to all persons who are in possession of information relating to this matter to come forward and disclose this information to the Authorities.

The Government's commitment that information pertaining to criminal cases ought to be brought to the fore is also evident from the fact that section 205 of the Criminal Procedure Act has already at the suggestion of the hon the Minister of Justice been amended during this Session in order to ensure that matters of this nature can be dealt with at the highest level.

†Dr F HARTZENBERG Mr Speaker, arising out of the hon the State President's reply, I wish to ask whether he can give this House the absolute assurance that there is no possibility that anybody in the service of the State could have removed this witness without his knowledge, and secondly, whether he is not replying on a technicality, in other words if the question was put differently, would the reply not have been different, and thirdly, whether the State President, in the light of the fact that no denial has previously been forthcoming, does not think it time that he takes the country and this House in his confidence and categorically states that if he cannot state with certainty now, it can be determined and the State's case and that of the people who work for the State can be put right.

†The STATE PRESIDENT Mr Speaker, in any organization at any time somebody may do

something in an unauthorized manner. One of the members of that caucus may collude and negotiate with the ANC without the knowledge of any of those hon members or their leader.

†HON MEMBERS Koos! Koos does it!

†The STATE PRESIDENT If it is so it does not mean that it is the policy or that it carries the approval of the leader of the party. It is probably possible that somebody unauthorized, without my knowledge or that of any political office-bearer, and without the knowledge of anybody in authority over him, may act against the law and in this case may have done something. It is theoretically possible.

The only person who alleges this is a faceless person and he alleged it to an official of the CP, and the only person who is protecting that possible witness, is an official of the CP. So, if the hon member for Lichtenburg wants that information from me, he must ask Mr Andries Beyers. [Interjections.] They must bring us that witness, then we can determine what the truth is. [Interjections.]

Hon members have the absolute assurance from me that we will rip the truth open to the bone, but we cannot do it if officials of the CP protect people who make such allegations.

†Dr F HARTZENBERG Mr Speaker, further arising out of the hon the State President's reply, may I ask the hon the State President—he has now taken cognisance that such an allegation was made to an official of the State—whether he wishes to tell the House that the State does not have the power to do that investigation and if it does have the power, how much time does the State President need to do the investigation and when is he going to tell the country what the situation is? [Interjections.]

†The STATE PRESIDENT Mr Speaker, we do have the power. The one line of the investigation that we followed was to summon Andries Beyers before the court to reveal his information and we are waiting for the judgment of the court. [Interjections.]

†Dr F HARTZENBERG He revealed all his information.

†The ACTING SPEAKER Order!

†The STATE PRESIDENT The other line of investigation that we are taking is that of the

usual methodology policing. So there is no question of our just leaving such an allegation pending. This is another new insinuation from the CP. [Interjections.] The investigation is going ahead at full steam and we shall carry out the investigation to its logical conclusion, but it remains an irrefutable fact that an official of that party publicized information and—if it is true—has information that could help the police to settle this case and that he is not making this known.

†Mr F J LEROUX Mr Speaker, further arising out of the hon the State President's reply, had he or any member of his cabinet been in contact with the attorney-general of the Witwatersrand before he made it known that he was going to bring an action against Mrs Winnie Mandela?

†Mr J H VAN DER MERWE Absolutely outstanding, Frank! [Interjections.]

†The STATE PRESIDENT Mr Speaker, I cannot tell the hon member what conversations take place between members of the Cabinet and the attorney-general specifically.

†An HON MEMBER. Ask Kobie!

†The ACTING SPEAKER Order!

†The STATE PRESIDENT. If a Minister of Justice does not contact his attorneys-general from time to time, he will certainly be guilty of serious breach of performance in respect of his duties.

†Mr J H VAN DER MERWE Fire Kobie!

†The STATE PRESIDENT Neither we as the Government, nor the Minister of Justice, nor anyone else interferes in any way with the normal process of justice. [Interjections.] We have respect for our system of justice. [Interjections.] Of course representations are made to politicians from time to time, also to some of those hon members, and do those hon members not then turn to the hon the Minister of Justice? [Interjections.] Do those hon members sitting there mean to tell me that they have never gone to the Minister of Justice on behalf of someone who came to them with representations and asked him, without infringing the legal process, to see what he could do to get a reasonable adjudication by the attorney-general for that person? [Interjections.]

†An HON MEMBER No, now you are going too far!

†The STATE PRESIDENT No, it happens! [Interjections.] It happens. There are Ministers in the other Houses who come forward with such representations. There was no improper interference at all by any member of this Government at any stage in respect of this matter of Winnie Mandela or any other matter.

Mr A J LEBON Mr Speaker, arising further from the hon the State President's reply, would he please tell us what is being contemplated by the Government and the State to actually safeguard and protect the witnesses who are too terrified to give evidence in this particular case?

†The STATE PRESIDENT Mr Speaker, tomorrow the Cabinet will consider full proposals which will be presented by the hon the Minister of Justice. An announcement will be made in due course.

†Mr T LANGLEY Mr Speaker, further arising out of the hon the State President's reply, I want to know what he, were he in the position of Mr Andries Beyers who received a piece of confidential information, would have done with that information. Would he have acted differently from Mr Beyers?

†The STATE PRESIDENT. Mr Speaker, firstly, I should certainly not have used it for political propaganda. [Interjections.] I would have communicated it to my leader along with the request that he ensure, through the correct channels, that it be properly investigated by the Government.

I am the Leader of the NP and I expect my people to do that if they have information about a serious crime. [Interjections.] An attorney or an advocate has a particularly confidential relationship with a client. However, Mr Beyers is nobody's attorney or advocate in this case, he is a politician who has misused information about an alleged crime for political ends, instead of helping us to solve the crime. [Interjections.]

†The ACTING SPEAKER Order! As the maximum number of supplementary questions has already been put, I shall not allow any further questions about this.

First execution in 15 months will take place soon - Coetsee

By Peter Fabricius
Political Correspondent

South Africa's 15-month moratorium on executions has ended and the first death sentence to be carried out since November 1989 will take place soon.

Justice Minister Kobie Coetsee announced in Parliament yesterday in reply to questions that 22-year-old Paul Bezuidenhout would be hanged for the murder of a 54-year-old coloured woman and a two-year-old African girl in Kimberley on September 1 1988.

He said no announcement would be made in advance of the date of the execution.

Mr Coetsee also announced that the Appeal Court had rejected appeals against the death sentences of 12 other people, since the moratorium officially expired on July 27 last year.

Bezuidenhout will be the first person executed since President de Klerk announced a moratorium on death sentences on February 2 last year, pending the introduction of reformed death

penalty legislation.

In fact no executions had taken place since November 14 1989.

The reform measures announced by Mr de Klerk were incorporated in new legislation introduced on July 27 last year.

They do away with the compulsory passing of the death sentence, give the Supreme Court wider discretion and give the condemned person automatic right of appeal.

Rejected

Mr Coetsee said that Bezuidenhout was sentenced to death by the North Cape Division of the Supreme Court on September 15 1989 on two counts of murder.

His appeal was considered and rejected by the Appeal Court on September 28 1990, in accordance with the new legislation.

His subsequent request for clemency was "thoroughly" considered by the Executive Authority but failed.

Bezuidenhout had six previous sentences, including

two for assault with intent to cause serious injury.

He stabbed to death Martha Doorse (54) and Istelle Dwango, a two-year-old girl in tin shanties on the farm Bakensfontein, near Strydenburg, in the Hope-town district.

Mrs Doorse was stabbed eight times and Istelle 43 times. Rebecca Antoinette Doorse, a five-year-old girl, was stabbed once but survived.

The Appeal Court agreed with the trial court that Istelle Dwango was the victim of a "furious and merciless assault" indicating Bezuidenhout's "general depravity".

It concluded that there was a real danger that he would kill again if he was not executed.

Mr Coetsee also announced in reply to questions from Democratic Party justice spokesman Dave Dalling that.

● The State President had granted clemency to 12 of the people condemned to death since the new mea-

● To Page 3

Multiparty talks take step forward

CAPE TOWN — President F W de Klerk met leaders of the self-governing states and Ministers Councils' chairmen yesterday, and a decision was taken to form a working group on the multiparty conference.

A joint statement issued after the meeting said there was general agreement about the urgency of the multiparty conference becoming a reality.

"To this end a working group, representative of the delegations present, was formed to produce a document for the next meeting with detailed proposals on a number of practical issues regarding the launching of the multiparty conference."

The meeting dealt with "matters of mutual concern, the most important of which was the multiparty conference."

Thorough attention was also devoted to aspects of the draft White Paper on Land Reform and the repeal of the Land Acts. "All those present were appreciative of the latest developments, nationally and internationally, indicating real progress on the way to a new SA to which they are all committed."

After the meeting, Inkatha leader and KwaZulu Chief Minister Mangosothu Buthelezi said the working group would probably start meeting next week. He was confident the multiparty confer-

BILLY PADDOCK

ence would soon be launched. "The draft White Paper proposals on Land Reform are a veritable minefield, and they seem to have done a very good job," Buthelezi said.

The meeting was attended by De Klerk, Cabinet ministers, Buthelezi, Gazanuku Chief Minister H u d s o n Ntsanwisi, Kangwane Chief Minister Enos Mabuza and Leboa Chief Minister Nelson Ramodike as well as chairmen of the Ministers' Councils Kobie Coetsee, Alan Hendrikse and J N Reddy. Administrators of the four provinces were also there Gwa Gwa Chief Minister T K Mopeli and KwaNdebele Chief Minister Prince S J Mahlangu sent representatives



● DE KLERK

DP calls for further inquiry into hit squads

CAPE TOWN — The DP yesterday called on government to institute a fresh inquiry into death squads in view of the attempted murder of former police captain Dirk Coetzee.

DP justice spokesman Tian van der Merwe, during an interpellation in Parliament yesterday, said witnesses called to testify should be given indemnity from prosecution "in exchange for spilling the beans".

He said a fresh investigation "is desperately necessary" in the light of the death of attorney Bhek Mlangeni. Mlangeni died when a "walkman" cassette player and tape he had received in the post exploded.

The gadget and tape were initially sent to Coetzee in Lusaka just prior to his leaving to testify before Mr Justice Krieger in London in connection with a defamation claim by police forensic unit chief Gen Lothar Neethling.

Van der Merwe was sceptical about the success Gen Romme van der Westhuizen and Transvaal Attorney-General Klaus von Lieres und Wilkau would have in tracking down the murderer.

He said this was not because the general was incompetent, but because the killers were too professional and had too many resources and too much expertise available to them.

He said a few weeks ago a witness, "Peaches" Gordon, had died.

"Could anyone doubt that his death was a result of his CCB revelations?"

In reply, Justice Minister Kobie Coetsee said the assassination of Mlangeni was being given urgent attention. All forensic tests would be conducted by CSIR personnel and the CSIR would be a leading part of the investigation. Should the killers not be identified within a short period, Von Lieres would request either the setting up of a judicial commission or a judicial inquest.

First execution in 15 months to take place soon

Political Staff

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CAPE TOWN — The first person to be executed in SA in more than 15 months will go to the gallows soon

Justice Minister Kobie Coetsee announced in Parliament yesterday that "the first execution after the expiry on July 27 1990 of the moratorium on executions will take place shortly." The moratorium, to allow for a review of legislation, was imposed on November 14 1989

No announcement would be made about the exact date

The Justice Department announced later that the person to be hanged was Paul Bezuidenhout, 22, who was sentenced to death by the northern Cape division of the Supreme Court on September 15 1989 for two murders

Coetsee also announced that President F W de Klerk had recently decided to commute the death sentences of eight people sentenced before July 27 last year. They were Peter Anthony, Zwelibanzi Nelson Boss, Thobile Boss, Sikhumbuzo Jantjes, Joseph Michulu Malaza, Dilinzintaba Valford Nomngana, Alfred Shongwe, and Zacharia Tseleng

Lawyers for Human Rights said later that according to its criteria five of those were political prisoners

A spokesman said the organisation was "very disturbed" by the announcement that a notice of execution had been handed out

Bezuidenhout was found guilty of the murders of a two-year-old girl and 54-year-old woman. The statement from the Justice Department noted that the Appellate Division mentioned in its judgment that Bezuidenhout's "complete depravity is proved by his senseless and enraged attack on a defenceless toddler and that the horrible nature and extent of his deeds indicate that his chances of reform are extremely poor." Bezuidenhout stabbed the child 43 times

Coetsee, responding to a question put by Dave Dalling (DP Sandton), said another 341 people were on death row. Of those, 298 were sentenced before the death penalty reform measures were introduced last July. The legislation introduced then

□ To Page 2

Execution

scrapped the compulsory imposition of the death sentence, granting a right of appeal to the Appellate Division. Measures were also introduced to simplify the appeal procedure

Since the commencement of the legislation — the Criminal Procedure Amendment Act — 531 people were found guilty of murder and 43 of those sentenced to death. Eight were sentenced to life imprisonment. Another person convicted of rape was also sentenced to death

In terms of the legislation people sen-

tenced to life "are incarcerated for the rest of their natural life, unless special circumstances are present", said Coetsee

People sentenced to death before the new legislation took force are entitled to have their cases reviewed by the Panel for the Consideration of Sentences of Certain Persons

Coetsee said that since July last year, the Appellate Division had dismissed the appeals of 12 condemned prisoners, while 20 appeals were successful.

□ From Page 1

February 27 1991

POLITICS

Coetzee offered indemnity

Political Staff

The Government has offered former police captain Dirk Coetzee temporary indemnity if the investigation into the "Walkman" killing of a Johannesburg lawyer turns into a judicial inquest

Justice Minister Kobie Coetzee made the offer in Parliament yesterday, saying the robe would turn into an inquest run by a judge or regional magistrate if there was not prompt progress in finding Bheki Mlangeni's killers

Mr Mlangeni, a human rights lawyer, was killed recently when he put on headphones and played a tape, activating explosives packed into an earpiece. Mr Coetzee has alleged that the bomb was meant to silence

him before the Harms Commission hearings, and that he knows who is responsible

Mr Coetzee was responding in a mini-debate to questions from Tlan van der Merwe (DP Green Point) on whether government would launch a fresh inquiry into "death squads"

The Minister said the Attorney-General for the Witwatersrand, Klaus von Lieres, would head an investigation into the matter, assisted by a senior policeman, and forensic tests would be conducted at the Council for Scientific and Industrial Research (CSIR)

If it did not speedily produce suspects, a judicial inquest would be launched

Mr Coetzee invited Mr Coetzee to return to issue affidavits to the Attorney-General "about everything he knows".

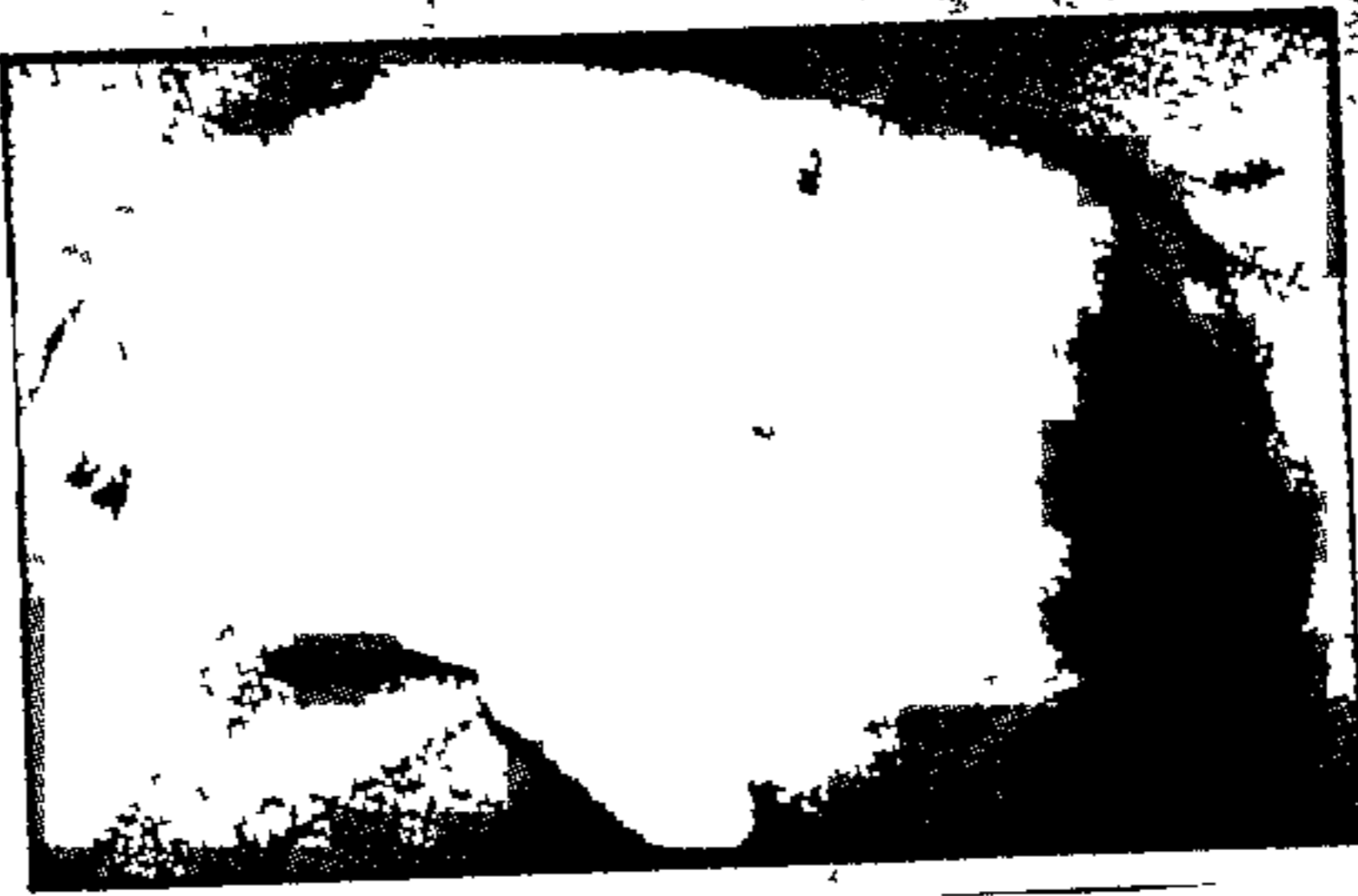
If Mr Coetzee lay low abroad and emerged with all kinds of vague allegations, he was not exposing himself to the public eye. "He had to be cross-examined," Mr Coetzee said

Mr Coetzee argued that a judicial inquest was quicker, more efficient and better suited to investigate the case than another commission of inquiry

Mr van der Merwe said he was sceptical of a police general probing the case under supervision of Mr von Lieres

"Not because the general is incompetent, but because the killers are too professional and have too many resources and too much expertise available," he said

Mr Moolman Mentz (CP Frelimo) criticised the DP for accepting Mr Coetzee's word. He said another inquiry would be a huge waste of money



Dirk Coetzee . . . "should tell us all he knows."

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Hangings resume after 15-month ban

Cont. Times 27/2/89 252

Political Staff

THE first person to be executed in fifteen months will go to the gallows soon, Justice Minister Mr Kobie Coetsee announced yesterday.

Mr Coetsee said in a statement that Paul Bezuidenhout, 22, sentenced to death on September 15, 1989, on two counts of murder, would be the first person to be hanged since the expiry of the moratorium on executions on July 27 last year (It came into effect on November 14, 1989. Since new legislation was enacted, 531 people had been convicted of murder and 43 sentenced to death.)

Bezuidenhout stabbed to death a 54-year-old woman and a two-year-old girl. Medical evidence at the trial was that the woman died as a result of eight stab wounds and the child as a result of 43

Mr Coetsee said the execution would "take place shortly", but no announcement would be made beforehand about the exact date.

He said 12 other death cell prisoners have had their appeals rejected by the Appellate Division and are now awaiting results of appeals for clemency to the State President.

He said Mr De Klerk had commuted the death sentences of eight people to periods of imprisonment ranging from 15 to 20 years.

A spokesman for Lawyers for Human Rights, Mrs Paula McBride, said that five of these could be classified as "political".

She said it was distressing that executions were to start again.

Mr Coetsee said there are 341 people on death row.



Witness protection probed by Cabinet

Political Staff

APR 15 27/2/91

THE Cabinet will today consider a protection programme for witnesses under threat in the light of the criminal trial involving Mrs Winnie Mandela and others.

President De Klerk said in the House of Assembly yesterday that the government would issue a statement in due course.

He was responding to a question by Mr Tony Leon (DP Houghton) on what the government intended doing to protect witnesses too terrified to give evidence.

Mr Leon and the DP have been pressing for a protection programme since the disappearance of a witness in the hearing involving Mrs Mandela, and the subsequent refusal of others to testify because they feared reprisals.

Without it, the DP warned, South Africa's judicial system could face collapse.

Mr De Klerk denied official involvement in the alleged abduction of Mr Gabriel Mekgwe from the trial.

He was reacting to questions by Dr Ferdi Hartzenberg, deputy leader of the Conservative Party, and rebutting a recent article in Die Patriot, the CP's mouthpiece.

Mr De Klerk noted that members of any organisation could commit unauthorised acts without that organisation's knowledge.

He noted that the CP's chief secretary, Mr Andries Beyers, had information that could help the

President De Klerk

Mr Tony Leon

State in the investigation but refused to share it.

The allegations that the National Intelligence Service was involved had come from Mr Beyers, who would not disclose his source, he said.

"There is no chance that we will leave it (the allegation of official involvement) hanging," Mr De Klerk said. "The investigation is going full-steam ahead."

The government would not tolerate any interference with the legal process. It was determined to ensure that the process continued.

"I wish to appeal to all persons who are in possession of information relating to this matter to come forward and disclose this information to the authorities," Mr De Klerk said.

Austria to help SA, Soviet link

By TOS WENTZEL

Political Staff

DIPLOMATIC interest sections of South Africa and the Soviet Union are to be exchanged with the help of Austria.

This means that South African officials will be based in the Austrian embassy in Moscow while there will be Russian officials in the Austrian embassy in Pretoria.

The Minister of Foreign Affairs, Mr Pik Botha, announced the agreement.

In diplomatic circles the move is seen as the last step before full diplomatic relations between South Africa and the Soviets.

Multiparty forum discussed at De Klerk meeting

TOS WENTZEL on the Presidency

PROPOSALS for the launching of a multiparty conference are to be worked out by representatives of executive government leaders.

This was announced after a meeting between President De Klerk, leaders of the self-governing black areas, cabinet ministers, members of the ministers' councils and provincial administrators.

A statement from Tynhuys after the meeting said there had been general agreement about the urgency for a multiparty conference.

WORKING GROUP

A working group representative of all the delegations was formed.

This group would produce a document for the next meeting with detailed proposals on a number of practical issues regarding the launching of a multiparty conference.

Before the meeting Mr De Klerk said there would have to be decisions on how such a conference would be set up, who would be represented and on what basis they should represent people.

LAND REFORM

The statement said thorough attention was also devoted to aspects of a draft White Paper on land reform and the repeal of the Land Acts.

"All those present were appreciative of the latest developments, nationally and internationally, indicating real progress on the way to a new South Africa to which they were all committed," the statement said.

HOUSE OF REPRESENTATIVES

INTERPELLATION

The sign * indicates a translation. The sign used subsequently, in the same interpellation, indicates the original language.

General Affairs

Criminal cases: protection of witnesses

Mr L T Landers asked the Minister of Justice:

Whether it is the intention to provide adequate and effective protection of witnesses in criminal cases in order to prevent harassment, intimidation and threats, if not, why not, if so, what steps are envisaged?

C9E INT

The MINISTER OF JUSTICE Mr Chairman, I just want to give the following perspective on the protection of witnesses. I would like to use the first three minutes to explain the present position.

We have on the Statute Book section 185 of the Criminal Procedure Act which empowers the Attorney-General to apply to a judge-in-chambers that a witness whose life is in danger be detained in custody. The Attorney-General himself may even order such a detention for a maximum period of 72 hours if he is of the opinion that the case before a judge may defeat the object of the application.

Furthermore, we have section 31 of the Internal Security Act of 1982, which also empowers the Attorney-General to issue a warrant for the arrest and detention of a witness if the witness must testify and there is danger that he will be interfered with or intimidated.

There are also sections 153 and 202 of the Criminal Procedure Act which provide for the protection of witnesses in that the court proceedings at which the witnesses testify are held behind closed doors so that the identities of the witnesses may not be disclosed and, to some extent, to prevent intimidation. We have the Intimidation Act as well, and to a certain extent it provides protection to witnesses.

Witnesses may furthermore apply to the Su-

preme Court for an interdict prohibiting a person or persons from having contact with him or them. In the past criticism has been forthcoming, particularly in respect of the application of these sections, that is section 31 and section 185. I have taken special precautions to make sure that these sections are properly and sparingly applied.

However, there was still a gap regarding children as witnesses. Therefore I requested the Law Commission to consider whether protective measures along the following lines should not be introduced, namely that the child who gives evidence should be represented by a lawyer, etc. The Law Commission undertook the investigation and published a working paper on 30 June 1989 and again considered its file report on the 21 February 1991. I expect this report to be handed over to me soon, and I will submit it to Parliament in due course. That is as far as child witnesses are concerned, especially when it comes to safeguarding the child against the experience of being intimidated and fearing for his safety.

Furthermore, in 1990 I requested the department to inform me of all provisions in terms of which a witness could be protected and to come forward with proposals regarding further measures which could be taken in this regard. A comparative study, especially about the measures taken for instance in this regard in the United States, produced proposals from the department which I think will perhaps alleviate the position. In short, the legislation envisages that a witness who is being threatened and whose life is in danger can voluntarily report to a place of detention where he will be kept in voluntary custody.

It will, however, also be possible to declare certain buildings and houses as places of detention for this purpose and to provide protection to witnesses in those buildings and houses. In order to ensure that we only protect genuine witnesses, and not persons seeking accommodation for the night, it will be provided that the Attorney-General must confirm such voluntary detention within 48 hours. In order to ensure that only volunteers are detained in terms of this measure, provision will be made for the witness to be visited by a magistrate at least once a week. [Time expired.]

*Mr L T LANDERS: Mr Chairman, in putting this interpellation the LPISA wishes to express its serious concern about the apparent disintegration and collapse of the South African legal system. The LPISA regards events of the recent past seriously. Witnesses who initially agreed to give important evidence on behalf of the State in criminal cases either refused to do so out of fear of or as a result of intimidation or have disappeared mysteriously and have allegedly been kidnapped. Many South Africans share our concern.

†This is evidenced by the tremendous interest displayed in this matter by, amongst others, the media and the entire legal fraternity. Therefore we must agree with the organisations in the legal fraternity when they say:

The disappearance or refusal of important witnesses in the criminal trial of Mrs Winnie Mandela and others is a serious blow to the principal that justice must not only be done, but must be seen to be done through a full public trial before an impartial tribunal.

*Regardless of the Transvaal Attorney-General's explanation, it is inconceivable that State witnesses in cases of such a serious nature as this could be permitted to stay in the Methodist Church in Soweto which is saturated with AKA4's without the necessary essential protection being provided by the State.

†I cannot accept the argument that these witnesses refused the protection which was offered to them. Obviously, in the circumstances, the use of security legislation to afford such protection would have been unacceptable. Therefore we must ask of the hon the Minister of Justice firstly, what exactly was offered to these witnesses by the State in the way of protection so that they could safely come forward to give their valuable evidence without fear of intimidation? [Time expired.]

Mr P C MCKENZIE: Mr Chairman, I think that to some extent I am a little disappointed by the hon the Minister's opening remarks, if one takes into account that yesterday the hon the Minister said in the House of Assembly that he would be reporting to the Cabinet on what protection there would be for prisoners. I really thought that the hon the Minister's opening remarks would tell South Africa today what protection they would be giving to our witnesses in future. It

is useless having all those things on the Statute Book, when things like this still happen anyway, with witnesses getting lost or being kidnapped or taken away.

It is true that this Winnie Mandela trial, as it is now being called, will perhaps go down in our history as one of the most important trials or cases that we have had in our courts. The high standard of the South African courts must be maintained and upheld. It is true that everyone inside and outside this country is looking at this case to see what the outcome will be.

I agree that what has happened to this young man is most unfortunate. We know that this is perhaps not the first time that something like this has happened, but it has happened, and in Mrs Mandela's own interests, and in order for her to prove her own innocence, it is important that this witness be found. I believe, as I read in the newspaper the other day, that even Mrs Mandela herself is worried about the disappearance of this witness. [Time expired.]

Mr M A HENDRICKSE: Mr Chairman, with recent developments in the Rand Supreme Court, I am reminded of the words from Shakespeare's *Hamlet*:

There is something rotten in the state of Denmark.

The perception created outside is that it does not pay to give evidence in any trial which has political connections, from cases involving murder to malicious damage to property and intimidation. Justice must not only be done, but must also be seen to be done, and right now it appears that justice is taking a long walk on a very short pier.

The courts of law in our country already have a notorious legacy in regard to the enforcement of apartheid legislation, and now the image is being worsened because of their inability to hold all persons accountable. People, no matter who or what they are, must not be allowed to commit criminal acts and to walk free simply because witnesses have been intimidated or removed permanently. One cannot blame prospective witnesses when they have no guarantee of their safety. In an interview with *The Sunday Star*, reported on 17 February 1991, a witness expressed his anguish and fear as follows:

My life is over I cannot run away They will find me wherever I am I cannot hire bodyguards I am a poor man

This is the perception of people outside, looking in, and when they look at what happens to people who actually go and testify, they know that if they want to stay alive it is in their best interests rather to remain silent

There is also a suspicion that the State has played a passive or an active role in the disappearance of certain witnesses I quote from *The Sunday Star* of 17 February 1991

The Government, on the other hand, allowed the fiasco to occur by doing nothing concrete to protect witnesses, despite repeated warnings of their fears It was left to the Methodist Church to offer its services and this proved insufficient

Why did the State not offer a better system of protection to the witnesses, because the present case has come a long way, and it is not only now that these people decided to give evidence The State knew full well, a long time ago, that these people were going to give evidence, and consequently did not give them the necessary protection [Time expired]

*Mr A J ROPER Mr Chairman, I should like to share the sentiments as placed on record by my colleagues in this House today In the light of the Mandela case, I would not want a distorted version to be sent out that the fact that it is Mrs Winnie Mandela specifically provides the reason why the LPSA has come forward with such an interpellation

Against the background of the times in which we are living, it is of paramount importance that witnesses in any case who are threatened or feel intimidated should receive adequate protection The hon the Minister already has sufficient legislation at his disposal

Mr L T LANDERS Mr Chairman, we take careful note of the hon the Minister's pronouncement at the beginning of the interpellation, but he must please tell the House whether witnesses like Gabriel Mekgwe were sufficiently motivated by the State In other words, were they provided with sufficient incentive to come forward and provide the court with their valuable evidence If not, we would like to know why not

We are equally concerned about the mass mobilisation of people and the toy-toting demonstrators outside our courts, particularly our supreme courts This adds to the atmosphere of fear and intimidation and is certainly most unhealthy for any court hearing Are we heading for a situation in which people can march on the homes of our learned and respected judges in order to intimidate them or to influence their decisions?

*The MINISTER OF JUSTICE Mr Chairman, I am delighted at the spirit of the debate because this spirit indicates that the House has come out strongly in favour of and in support of the administration of justice of this country This is positive I am delighted that hon members have said that the status of our courts should be maintained and that nothing should affect this This is to be welcomed Of course, this is why the House also supports the police in taking action against demonstrators, as they certainly do, where people try to enforce their own law I like this

My proposals fill a gap The gap is that at present a warrant is required A person is taken and locked up or detained in a prison He cannot care for his wife and children He is not in familiar surroundings and this represents total disruption to him The proposal makes provision for him to be detained in a place of safekeeping or perhaps even in his house It makes provision for the Methodist Church possibly to be declared a place of safekeeping with the same status as a prison where people are subject to discipline It makes provision for indemnity for the State because such a person voluntarily requests protection

All the provisions stipulate that there shall be a warrant and that the person be detained against his will to a great extent He can actually be detained for a shorter period with his co-operation, but we now foresee a much longer period

One would then perhaps be able to work with him and, with his co-operation, move and further protect him

This is a programme that we want to tackle with great caution because we see that we shall be filling a gap here As regards children as witnesses too, I said that we had given instructions that this should take place with co-operation

In speaking of a witness protection programme, we can look at the USA which has introduced it and where it has already come to light that 39% of witnesses with whom interviews were conducted feared reprisals [Time expired]

Debate concluded

QUESTIONS

†Indicates translated version

For oral reply

General Affairs

Single education authority/education system

*1 Mr J A RABIE asked the Minister of National Education †

(1) Whether it is the intention to introduce a single education authority and education system in South Africa, if so, what are the relevant details,

(2) whether the State will have the final say in the opening of schools to all population groups, if not,

(3) whether the parents concerned will have this say, if not, what procedure will be followed in the opening of schools,

(4) whether he will make a statement on the matter? *Hansard* 27/2/91 CSE

THE MINISTER OF NATIONAL EDUCATION

(1) The different education departments which at present provide education form part of the same single education system which is merely administered by the different Ministers The unity in the system is achieved by means of the general education policy which is determined by

the Minister of National Education

The intention of the Government is to continue to conduct education within a single education system Whether this entails introducing a single education authority, however, is a matter which depends on the outcome of constitutional negotiations which have not yet begun No premature announcement can therefore be made in this regard

(2) and (3) The policy relating to the admission of pupils to schools is at present determined and applied by the respective education departments controlling them It is not possible to speculate on what the structure of the education system and the position as regards the admission of scholars to schools will be under a new constitutional dispensation *Hansard* 27/2/91

(4) No

†The MINISTER OF NATIONAL EDUCATION Mr Chairman, as it is my first opportunity to reply to a question in this House, I would like to express my respect to the House and the hon members present here

†Mr P W SAAIMAN Mr Chairman, arising out of the hon the Minister's reply, I want to put a question I do not want to make a debate out of this, but at the beginning of his reply the hon the Minister actually admitted that we are not going to have one education system Now I want to ask whether this role that the parents are going to play to determine whether a school will be open or not, is not merely a way to delegate apartheid to the parent level so that the State does not have to decide whether a school may be open or not

†The MINISTER Mr Chairman, the present education system and division in the various education departments is contained in the Constitution as it stands at the moment If the hon member looks at Schedule 1 of the Constitution, he will see that provision is made for education to be referred to own affairs departments It is thus part of the Constitution that must be changed with the whole process of constitutional negotiations in which we are now involved

†Mr C INASSON Mr Chairman, further arising out of the hon the Minister's reply, I wish to ask whether he, having said that his department is an

Mlangeni probe sets Govt precedent

Star 2/12/91 AS2

The investigation of the assassination of human rights lawyer Bheki Mlangeni has received unprecedented attention from the Government. HELEN GRANGE reports.

THE treatment of sinister assassinations, which in the South Africa of the past afforded no special attention, has taken a dramatic turn with the recent death of ANC lawyer Bheki Mlangeni.

Probes into scores of mystery killings of political activists — many of them still unsolved — have been, to many apartheid critics, handled carelessly and inadequately by police whose results were untrustworthy.

However, in the case of Mr Mlangeni, who died when the earphones of a booby-trapped Walkman exploded, the weight placed on finding the culprit or culprits has created a surprising precedent which may go a long way to restoring some faith in the state's long doubted method of dealing with political crimes.

For the first time, police detectives are working hand in hand with human rights lawyers in what constitutes an unusually

mixed and professional investigation team.

Heading the team in a supervisory capacity is Witwatersrand Attorney-General Klaus von Lieres and Wilkau, a man who needs little introduction.

At the centre of the most controversial criminal procedures, he has a reputation for unwavering decisiveness in difficult and weighty matters.

The criminal investigation is being headed by one of the police's top men, Major-General Ronnie van der Westhuizen.

Controversy

A seasoned detective, General van der Westhuizen is no stranger to controversy.

His last noted assignment was to investigate the alleged involvement of security forces in violence on the Witwatersrand last year.

Ironically, it was during this probe that police spurned sug-

gestions that a member of the Independent Board of Investigation sit with General van der Westhuizen.

Human rights lawyer Brian Curran also pointed out then that although General van der Westhuizen might be scrupulous, the "plain fact is that a large number of people have lost trust in the police".

This time, General van der Westhuizen is conducting his work with the help of people who may just have been his adversaries under any other circumstance.

Peter Harris, an attorney of Cheadle, Thompson and Haysom, as well as senior partners Halton

Cheadle and Clive Plasket, have been granted independent access to evidence and have arranged for a top forensics expert to come to South Africa.

(The forensic tests would normally be handled by the police forensic laboratory, still headed by General Lothar Neethling.)

The lawyers have also had a share of initiating legal probes into political violence. The firm was involved in the Natal violence and made the first legal applications against wardords in the region.

On a number of occasions, their work has meant challenging the State on behalf of political activists. On this occasion, it

means co-operating with the State on behalf of a close colleague whose death many suspect may have been orchestrated from within state structures.

Mr Plasket said yesterday that he and his colleagues had gathered various statements from people, but that much of the investigation was on hold until the forensic expert (who may not be named) arrived.

Suspicious

"We are determined to reveal the facts of this case," he said.

It has been reported that the lawyers have "strong suspicions about who was behind the murder", and former police hit squad member Dirk Coetzee has identified the assassination as having all the hallmarks of a hit squad murder.

Captain Coetzee said a special "technical department" attached to security police headquarters in Pretoria was capable of manufacturing a bomb

such as that used in the Mlangeni killing.

Police have responded to Captain Coetzee's remarks by saying that until he came to South Africa to have his claims tested in court, they could not be given much credence.

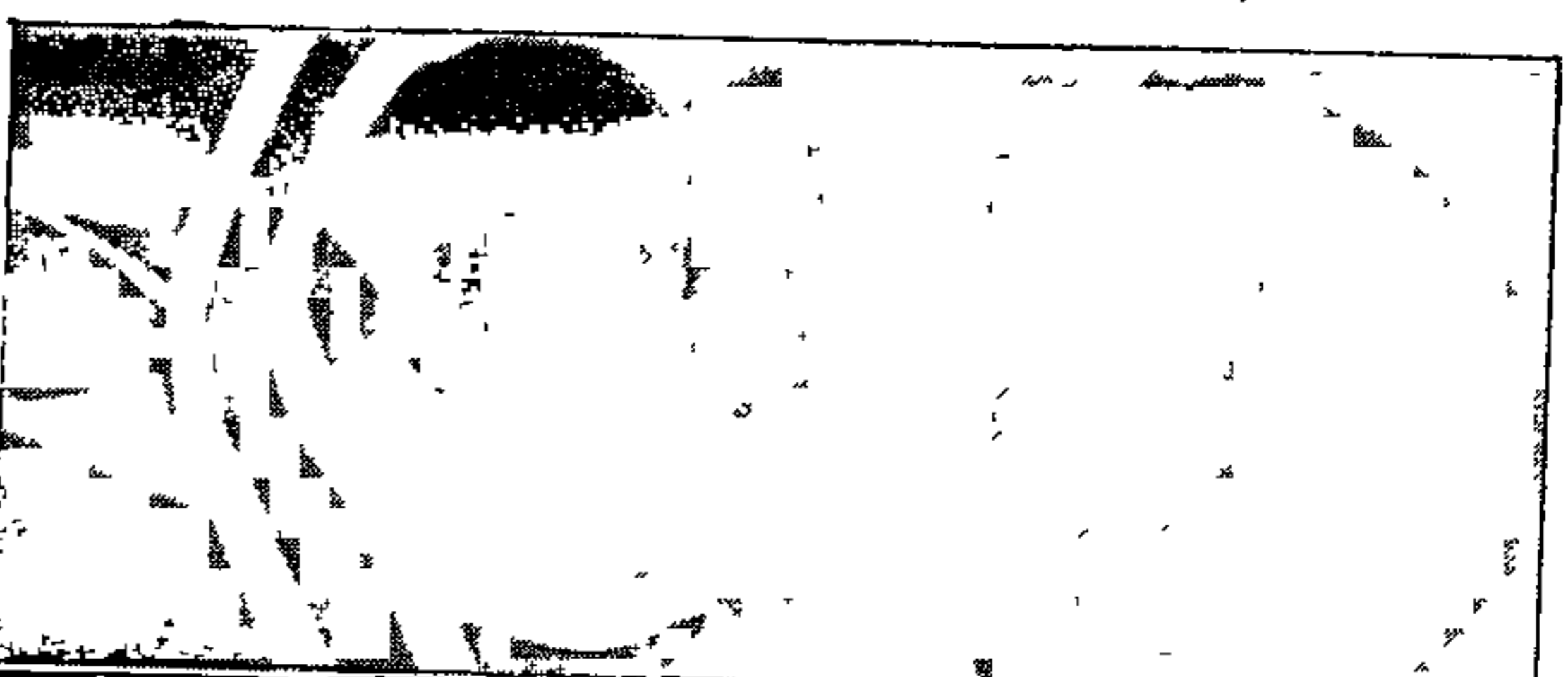
The cassette player which exploded when Mr Mlangeni activated it, was sent to Captain Coetzee in Lusaka last year. He refused to pay the duty charges on the parcel and it was sent back to the sender's address — given as Mr Mlangeni at the offices of Cheadle, Thompson and Haysom.

So far, the investigation into the tragedy has been difficult, and police have said they have found no direct leads arising out of their examination of the remains of the device and the tape-recorder.

However, the understanding that the recorder was insured may be a vital key to pinpointing the sender.



G Klaus von Lieres heading murder probe.



Blast victim lawyer Bheki Mlangeni

UWC focus on bill of rights ⁽²⁵²⁾

Cont. 28/2 - 6/3/91
SEVERAL members of the ANC's constitutional committee will participate in a focus on a bill of rights being organised by the University of the Western Cape. The focus is part of a series of talks on human rights being organised by UWC's law faculty and the Community Law Centre.

On March 4, Professor Kader Asmal of the law faculty will speak on constitutionalism and Human Rights. Discussion will also be held on "A Bill of Rights/ People's Rights and the Relevance to South Africa".



FREE: Top ANC cadre Ebrahim Ismail Ebrahim in Cape Town this week

PIC. YUNUS MOHAMED

'Tortured' cadre takes action

FIVE years ago top MK cadre Ebrahim Ismail Ebrahim was taken from his Swaziland home at gunpoint by unknown abductors

Held for three days in a tiny cell and subjected to shrill noises, Ebrahim refused to give his captors more than his name.

This week, Ebrahim walked off the Robben Island ferry a free man, and started instituting legal proceedings against the police based on his abduction and unlawful detention

He was released from the Island on Wednesday after his conviction and sentence to 20 years in prison for treason had been set aside the day before. For the first time in South African legal history, the Appellate Division found that South African courts had no jurisdiction to try people abducted from foreign countries and brought to trial

The decision came far too late to prevent Ebrahim's ill-treatment — he

Top MK cadre Ebrahim Ismail Ebrahim this week instituted legal proceedings against the police after a landmark decision by the Appellate Division of the Supreme Court to set aside his conviction and sentence for treason in 1987. A day after his release from Robben Island, he spoke in an exclusive interview to **Rehana Rossouw:**

had been abducted, tortured and sent to prison for 20 years

Yet, he remembers his abduction without bitterness "I expected this type of behaviour from the security police. But what I stood for, and still do, will eventually triumph"

On December 15 1986, two men, claiming their car had broken down, came to his house in Mbabane and asked for help

When Ebrahim left the house to assist them, they held him up with firearms and threatened to kill him if he made a noise or shouted

"I asked them who they were and they said they were South African policemen," he said

"I was then blindfolded, my mouth gagged and I was put on the seat of my car where I was told to lie down"

Ebrahim believes that even if the police were not involved in his abduction, some arm of the security forces was

"It could be the CCB or that kind of oppressor, but they were definitely linked to the security forces. Why would they be able to go fully armed through a roadblock, why

Turn to page three

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R5000 for PAC man

South Africa - 28/2 - 6/3/91
A WORKER dismissed recently for wearing a Pan Africanist Congress T-shirt has been awarded R5 000 in an out-of-court settlement.

Christopher Lewis, an employee at Peninsula Packaging in Cape Town, was awarded the amount after his union, the South African Chemical Workers Union (Sacwu) threatened to take the company to the Industrial Court, said Sacwu's spokesperson, Mr Peter Roman, on Wednesday. (252)

Roman described the settlement as a victory for Sacwu.

The company was not available for comment.



Coetsee outlines plan to protect witnesses

CAPE TOWN — Legislation was being planned to provide protection for witnesses in criminal cases, Justice Minister Kobie Coetsee said yesterday

Speaking in an interpellation debate moved by Luwellyn Landers (LP Durban Suburbs) in the House of Representatives, Coetsee said the legislation would allow witnesses who felt their lives were threatened to "volunteer for protection" (252)

Introducing the interpellation debate, Landers said the Labour Party wished to express its "deep and serious concern at the apparent cracking and crumbling in the foundations of SA's judicial system"

He referred to the disappearance of a witness in Winnie Mandela's assault and kidnapping trial and the refusal of other witnesses to give evidence.

Coetsee said that apart from the envisaged new

legislation, there were various provisions on the statute book aimed at protecting witnesses.

Witnesses who volunteered to be placed in a place of detention would be kept in voluntary custody. It would also be possible to declare certain buildings and houses as places of detention for this purpose, and to provide protection for witnesses there.

To ensure that only genuine witnesses were protected and not people "seeking accommodation for the night", provision would be made for the attorney-general to confirm such a voluntary detention within 48 hours, and for a magistrate to visit the witness at least once a week.

Because the detention would be voluntary, a witness who changed his mind would immediately be released, "but in such a case the state will, of course, be indemnified". — Sapa

Mangope willing to negotiate

LONDON — Bophuthatswana cannot remain unaffected by the reform process taking place in southern Africa even though it is manifestly independent, financially viable and has a proud history as a nation on its ancestral land, says President Lucas Mangope

In the latest edition of Africa Analysis he emphasised his government had no wish to let changes in SA pass Bophuthatswana by

"I have made clear my willingness to participate in negotiations with all groups concerned, provided only that dialogue is held in a spirit of peace and non-violence," he wrote.

Citing Bophuthatswana as a living example of a true non-racial society in southern Africa, Mangope said: "Any attempts to destabilise this government will be dealt with by the courts. The only challenge we will accept is the challenge of the ballot box." His country was looking forward to talks in SA — Sapa

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252
'Bring back moratorium on hanging'

Business Day Reporter

THE ANC and the Human Rights Commission yesterday condemned government's announcement that the moratorium on hangings had ended

The ANC said it should be reinstated until all South Africans had a chance to agree on what should be done *Blom 28/2/91*

The organisations were responding to the announcement this week that SA's first execution in 15 months would take place soon, following expiry of the moratorium introduced in November 1989 to allow legislation to be reviewed.

An ANC statement said "What is even more cruel is the fact that those who are facing the death penalty were given false hope. It is reasonable for the public and those directly affected to feel cheated," the statement said

The HRC said in its statement the most fundamental human right of all was the right to life

"We fail to see how the deliberate taking of a life can compensate for the loss of another, or in any way set the matter right and prevent a recurrence of the original act"

It suggested the energies of the justice machinery be used to stop extra-legal executions carried out by "shadowy death squads"

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Double killing: warrant out for detective

A WARRANT for the arrest of a private detective, alleged to have shot and killed two black men near Mamelodi, has been issued by the Pretoria Supreme Court.

The warrant was issued by Mr Justice Swart, for the arrest of Mr Pieter Hendrik Groenewald (29), of Boxer Street, Garsfontein, who failed to appear with his co-accused, Mr Brian Chester-Browne (27) on murder charges on Tuesday.

Groenewald's advocate, Mr J. Engelbrecht, instructed by Mr W. Cornelius, arrived at court but waited in vain for his client until 1.30am.

Groenewald and Chester-Browne, a University of Pretoria student of McKenzie Street, Brooklyn, Pretoria, are alleged to have murdered Messrs Prince Makena and Simon Chuene Kobo on the Mamelodi/Cullinan road on May 5 last year.

Shooting

The State, represented by Mr J. D. Fouche, also alleges that they attempted to murder Mr Xavier Lekgoadi on the same date by shooting at him.

Both men pleaded not guilty in the Cullman Magistrate's Court on August 28 last year and Groenewald's R10 000 bail and Chester-Browne's R1 000 bail was extended.

During a later appearance the men were ordered to appear in the Magistrate's Court on February 28 for the trial date to be made known.

Applying for the warrant, Fouche called Detective Sergeant E. W. Olivier of the Pretoria Murder

and Robbery who testified that he had indeed served a notice of the trial date set for Tuesday on Groenewald on January 17.

An order by Mr Justice Swart that the matter against Chester-Browne, at the State's request, be postponed indefinitely and his bail extended, was not opposed by defence counsel, Mr C. R. Jansen.

Sowetan Correspondent

New witness protection legislation will allow 'voluntary custody'

By **MICHAEL MORRIS**
Political Correspondent

GOVERNMENT is preparing new legislation to protect witnesses after the uproar over the ineffectiveness of existing measures

This was announced yesterday by Minister of Justice Mr Kobie Coetsee. It follows criticism of the absence of witness protection measures in the Winnie Mandela case, among others.

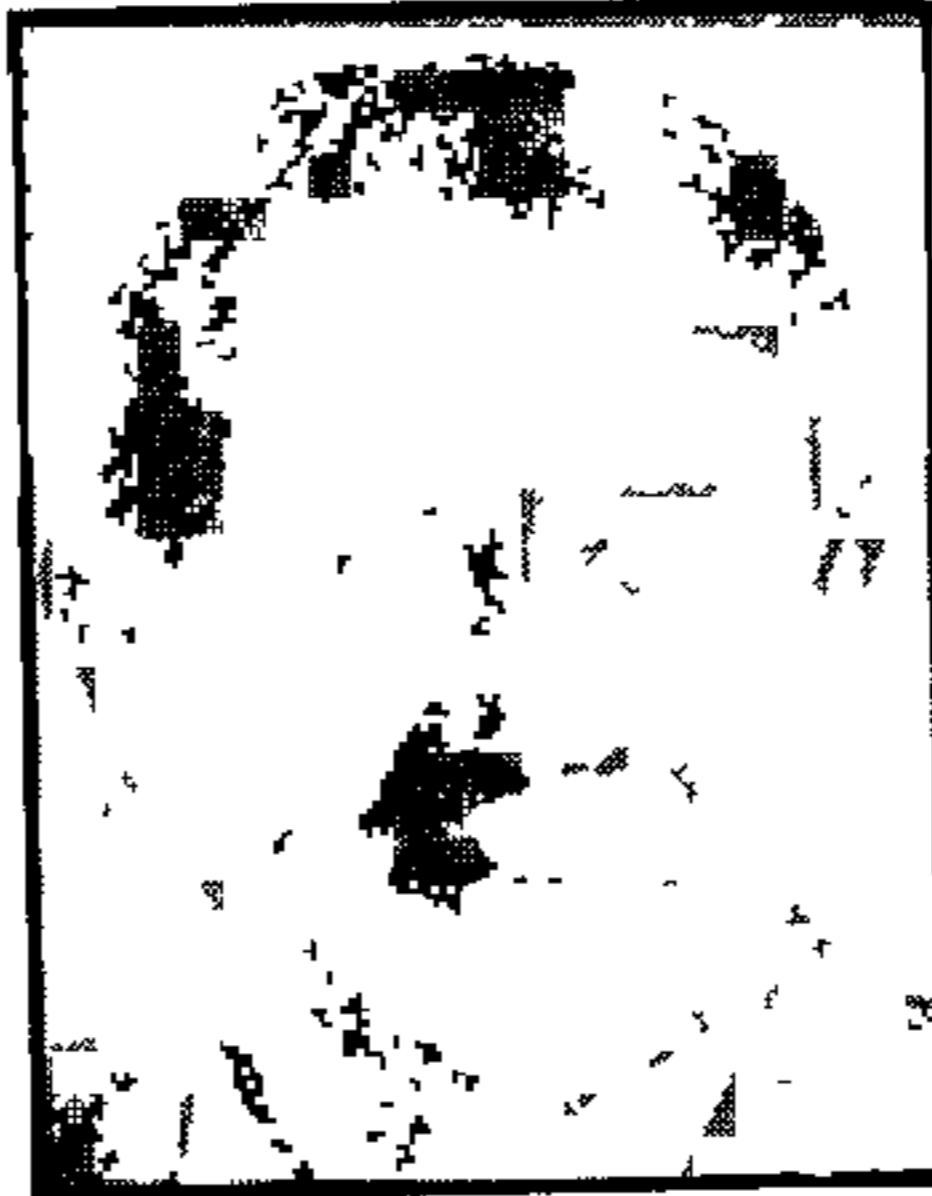
Earlier this month, Democratic Party spokesman on justice, Mr Dave Dalling said the "apparent abduction of a witness, as also the unwillingness of other witnesses to testify due to their fear of reprisals was leading to a breakdown in the administration of justice"

He added "It is our considered view that unless the government introduces a sophisticated and properly structured witness protection programme not involving involuntary incarceration, our judicial system could face collapse. We demand that such action be taken without delay. All should have the protection of the and none should be above it"

The new legislation will give witnesses the option to immediately seek voluntary protection without an order of a court or an Attorney-General at any place designated for the purpose. This could include the person's own home.

If the witness chooses, protection can be continued after evidence has been given and this protection will be available in cases involving any crime.

Mr Coetsee said current thinking was that protection offered under section 31 of the Internal Security Act (which must be ordered by



Kobie Coetsee

the Attorney-General) and section 185 of the Criminal Procedure Act (which must be ordered by a judge after application by an Attorney-General) "do not provide total protection"

The process of protection in terms of the Criminal Procedure Act requires an Attorney-General to apply to a judge in chambers for the detention of a witness whose life is in danger.

The Attorney-General himself may even order such a detention for a maximum period of 72 hours if he believes the application before a judge may defeat the object of the application.

In terms of section 31 of the Internal Security Act, the Attorney-General may issue a warrant for the arrest and detention of a witness if the witness must testify, for example, in a case of high treason, sedition and terrorism and there is a danger that he or she will be interfered with or intimidated or abscond. A witness may also be detained if this is deemed to be in the interest of person concerned, or the administration of justice.

Another section of the Criminal Procedure Act pro-

vides to the protection of a witness in court by holding the proceedings behind closed doors, or by withholding the name of a witness.

Further, indirect, protection is accorded by the Intimidation Act which says it is an offence to intimidate a witness to testify, not to testify or to testify in a certain way.

Witnesses can also apply to the Supreme Court for an interdict to stop interference.

However, all of these have been wide criticised as ineffective and unpopular.

Mr Coetsee said the new legislation "envisages that a witness who is being threatened and whose life is in danger, can voluntarily report to a place of detention where he will then be kept in voluntary custody.

"It will, however, also be possible to declare certain buildings and houses — even the witness's own home — as places of detention for this purpose and to provide protection to witnesses at those buildings and houses.

"In order to ensure that we only protect genuine witnesses and not persons seeking accommodation for the night, it will be provided that the Attorney-General must confirm such a voluntary detention within 48 hours. Provision will be made for a magistrate to visit once a week to ensure only volunteers are detained."

He said "The government regards the protection of witnesses as a matter of priority and will do everything possible to ensure that justice takes its course."

Wide consultations would take place on the new legislation and the proposals would be submitted to the joint parliamentary committee on justice for consideration.

Plan to protect witnesses

Nov 28/1991

Legislation was being planned which would provide for witnesses in criminal cases who felt their lives were threatened, to volunteer for safe protection by the State Minister of Justice Kobie Coetsee said in the House of Representatives yesterday.

Speaking in an interpellation debate moved by Luwellyn Landers (LP Durban Suburbs), he said he had been informed that the Law Commission had approved its final report on February 21 1991 on the protection of child witnesses and that it was being translated and prepared for submission to him



Justice Minister Kobie Coetsee ... witness protection plan



Luwellyn Landers ... concern at crumbling judicial system.

Concern
He would table it in Parliament as soon as possible. Introducing the interpellation debate, Mr Landers said the Labour Party wished to express its "deep and serious concern at the apparent cracking and crumbling in the foundations of South Africa's judicial system". Witnesses, having apparently agreed to give vital evidence for the prosecution in criminal cases, had either refused to give that evidence out of fear and in-

timidation, or had mysteriously disappeared or allegedly been abducted. The LP agreed with the legal fraternity when it said, "The disappearance of important witnesses in the criminal trial of Winnie Mandela and others is a serious blow to the principle that justice must not only be done but must be seen to be done through a full public trial

before an impartial tribunal". The LP was equally concerned about the mass mobilisation of people and demonstrators outside South Africa's courts, particularly the Supreme Courts, "which lends to the atmosphere of fear and intimidation and which is most unhealthy for any court hearing". Mr Coetsee said that, apart

from the envisaged new legislation, there were currently various provisions on the Statute Book aimed at protecting witnesses.

Witnesses who volunteered to go to a place of detention would be kept in voluntary custody. It would also be possible to declare certain buildings and houses as places of detention for this purpose and provide the necessary protection to witnesses at those buildings and houses.

Genuine

To ensure that only genuine witnesses were protected and not people "seeking accommodation for the night", provision would be made so that the Attorney-General had to confirm such a voluntary detention within 48 hours.

"In order to ensure that only volunteers are detained in terms hereof, provision will be made for the witness to be visited by a magistrate at least once a week."

Because the detention would be voluntary, "a witness who changed his mind would immediately be released, "but in such a case the State will, of course, be indemnified" — Sapa

Squads: New inquiry wanted

THE Campaign for a Judicial Inquiry into Hit Squads has asked the State President, Mr FW de Klerk, to establish a new commission of inquiry into political murders. (252)

- In a letter sent to the State President this week, the campaign said the parcel bomb murder of a Johannesburg lawyer Mr Bheki Mhlangeni earlier this month, had once again highlighted the existence of hit squads operating both within and beyond South African borders.

In the letter the campaign asked Mr De Klerk to establish a commission of inquiry which would encompass political murders outside the country.

South 28/2-6/3/91

By Musa Ndwandwe

THE Supreme Court is to be asked to stop South Africa's first hanging in 15 months.

A spokesperson for the Lawyers for Human Rights confirmed this as a last ditch attempt to save Paul Bezuidenhout, convicted on two counts of murder, from the gallows

The Minister of Justice, Mr Kobie Coetsee, announced in parliament on Tuesday that executions are set to resume after a moratorium on capital punishment.

Although he did not announce the date, Coetsee confirmed that Bezuidenhout would be the first to be executed after the expiry on July 27 last year of the moratorium on executions

Murder

Bezuidenhout was convicted in September 1989 for the murder of a 54-year-old woman and a two-year-old girl by stabbing them with a knife

The murders took place in September 1988

It is believed that the success of the court action could set a precedent where other prisoners would be saved from execution

Lawyers for Human Rights has vowed to mount pressure on the government to abolish the death sentence.

"We will investigate all aspects of Mr Bezuidenhout's case and in addition mount a concerted campaign against the resumption of hangings in South Africa," a spokesperson said

"We find it extraordinary that while the government talks of healing the terrible wounds of our society, it sees fit to continue with this barbaric form of punishment"

Meanwhile, the Department of Justice announced that the State President had commuted the death sentences of eight other death row prisoners to sentences varying from 15 to 20 years imprisonment.

Five of them were political prisoners

Maximum

There were 325 prisoners awaiting execution at Pretoria's maximum security prison at the end of December 1990, according to the Human Rights Commission

Of these, 55 were political prisoners. By December last year, 25 political prisoners had been released from death row

The number includes 12 political prisoners in the Ciskei who were affected by the abolition of the death sentence in this homeland

Ten common law prisoners were released from death row last year and 17 were executed the same year. No political prisoner was hanged last year

South Africa - 6/3/91 252 Court bid to stop hanging

4 SOUTH, FEB 28 TO MAR 6 1991

REPRESSION DOSSIER

From Mono
Badela
Johannesburg

Slovo warns of Nuremburg trials

SOUTH African Communist Party chief, Mr Joe Slovo warned at the weekend that those responsible for the murder of human rights lawyer Bheki Mlangeni and other activists would face a Nuremburg-type trial under a new regime in South Africa

Slovo was addressing thousands of ANC supporters who braved the scorching heat to pay tribute to Mlangeni who was buried at Heroes Acre at Avalon cemetery at the weekend

South 25/2 - 6/3/91.
The deputy president of the ANC, Mr Nelson Mandela, and other senior ANC national executive committee members were among the dignitaries who attended the service in Soweto

Speakers accused the notorious SA Defence Force's Civil Cooperation Bureau (CCB) of being responsible for Mlangeni's death

Mlangeni was killed last

week by a booby-trapped cassette player which exploded in his ear

Slovo warned that the murder of Mlangeni tested the credibility of President FW de Klerk — a failure to act now meant that he would tolerate corruption

"Those who are responsible for Mlangeni's and other activists' death will be brought to book under a new

government in South Africa," Slovo said

Mlangeni lived and fought for justice, humanity and order "We should continue from where he left off"

Mlangeni is the third political leader to be buried at Heroes Acre. The others are PAC president Mr Zephania Mothopeng and Soweto student leader Tsietsi Mashinini

Inquest told of Inkatha

men's anger

Star 1/3/91 252
By Melody McDougall
Vereeniging Bureau

Inkatha Transvaal leader Themba Khoza yesterday told the Sebokeng inquest in Vereeniging how Inkatha-supporting hostel dwellers were forced to flee last year for safety.

Mr Khoza said the Inkatha people had no longer felt safe and fled because of clashes with ANC-supporting hostel residents.

He was testifying at the inquest chaired by Mr Justice Eddie Stafford on the deaths of 42 people at the Sebokeng hostel on September 4.

The hearing yesterday was devoted to the cross-examination of Mr Khoza by the Deputy Attorney-General of the Transvaal, Anton Ackermann.

Tent housing

Asked by Mr Ackermann if it was correct that the Inkatha people had no place to stay after fleeing, Mr Khoza said it was.

They were later housed temporarily in tents supplied by the Red Cross.

He admitted that the group was impatient and unhappy about living in the tents as "conditions were unbearable".

Mr Khoza said the group later moved to a house owned by the KwaZulu government between the Iscor and Sebokeng hostels.

Asked what the Inkatha supporters were doing at the Sebokeng hostel on the morning of September 4, Mr Khoza said he had heard it was because they had been attacked at the house, which was later burnt down.

The Inkatha group had fought back after the attack.

The hearing continues.

Accusations of nepotism during Harms Commission

Political Staff

CAPE TOWN — Exorbitant legal fees and suspected "jobs for pals" at the Harms Commission have raised eyebrows and questions in Parliament

At issue are the family ties of some of the lawyers, and money they were paid during and after the investigation by Mr Justice Louis Harms last year into political killings

More formal questions from both the Conservative and Democratic Parties are awaiting answers in Parliament

MPs want to know who received what in the months of the Harms hearings — including those advocates who represented the SAP

The Ministry of Defence disclosed last week that four advocates appearing for the SA Defence Force were paid more than R2,2 million. One received R900 000

"The amounts which surfaced last week is the half of it," Chris de Jager (CP Bethal) told Parliament this week

MPs have expressed concern at

● A Pretoria law firm with

SAF 1/3/91

links to Lieutenant-General Basie Smit, head of the Security Police, being paid by the State to represent police at the hearings

● Relatives of Law and Order Minister Adriaan Vlok being given the transcript contract for the commission

● Another lawyer whose father may be in the SA Defence Force

Mr de Jager said two private firms were appointed to do work at the Harms Commission for which the State paid Getz, Behr, and Havinga

In September last year, Mr Havinga became partners with a Mr Kruger

"This Mr Havinga, an inexperienced lawyer, with all respect, received this big brief of R30 000 to R40 000 a month, just after he started practising

"I just want to ask if this is because his father has a position in the SADF"

Mr de Jager asked why Getz, Behr had got the brief "Was it because the head of the Security Police, General Basie Smit's daughter, Mrs Kruger, is a partner? Is it because his son-in-law, A C Kruger, is a professional assistant there?"

The son-in-law resigned afterwards and went into partner-

ship with Mr Havinga

"That is not the end of the jobs for pals," Mr de Jager said, "and I do not blame the honourable Ministers for all these things. But this is going on

"Who got the transcription contract for the Harms Commission? The Vlok brothers?"

"Did they submit the lowest tender? I challenge the honourable Ministers to make those tenders public to allow us to see the tender amounts

"It is time for an end to jobs for pals at State expense. We are tired of it!"

Mr de Jager said the Advocate-General issued guidelines a year or so ago in dealing with former Cabinet Minister Pieter du Plessis' case. He had suggested that one should be careful in creating jobs for pals

Questions about the Harms Commission transcripts were first raised in June last year

Marius Vlok, a brother of the Minister, won the contract for the Pretoria Magistrate's Courts and Pretoria North Magistrate's Courts in 1988 through his company, Rent-a-Roof

Nic Vlok, who also submitted tenders via CNN Recordings, was awarded the Pretoria Supreme Court contract

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The two brothers later formed Vlok Recordings and Transcriptions. It was given contracts for the Cille Commission into strike action at Ga-Rankuwa Hospital and the Harms Commission

Lester Fuchs (DP Hillbrow) said in a statement "We strongly condemn the 'jobs for pals' ethic which has permeated NP rule in this country"

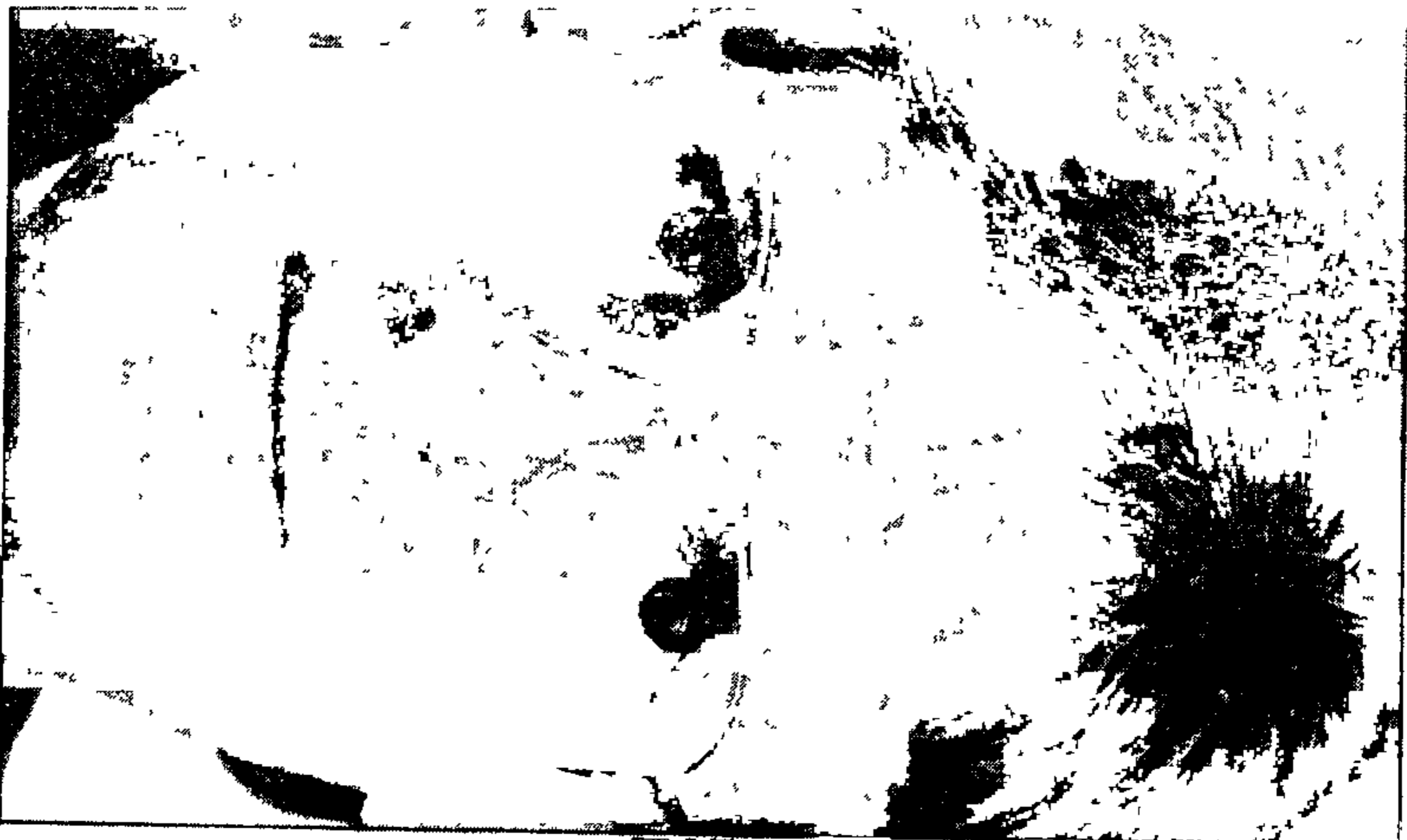
If the man in the street was to respect the country's rulers, they could not be seen to tolerate the promotion of anybody other than on grounds of merit

Mr Fuchs said the DP could not understand why it was necessary to appoint a private law firm to appear on behalf of the police forensics expert, Lieutenant-General Lothar Neethling, in his recent civil action against Vrye Weekblad

"The Government should realise that the money they so eagerly spend is not their own, but is generated by hard-earning taxpayers and we unequivocally condemn this waste of taxpayers' money," he said

Mr Fuchs noted that the State Attorney could have done the job

The State Attorney could also have appeared on behalf of the SAP at the Harms Commission



MP Lester Fuchs

condemns "jobs for pals"

Witness protection a priority

Witness protection has taken on a new urgency in South Africa. There is growing concern that confidence in the legal system is further eroding as trials collapse because of intimidation and disappearance of witnesses

In Natal this has been a problem for years — people from both sides in the conflict have been acquitted simply because witnesses refused to testify.

Alarm over this aspect of the Winnie Mandela trial has put such pressure on the state that proposed new legislation including "voluntary detention" of witnesses was hastily announced by Justice Minister Kobie Coetsee this week.

Witness protection is a problem because the rights of witnesses to be protected often conflict with other rights — the witness's right to freedom of movement or the right of the accused to a fair trial, for example.

In Germany with the rise of left-wing urban terrorism in the early 70s the courts began to allow "anonymous witnesses".

In such cases only the judge knows the true identity of the witnesses, people give evidence in cubicles so they cannot be seen and special voice-distorting microphones are used.

When it was first introduced there was an outcry with many objections and critical academic writing on how such procedures prevented a fair trial. However the argument that witnesses' lives were in danger without such a scheme, won the debate.

Unisa law professor in the Institute of Foreign and Comparative Law, Andre Thoma-shausen, said similar procedures were adopted in France and other countries on the continent. As far as he was aware, witnesses giving evidence at some trials in certain states in the USA were also permitted to "remain anonymous".

But on the British mainland the practice of

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 CARMEL RICKARD

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anonymous witnesses has not been found acceptable

More widely used methods of protection include discreet or overt police guards for witnesses, their homes and families

Sometimes witnesses are installed in "safe houses" before and during the trial and they may stay on for some time afterwards.

But in more extreme cases, such as the "supergrass" in Northern Ireland, witnesses and their families may never return home. Instead they may be given new identities, surgery to create new faces, new life "stories" and they are relocated to another state or even another country.

In the US there is also a "victim and witness assistance programme" which offers help including psychological counselling, separate waiting rooms to avoid seeing the accused, and escorts in and out of the court building through side doors, while witnesses and victims are also informed when the accused are released from custody

In return for providing some degree of protection a state will want a witness to go into the box and say fully and truthfully what he or she knows.

If witnesses still will not speak, most countries including South Africa, have laws allowing witnesses to be jailed as a punishment.

But South Africa has in its legal armoury another "weapon" ostensibly protecting witnesses, which most other countries do not have

Under the Internal Security Act and the Criminal Procedure Act, witnesses may be detained by police before a trial and kept until they have completed giving evidence.

People held under this legislation pending

their appearance to give evidence have reported torture, prolonged solitary confinement, threats and other forms of harassment to ensure they testify against former colleagues in political trials

In the eyes of many, evidence given by people held under these provisions is viewed with suspicion, while human rights lawyers have questioned the validity of the testimony from a legal point of view.

This legislation has been commonly used in the past, but with its new concern for the rule of law and due process the state is increasingly unwilling and unable to use it.

In the Mandela case, for example, if the witnesses had been held against their will in police cells, their evidence may have been disbelieved by the human rights community.

(The level of suspicion of the state is so high that even if they had been held in luxury hotel suites, their evidence might also have been disbelieved on the grounds they were "bought")

The fact that South Africa is faced with the problem of how to protect witnesses is partly because we share in a world problem — but a large part of the difficulty is of the government's own making, the price we are paying for past disregard of the rule of law

Years of using the courts to administer blatantly unjust laws have eroded public confidence in the legal system

But the cycle has to be broken. Most of the methods used in other countries would not require legislation to be implemented here and some are already in use in this country.

How far will the human rights community tolerate witness protection infringing other rights? One noted civil rights lawyer said as long as it was voluntary "the state can use whatever imaginative means it likes", even though it might involve considerable expense, for example in creating new identities, or less dramatically, paying for the protection of a full time private security firm

People's justice: bloody and deaf

A PEOPLE'S court sentenced four men — including one over 60 — to 500 lashes each after they were accused of ignoring a call for a work stayaway

The four, Simon Mothapo (63), Sakkie Mokone (52), Witness Gaji (45) and Christopher Kraai (34), "stood trial" in Jouberton near Klerksdorp this month. They were "convicted" after a 3 am hearing in a shanty town called Joe Slovo.

**Star 2/3/91
Awakened**

The men had been forcefully awakened in the early hours and made to walk about 4 km, escorted by "comrades". Said one of the men: "As if we were a herd of cattle, they drove us from behind like devoted herd-boys"

The four were then "tried and sentenced" inside a small, dim shack, occupied by members of the jury. It had no furniture, except for a few make-shift chairs on which "court officials" were seated, the men said. They were not given a chance to state their case

ABBEY MAKOE (52)

A gathering of men, women and children — some as young as 10 — waited outside the shack

The men said that shortly before the floggings began they were told "This is the era of Mandela, not De Klerk"

"Court officials" left the shack and ordered the "flogging team" to get ready. The victims said almost everyone was wielding a plastic zoro (another term for sjambok)

Soon after being stripped naked, the 45-year-old Mr Gaji was spreadeagled over a drum and flogged on the buttocks, thighs and back. He said "comrades" held his feet and hands tight.

Then the three others were flogged. They said they received more than 50 lashes each "Every-one wanted to lay a hand on us"

The victims started to bleed "Little girls fetched water in buckets and poured it over us"

The men thought their ordeal was over, but

were then seated on the ground and forced to sing. Said the 63-year-old Mr Mothapo "We clapped hands and responded to the conductor 'Rona re Dimpipi' (we are informers)."

They were then forced to play with a tennis ball. Mr Mothapo, who found it difficult to kick the ball, was later told he was "manager-coach" of the impromptu football team. Mr Mokone was the goal-keeper.

Each time Mr Mokone conceded a "goal" he was lashed. Mr Kraai and Mr Gaji were lashed when they missed a shot

Soon before being released at 5 am they were shown a long sharp knife and warned that should they become habitual offenders of the "people's rules", their ears would be cut off.

Fire threat

"We were also shown chemicals," said one of the men. "A small amount was spread on the ground and set alight. A small boy told us we would get burnt if we were stubborn."

Said Mr Mothapo "What kind of society is it going to be if blacks take over government?"



PEOPLE'S COURT VICTIMS: From left: Christopher Kraai Sakkie Mokone, Witness Gaji and Simon Mothapo.

David



Unterhalter

ON BOOKS

LAWYERS who question the value of a bill of rights may be compared to priests who question the primacy of the Pope. The dominant position is that the constitution must uphold democratic principles and ought further to contain a justiciable bill of rights.

This constitutional mantra is intoned so often by lawyers and politicians that it seems trite. But it is not self-evident that a bill of rights, interpreted and enforced by judges, is required by, or even consistent with, democratic government.

The problem may be simply put: A bill of rights gives to unelected judges the power routinely to strike down as unconstitutional laws enacted by lawmakers elected by a majority of voters.

This judicial review, which requires judges to test the laws of a democratic government according to abstract standards set out in a bill of rights, may appear to be undemocratic.

Two considerations make this problem pressing. First, judicial review constrains the lawmaker. Such constraint is quickly resented and the bill of rights may end up being torn out of the constitution in the name of democratic government, unless it is widely accepted that upholding the bill of rights is an essential part of democratic government.

Theories

The second consideration is this: The interpretation of a bill of rights is a task that must be performed by judges. That task requires judges to develop theories about rights in the face of widely different interests.

To succeed in this, people must have confidence in the judges.

Democracy and the Judiciary, edited by Hugh Corder (Idasa), is a collection of papers written by lawyers and drawn from the proceedings of a conference organised by Idasa in 1988.

The papers may be divided into two categories: those that assess the past performance of our judiciary, and those that look ahead to the future role of judges in a democratic society.

Why a bill of rights belongs in a democracy

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The collection thus engages the two issues that will determine whether a bill of rights will succeed here: judicial legitimacy and the scope of democratic government.

The collection offers a now familiar account of our judges. They failed to uphold our liberties, liberties assailed under the *ancien regime* of Mr Botha and his predecessors by a relentless creed of authoritarian racism.

That failure did not come about because judges had no choice or were not invited to act. Rather, it came about because judges interpreted the law in a parsimonious fashion, using tired formulas of statutory interpretation to defeat claims to fundamental rights.

There have been many exceptions to this gloomy view, made celebrated by being exceptional.

More recently there has been something of a fresh breeze blowing through the courts, and that is to be welcomed. But the legacy remains and it casts doubts on whether our judges can make of the bill of rights a flourishing doctrine.

Democracy and the Judiciary is less successful in dealing with the relationship between judicial

powers and democratic government.

There are somewhat standard accounts of the problems associated with the appointment of judges and the limits of judicial review. What we need rather more is a convincing theory that offers grounds for the proposition that a bill of rights forms part of what we take democracy to be.

One answer simply claims that a bill of rights is not intended to be democratic, its purpose is to constrain the actions of the majority that trespass upon basic liberties.

Majority

But this answer is not convincing because it does not provide reasons to prefer rights as understood by judges to those values pursued by a democratically elected legislature.

A second answer argues that constitutional rights, though appearing to disable majority decision-making, are, in fact, necessary to give effect to the will of the majority.

Free speech, for instance, must be guaranteed if people are to be informed before voting, whatever

the pressure to silence unpopular views.

Some rights may be understood in this way as necessary to promote democratic decision-making. But other rights that standardly form part of a bill of rights cannot be so understood.

Rights of privacy, the prohibition of cruel punishment or the procedural rights of accused persons provide examples. So this answer at best rescues only some of the rights that figure in a bill of rights.

A third, and more ambitious, account questions our conception of democracy.

Most sensible people recognise that democratic government requires a form of majority rule. Majority rule is thus a system that seeks to distribute power in an equal way over the community.

Equal

But it makes a more profound commitment. It says that every person is an equal citizen of the political community.

Thus democracy is not simply concerned with fair voting procedures. Democracy requires institutions that make good the commitment that citizens are equal members of the political community.

Parliament is one such institution. Another is a justiciable bill of rights that protects the citizen's claim to equality.

Properly understood, judges are simply servants. They are given powers of judicial review to respect and serve an institution that upholds the rights due to our fellow citizens as equals.

Judges may not go their own way, nor fashion public policy according to personal whim. They are bound to uphold the principles of the bill of rights, just as MPs are bound to serve their constituents.

A constitution may be democratic without a bill of rights. But the inclusion of a bill of rights is entirely consistent with democracy because it seeks to ensure the equal value of persons. And no principle is more fundamental to our conception of democracy.

Lawyers try to save killer

By CAS St LEGER

AN eleventh-hour bid is under way to save murderer Paul Bezuidenhout, the first South African to hang since the death penalty moratorium ended last July.

Bezuidenhout, believed to be 24, is due to hang on

Tuesday, but Lawyers for Human Rights are urgently studying grounds for an application for a stay of execution.

In another development

last night, the South African Council of Churches said it has petitioned State President F W de Klerk to grant a stay of execution. "We appeal to Mr de Klerk to reinstate the moratorium on death sentences for this interim period, as SA moves towards a new constitutional and judicial order," said a statement.

Lawyers for Human Rights believes there is evidence in mitigation which would have been important during trial.

Lawyers say Bezuidenhout, a vagrant at the time of the murders, did not even know his age—which had to be estimated by the court. He had no schooling, no parents and grew up deprived.

Stabbing

LHR said yesterday. "Investigation into such a background requires massive amounts of work under a system which provides for pro deo defence, it is impossible, even with the best intent in the world, to provide the court with this kind of evidence."

On September 1, 1988, Bezuidenhout, then about 22, armed himself with a knife, stripped off his sandals, overalls and hat and smeared his face with clay.

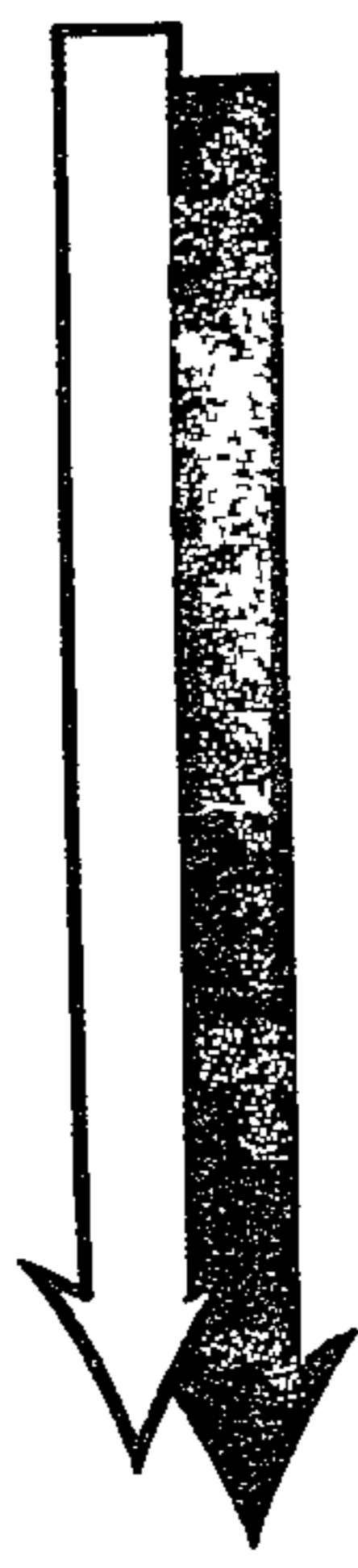
For unknown reasons, he went to two tin dwellings on the farm Bakensfontein in the Hopetown district near Kimberley. In a frenzy, he stabbed to death Martha Doorse, 54, and a toddler, Istelle Dwango, 2, who was stabbed 30 times.

Bezuidenhout, who had six previous convictions, including two counts of assault, claimed he was under the influence of alcohol and dagga, but the court found that he was sober and in control of his senses.

GIVING JUSTICE A CHANCE

STIMES 3/3/91

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WE are in the midst of a process of unprecedented transformation. It is common cause that the majority of South Africans would prefer the new order to be a democratic one.

Most would agree that our democracy must comprise, at least, universal suffrage, regular elections, a multiparty system, a justiciable bill of rights and an independent judiciary.

There is, however, little if any agreement on the other important components of the democracy envisaged. This is where the problems lurk and the challenges lie.

Somewhere, in the not too distant future, we will have to solve and agree on the really difficult and crucial constitutional problems. For example:

- The form of the future state (federal or unitary).
- The form and composition of the legislature (unicameral or bicameral, modes of representation, the electoral system and powers and limitations).
- The form and powers of the executive (a president or a prime minister, or both, a presidential or parliamentary cabinet, power sharing in the cabinet, accountability and limitation of powers).
- The composition and method of appointment of the judiciary.

Facets

- Tax levels, financial control and accountability in respect of state expenditure.
- The composition and control of the military and police forces, etc.

Even in developed, homogeneous societies these problems are not easily solved. Democracy has many forms and facets. There is no magic formula for success.

The problem of constitutional reform and the creation of a new order is, however, exacerbated by deep divisions between our people on racial, ethnic, cultural, linguistic, religious and economic lines. In the absence of an overarching patriotism, these divisions have taken on extraordinary importance.

To a large number of our citizens — and not only whites — group loyalties are more important than national unity. For that reason, the constitutional debate is, directly or indirectly, dominated by arguments such as group protection versus nation building, individual rights versus group rights, and so on.

Mr Justice PIERRE OLIVIER argues in this, the fifth article in our Towards The Future South Africa series, that coalition politics offer South Africa the best option for stable government. Only just law will make this possible

ed by arguments such as group protection versus nation building, individual rights versus group rights, and so on. The result of this underlying schism is that the search for the best, that is the most just and equitable, constitutional solutions, is, and will in the foreseeable future continue to be, dominated not by a search for justice but by a quest for group power.

For example, the discussion of the best electoral system for our country — single constituencies with a winner-take-all system as against proportional representation — is often influenced by the unexpressed question which system will favour my group, rather than the question which system is best for our country as a whole?

While this schism exists, it may well be impossible to obtain the consent of all the contending groups or parties to any constitution. Common sense dictates that in the end a reasonable constitution, assented to by the majority of groups or parties and citizens, must replace the present one.

It is also realistic to accept that time is of the essence for creating and implementing the new constitution. The struggle for a system of universal franchise has been going on for more than eight decades. It would be sheer utopianism to suggest that the creation of the new regime be postponed until the underlying schism has been resolved, or until



a strong common patriotism has developed.

Not only has the past caught up with us, but the demands of the present and the challenges of the future must be met, the sooner the better.

All this does not mean that all group demands, all minority fears and all sectional aspirations should be ignored, rejected or even worse, scorned. Some of these demands, fears and aspirations are not unreasonable as such.

The wise approach, in my view, is to determine, as honestly and reasonably as is possible, which of these demands, fears and aspirations are justified and indisputable. These should be taken into account and satisfied in a reasonable manner. Unjustifiable demands should not stand in the way of the ushering in of the new South Africa.

Historically, there has been a strong tendency in shaping constitutions in deeply divided societies for natural groups — racial, ethnic, linguistic or religious sections — to demand group recognition and protection in the constitution itself. When this solution

has been adopted, one usually finds constitutional definitions of the groups. Because the group is defined in terms of natural, immutable qualities, it is frozen and intergroup mobility is ruled out. The constitution is built on the group pattern and reflects the divisions in society. Our own tricontinental parliament was created as a result of this way of thinking.

On the whole, such models have a dismal record. What usually happens is that parties are formed which merely reflect the group divisions. Inter-group antagonism and distrust prevent the formation of cross-cutting parties that can transcend group loyalties, no national unity of patriotism can develop.

Precisely because the constitution itself recognises and embodies these group divisions, group conflict is transferred directly into the legislature and other institutions of government. The divisions between the groups grow deeper, and group conflict permeates every aspect of governing the country.

Collapse

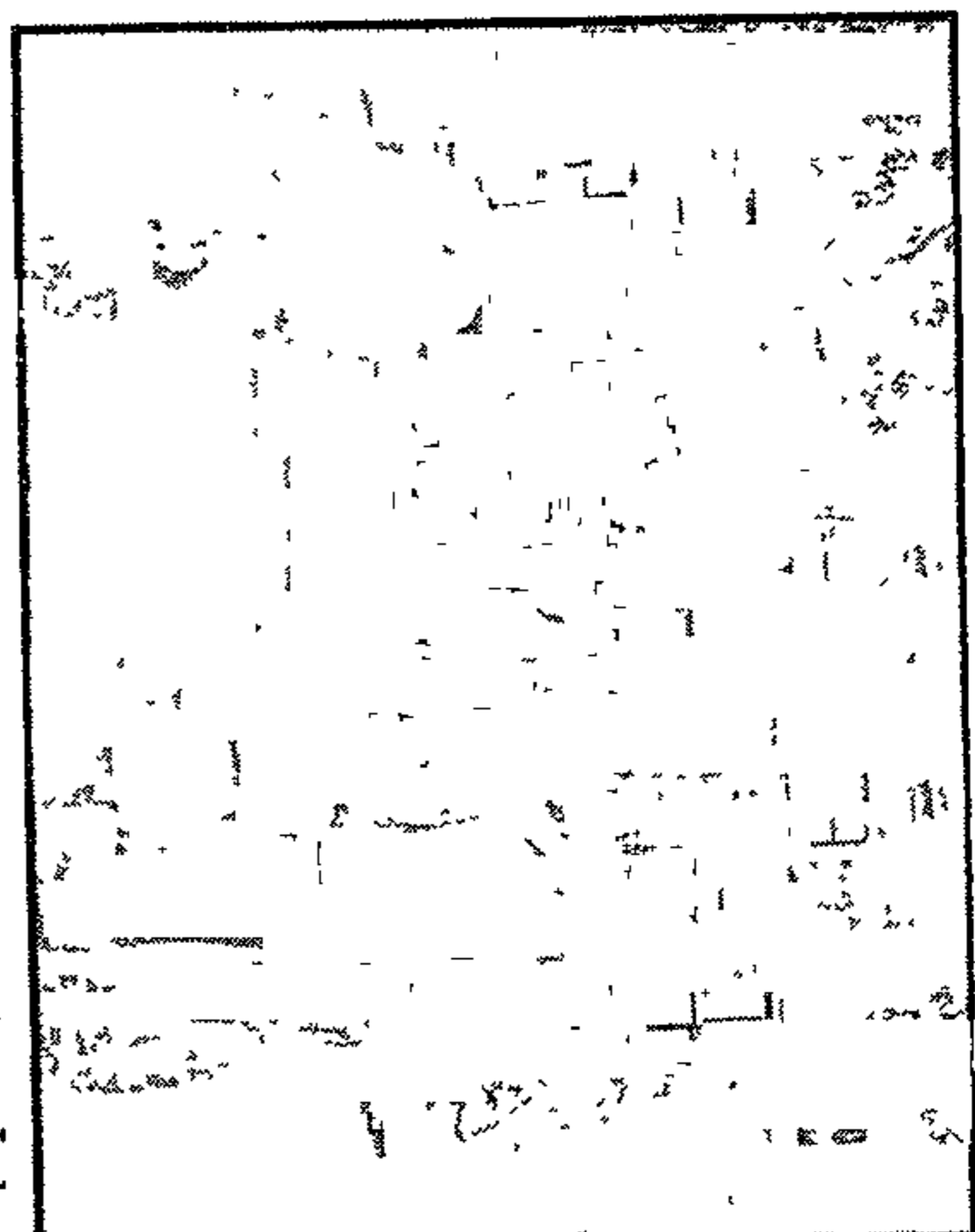
The system, far from achieving the protection of groups, degenerates into all-out group warfare. Eventually it collapses, usually ending in bloodshed.

An example of this is Cyprus after the introduction of the 1960 constitution. In that constitution, the legislature was designed to reflect existing ethnic divisions. Provision was made for power sharing between the Greek and the Turkish groups.

The result was further polarisation, leaving no room for nation building. The system collapsed in November 1963.

In other deeply divided societies the opposite approach has been followed. Here the constitution is not fashioned around account and satisfied in a reasonable manner. Unjustifiable demands should not stand in the way of the ushering in of the new South Africa.

Historically, there has been a strong tendency in shaping constitutions in deeply divided societies for natural groups — racial, ethnic, linguistic or religious sections — to demand group recognition and protection in the constitution itself. When this solution



THE RIGHT WAY the free association route in India

nation, are seen in the correct perspective, a common patriotism and national unity are given a chance to develop.

This model has, on the whole, proved to be successful. Switzerland is a case in point. A better example is India. Despite the great diversity of its population, India has survived since 1947. Its constitution does not mirror the great ethnic, religious or linguistic divisions in its population.

The ruling parties have been multiparty coalitions such as the Indian Congress Party, which is supported by voters from every conceivable group.

If this model has proved to be a success, it is because it is in essence the more just one. Only a just and equitable system engenders mutual trust.

Needs

Only mutual trust engenders patriotism and unity. An unjust system divides and ultimately destroys society.

The strength of the last-mentioned model is that it guarantees justice for the individual and the group.

It does not ignore the needs of groups, nor is it a simple majoritarian system. A discussion of two of these mechanisms will illustrate the point.

First, an entrenched and justiciable bill of rights. By its very nature, it will outlaw discrimination by the legislature, the executive and the administration. It will guarantee equal rights and equal justice for all. It will protect collective



THE WRONG WAY the ethnic route in Cyprus

Those who clamour for group rights should be the strongest proponents of a bill of rights — unless, of course, their true aim is not justice through equality, but power and domination.

interests, such as freedom of religion, culture and language (for example, mother-tongue education on a voluntary basis), even against the will of an unreasonable majority.

It will protect procedural rights to the fullest extent, incorporating habeas corpus and outlawing unjust and draconian measures such as arbitrary detention without trial, presumption of guilt, the ouster of the jurisdiction of the courts, etc.

Measures such as these are not only unjust, they tarnish the image of the legal system and undermine a nation's pride and self-respect.

A bill of rights, by protecting all individuals, also protects all groups and communities. Those who clamour for group rights should be the strongest proponents of a bill of rights — unless, of course, their true aim is not justice through equality, but power and domination.

The point is often overlooked that the greatest value of a bill of rights is its role as a nation builder. A bill of rights underscores the principle that all citizens shall share equally in the justice of

their country and that there are no degrees of human dignity. By creating mutual respect, it builds mutual trust, without which a nation is stillborn.

Secondly, a just and equitable electoral system. Many electoral systems evoke a sense of injustice. This in turn results in the alienation of many citizens and their rejection of the legitimacy of the legislature. The Westminster or winner-take-all system is such a system.

In many cases the winning candidate in a single-member constituency receives less than half the votes cast. Such a candidate is not the choice of the majority of voters. Furthermore, the votes cast for the losing candidate or candidates are wasted — they have no constitutional relevance, and the voters casting these votes are not represented by someone of their choice.

They have a sense not only of having lost, but of being irrelevant.

The requirements of justice are better served by a system in which no votes are wasted and every voter is represented by a member of the party to which he belongs. Such a system can be one of the various forms of proportional representation.

Under a system like this, the party which wins the support of, say, 40 percent of the voters will win 40 percent of the seats in the legislature. The voters who supported that party may well feel they have lost the election, but they will not feel alienated from the system, because they are represented in exact accordance with their strength, that is, justly. I have used these two examples to illustrate and substantiate the point that the one indispensable value on which our new constitution must be based is justice.

Pride

There is more to simple justice between man and man than meets the eye. The emotional and psychological effects of a system which is just and equitable are immeasurable.

It is only when justice permeates every constitutional institution and mechanism that pride and self-respect can take their place. Only then can a nation be built.

Let us give justice a chance.
 □ Mr Justice Olivier is the vice-chairman of the SA Law Commission and its project leader on human rights and constitutional models.

Next week our series turns to the economic aspects of a future South Africa. Peter Berger, director of Boston University's Institute for the Study of Economic Culture, provides the keynote piece.

Death penalty story 'nonsense'

C Press 3/3/91
A MEDIA report which quoted the ANC as saying the government had announced a commission of inquiry to investigate the death penalty and that the government was lifting the moratorium before the commission had begun its work, is "utter nonsense" according to the Department of Justice. In a statement the Department said "The State President announced in his

address on February 2 last year that all executions were to be suspended until Parliament had taken a final decision on the new proposals regarding the death sentence, which were under consideration at that time "

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The moratorium ended last July when legislation was passed giving the courts discretion in sentencing - Sapa

Lawyers in last-minute bid to save man from gallows

LAWYERS for Human Rights (LHR) and the SA Council of Churches (SACC) will today launch last-minute appeals to stop the execution of double murderer Paul Bezuidenhout, who is due to be hanged in Pretoria tomorrow. 810494/3/91

The SACC at the weekend condemned the death penalty and appealed to President F W de Klerk to reimpose last year's moratorium on capital punishment.

Bezuidenhout was sentenced to death in October 1989 for stabbing to

DARIUS SANAI

death Martha Doorse, 54, and a child, Estelle Dwango

No motive was found for the murders, but a spokesman for Lawyers for Human Rights said legislation passed since the trial took place could alter the validity of Bezuidenhout's death sentence.

She said his lack of schooling, his life as a "virtual nomad", combined with the possibility that he was mentally retarded, would be taken into account under present laws

252 The SACC says the moratorium should be a bridging measure pending the drawing up of a new constitution and new criminal laws

However, a government statement on Friday said the moratorium had been a temporary move pending new criminal legislation, and it had expired last July, when the new laws came into force

A Justice Department spokesman said the moratorium had been announced on February 2 1990, before talk of plans for a new constitution

● Comment: Page 6

SYDNEY Kentridge SC once sounded a warning about SA's legal system: "One day there will be change in SA. Those who then come to rule may see the process of law in their own country not as protection against power but as no more than its convenient instrument to be manipulated at will. If so, then it may be said of those who now govern that they destroy better than they know."

Government has belatedly taken Kentridge's censure to heart. In degrees — and in some areas more successfully than others — it is subjecting our law to massive, overdue change.

Where it once rode roughshod over the independence of the judiciary and tampered with the concept of due process of law, on February 1 this year President F W de Klerk committed himself to a "just state under the rule of law".

He pledged support for the very concepts which the actions of the apartheid state once so assiduously mocked.

Purging the statute books of the more odious aspects of security legislation has yet to be undertaken. President de Klerk has, however, offered the promise of a legal system which is "simpler, faster and cheaper".

Both the President and his reformist Justice Minister, Kobie Coetsee, understand that our legal system is under threat, and that it faces a crisis of credibility. The administration of justice is seen by many to be alien, sporadic, ineffectual and inaccessible. Respect for law is difficult to achieve when it is seen to be incapable of delivering even simple justice.

There have been some noteworthy changes — some implemented, others awaiting introduction — which have impacted on the law.

The desire for community involvement of the law and thus its legitimisation, has led to the acceptance by the state of aspects of the people's court

The search is on for simpler, faster and cheaper justice

BIDY 4/3/91

TONY LEON

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philosophy and practice. This is not to suggest that the Department of Justice will condone public floggings arbitrated by the lynch mob in an atmosphere of kangaroo justice. Rather it is a frank recognition that black alienation from the current system is profound and requires correction.

Towards this end, President de Klerk suggested that the assessor system be extended to the magistrates' courts by making use of members of the lay public (read black public) and through an enhanced role for Justices of the Peace to try petty misdemeanours.

The doubling of the judiciary in SA since 1965 to its current strength of 140 judges has failed to address two fundamental issues — the absence of black jurists and its agonisingly slow delivery system.

Government has yet to address the first problem. It has resisted suggestions that judicial appointments be removed from the political arena. It has also failed to comment on the proposal that the net of potential appointees be widened beyond the ranks of Senior Counsel from where appointments are traditionally drawn.

In contrast, inaccessibility to jus-

tice and the inordinate delays experienced in the system have engaged the attention of both government and the Directorate of Justice. Several projects undertaken by the SA Law Commission suggest that significant change in this regard is imminent.

Reform initiatives have included the small claims' court for civil litigation which last year disposed of more than 13 000 cases that otherwise would have clogged the already overcrowded magistrates' courts. The 1989 annual report of the Department of Justice paints a dismal picture of justice delayed, and thus denied in the realm of criminal law, more than 2-million cases were noted and entered by the district courts — an increase of 47.9% in 10 years.

Each magistrate is thus obliged to deal with, or dispose of, something like 2 500 cases per annum.

In an effort to ease this burden, urgent attention is being given to rid petty, technical offences of their criminal status.

Thus the detection and adjudication of serious crimes remains the elusive goal. Success in this pursuit will do much to shore up the credibil-

ity of the entire system.

An allied issue of tremendous importance, but historic neglect in SA, is the right of the criminal accused to a proper defence. The rights and guarantees of the best legal system in the world are worth little unless effective remedies and resources are available for their enforcement.

It has been estimated that 85% of the accused in SA criminal cases are unrepresented. Prof David McQuoid-Mason suggests that 150 000 persons enter our jails each year without having the benefit of defence counsel. In 1968, the American Supreme Court unanimously ruled that an accused person cannot be assured a fair trial unless he has been assisted by a lawyer, and that in the case of indigence, it is the State's duty to provide counsel.

Minister Coetsee has recently unveiled SA's own Public Defender's scheme for people who cannot afford legal fees in criminal cases. Commendable in intention, it will fall short in execution.

It envisages 10 public defenders, drawn from the ranks of legal practitioners, funded by the Legal Aid Board and operating independently of government. Coetsee is adamant that the private legal sector must also underwrite the case of legal aid

Government's commitment to funding has been set at R22.3m for the next financial year. According to an innovative proposal of Prof Arthur Chaskalson, comprehensive provision could be made to ensure a proper defence for the unrepresented accused if law graduates were obliged to undertake a two-year internship, similar to the clinical training for doctors.

Both Coetsee and Chaskalson agree that legal assistance for the poor should be adequate, but not inferior. Chaskalson's scheme would cost R40m a year but, in contrast to the Minister's, would involve 2 000 lawyers as opposed to the 10 initially contemplated by government.

The bottleneck and frustrations experienced by civil litigants is receiving the attention of Parliament. The Short Process Courts and Mediation Bill is currently before the Justice Standing Committee. Based on the principle of small claims' courts, it is an attempt to obviate the delays and the sky-high costs of civil litigation.

It envisages a mediation procedure during which the parties to a dispute are canvassed, through the intervention of a court-appointed mediator, on the possibility of settlement — failing which the issues in dispute are narrowed, which may then be reflected to adjudication. This reflects the international trend towards informalising litigation through alternative ways of resolving disputes.

The Bill has already been criticised by experts for being pre-emptory and too formalistic, and for downgrading the status of the mediator to that of a magistrate. It also fails to apply the principle of alternative dispute resolution to the Supreme Court — where costs of litigation are truly astronomical and the delays inordinate.

Nevertheless, cumulatively viewed, these measures suggest that the transformation of our system of justice will be a decisive anchor for the new SA.

□ Leon is DP MP for Houghton.

Wednesday, March 5, 1991

CMF

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Judge reacts to 'Death Row' report

BLOEMFONTEIN.— The Chief Justice, Mr. Justice M. M. Corbett, last night criticised press reports as "incorrect" and "misleading" about death row prisoners.

Mr. Justice Corbett said a report appeared on page 2 of the Star on March 2 under the headline "Panel to decide on 170 death row prisoners".

He said the Criminal Law Amendment Act, 1990 ("the new Act") was promulgated in July last year, changing the law in regard to the imposition of the death sentence. Prior to the new Act the death penalty was mandatory in murder cases if the accused was 18 or older, and where the court was un-

able to find extenuating circumstances.

The new Act abolished the mandatory death penalty. The death sentence was now imposed only after the court made a finding on the presence or absence of any mitigating or aggravating factors, and the presiding judge, with due regard to that finding, was satisfied that the sentence of death was the proper sentence.

The Chief Justice said the new Act also provided for an automatic right of appeal against a death sentence. He said there were further innovations. The criteria of the new Act were

applied to all those sentenced to death before July 27 when the appeal was heard. Between August and December 1990, 12 of 18 appellants' death sentences were confirmed.

The new Act also made provision for those persons convicted under the old law who had already exhausted all their legal remedies. They had recourse to a panel of judges or retired judges and other legal experts.

If it found that it would not have been imposed, the case would then be laid before the State President for the extension of mercy. If the death sentence would have been imposed, then

the case would go before the Appellate Division.

If the Appellate Division confirmed the death sentence, the accused could still petition the State President for clemency.

He said the Star article created the impression that the panel of judges, headed by Mr. Justice Viljoen, would have the final say in "the fate of at least 170 South African death row prisoners".

He said no one would be executed without their case having been fully considered on appeal applying the criteria postulated by the new Act.



NO TO HANGING
... Demonstrators in Pretoria against the reinstating of executions in South Africa.

Picture: REUTER

Bezuidenhout granted a stay of execution ²⁵²

Own Correspondent *CAPL TWP 5/3/91*

JOHANNESBURG. — Double murderer Paul Bezuidenhout, who was due to be executed early today, was yesterday granted a stay of execution by the Supreme Court, Pretoria, after an appeal by Lawyers for Human Rights (LHR).

LHR took the case to an emergency Supreme Court hearing at 3pm after it claimed Justice Minister Mr Kobie Coetsee refused its application for a stay of execution.

An LHR spokesman said yesterday that new evidence, indicating that Bezuidenhout might be mentally retarded and unfit for trial, was presented to Mr Coetsee and Mr Justice

Human. Mr Justice Human ruled that the new evidence did merit a review of the case. LHR was granted "at least several weeks" to prepare detailed new evidence.

Bezuidenhout, 22, who was sentenced in Kimberley Circuit Court to death for the 1988 murder of Ms Martha Doorse, 54, and Istelle Dwango, 2, was scheduled to be the first person in South Africa to be executed since a 15-month moratorium on executions was lifted last week.

Bezuidenhout's appeal against his original sentence was dismissed by the Appellate Division in September last year.

● Judge reacts — Page 2

SAL

Killer Bezuidenhout wins stay of execution

DOUBLE murderer Paul Bezuidenhout — who was due to hang today — was yesterday granted a stay of execution by the Pretoria Supreme Court after an appeal by Lawyers for Human Rights (LHR)

LHR took the case to an emergency Supreme Court hearing at 3pm after it claimed Justice Minister Kobie Coetsee refused its application for a stay of execution. Coetsee, however, denied issuing a statement refusing a stay.

An LHR spokesman said yesterday that new evidence, indicating that Bezuidenhout might be mentally retarded and unfit for trial, was presented to Coetsee and Mr

8/24 5/2/91
DARIUS SANAI

Justice Human

Mr Justice Human ruled the new evidence did merit a review of the case. LHR was granted "at least several weeks" to prepare detailed new evidence.

Bezuidenhout was convicted in 1989 of killing 53-year-old Martha Doorse and a two-year-old child, Estelle Dwango.

Bezuidenhout was to be the first person hanged after government's moratorium on the death penalty expired last July. More than 200 Death Row prisoners are awaiting a review of their cases by a judicial panel.

The panel, headed by Mr Justice Viljoen, was set up by government after new laws regulating the passing of death sentences more strictly were implemented last July.

Meanwhile, it emerged yesterday that those appealing to the panel include Butana Almond Nofemela, the condemned murderer who first "blew the whistle" on the existence of government death squads.

The panel is considering the cases of all Death Row prisoners who were tried and who appealed before the new laws were passed. However, Bezuidenhout's appeal was heard after the new laws were passed.

I AM concerned about incorrect and misleading reports and comments which have appeared recently in the Press concerning 'the fate' of so-called 'death row' prisoners. One such report appeared on Page 2 of the Saturday Star on March 2 under the headline 'Panel to decide on 170 death row prisoners'. It was evidently written by Pat Devereaux and, for convenience, I shall refer to it as 'the Devereaux article'.

On July 27 1990 the Criminal Law Amendment Act 1990 ("the new Act") was promulgated. It changed the law in regard to the imposition of the death sentence.

Prior to the new Act the death penalty was mandatory in cases of murder where the accused person was 18 years or older at the time of the commission of the offence and the court was unable to find extenuating circumstances. The burden of proving extenuating circumstances rested upon the accused.

The new Act abolished the mandatory death penalty. In its place it was provided that the death sentence should be imposed only

Factors

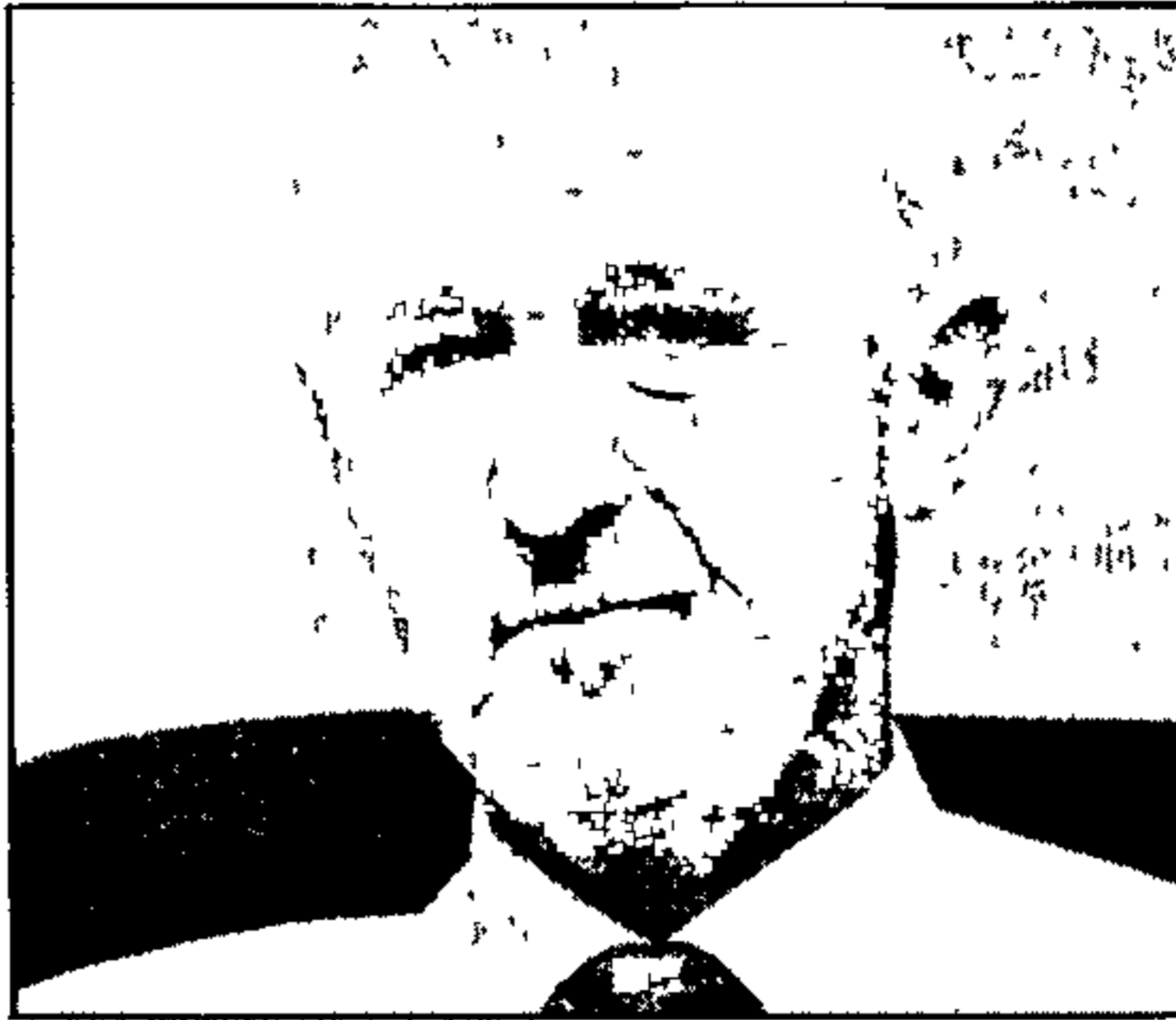
a) After the court had made a finding on the presence or absence of any mitigating or aggravating factors, and
b) If the presiding judge, with due regard to that finding, was satisfied that the sentence of death was the proper sentence.

In cases since the coming into operation of the new Act, the Appellate Division of the Supreme Court in Bloemfontein has interpreted these provisions to mean that "mitigating factors" were a wider concept than the old extenuating circumstances, that the burden to prove "aggravating factors" rested on the State and that proof of such factors beyond a reasonable doubt was required, that the burden was also on the State to negate beyond reasonable doubt mitigating factors suggested by the evidence or raised by the accused, that the words "the proper sentence" meant the only proper sentence, with the result that the imposition of the death sentence will be confined to exceptionally serious cases where such a sentence was imperatively called for.

The new Act also provides for an automatic right of appeal against a death sentence and, in effect, that in deciding such an appeal, the Appellate

The death penalty: no 'legislative muddle'

MR JUSTICE M M CORBETT, the Chief Justice (right), has expressed concern about a report published in the Saturday Star of March 2 on "the fate" of South Africa's so-called "death row prisoners". Mr Justice Corbett issued a statement to The Star yesterday, outlining his objections to the report. His statement is published here.



Division exercises an independent discretion if it is of the opinion that it, itself, would not have imposed the death sentence, it may impose such other punishment as it considers proper. These are further innovations.

Since July 27 1990 the provisions of the new Act had been applied in all cases that came on trial before the provincial divisions of the Supreme Court and on appeal before the Appellate Division after that date.

Thus, where an accused person was sentenced to death in a provincial division before July 27 1990 under the old law, when his appeal came before the Appellate Division, the criteria laid down by the new Act were applied to his case. This is all provided for by the new Act.

In the period August to December 1990 a number of such appeals were heard by the Appellate Division. In the case of 18 appellants the death sentence was set aside. In the case of 12 appellants the death sentence was confirmed.

In the current term and the next term, the Appellate Division will deal with a further 75 such appeals. These figures relate to the number of appellants, not the number of cases. In some cases there are more than one appellant.

The new Act had, of course, to make provision for those persons convicted under the old law who had already ex-

hausted all their legal remedies by way of appeal and the exercise by the State President of his prerogative of mercy and as at July 27 1990, were awaiting execution of their sentences.

It did so by providing
1 That the cases of all such persons should be considered by a panel of judges (or retired judges) and other legal experts, the panel to decide whether or not, in its opinion, the death sentence would have been imposed by the trial court had the new Act been in operation at the time sentence was passed.

2 That in the event of the panel finding that the death sentence would probably not have been so imposed, the case is then to be laid by the Minister of Justice before the State President for the extension of mercy to the accused.

3 That in the event of the panel finding that the death sentence would probably have been so imposed, then the case was to come on appeal before the Appellate Division which must consider it under the provisions of the new Act, irrespective of the fact that it may previously have dismissed the appellant's appeal under the old law.

If the Appellate Division confirms the death sentence, the accused person may still petition the State President for clemency.

Thus it is clear (1) that those accused who, as at July 27

1990, were awaiting an appeal against their death sentences have had, or will have, their cases considered on appeal by the Appellate Division in accordance with the criteria laid down by the new Act, and (ii) that those who, as at July 27 1990, had exhausted all their legal remedies will have their cases reconsidered by the panel and, in some instances, ultimately by the Appellate Division in the light of the criteria laid down by the new Act.

Impression

The Devereaux article creates the impression that the panel of judges, headed by Mr Justice Viljoen, will have the final say in "the fate of at least 170 South African death row prisoners". As I have shown, this is not correct. In cases where the panel decides that the death penalty would probably have been imposed under the new Act, the final say is with the Appellate Division.

The article calculates that there are altogether 290 prisoners under sentence of death who were convicted prior to the new Act coming into operation.

The article proceeds "Meanwhile, Lawyers for Human Rights claim that so far only about 170 of the 290 death row prisoners will have their cases reviewed by the panel, as at least 120 prisoners have been caught up in a legis-

lative muddle.

"One was Paul Bezuidenhout (22) who was this week notified that he is to be hanged on March 5. He was sentenced before July 27. Bezuidenhout, convicted on two counts of murder, will not have the opportunity to go before the panel. His appeal in September last year failed and his request for clemency from the State President was dismissed."

This passage in the article is misleading and constitutes an unwarranted slur on the administration of justice.

All prisoners whose cases are not being considered by the panel are either (i) persons awaiting the hearing and/or decision of their appeals by the Appellate Division under the new Act, or (ii) are persons whose appeals under the new Act have been dismissed and who are awaiting the outcome of their pleas for clemency, or (iii) are persons whose appeals under the new Act and petitions for clemency have been dismissed and are awaiting execution of their sentences.

No muddle

The number of 120 mentioned in the article, if correct, would be comprised of persons who fell into one of the above three categories. There is no "legislative muddle" whatever.

As I have demonstrated, all possible contingencies have been catered for. No one would be executed without his case having been fully considered on appeal by the Appellate Division applying the criteria postulated by the new Act.

The reference in the above-quoted extract from the Devereaux article to the case of Paul Bezuidenhout, as an instance of someone "caught up in a legislative muddle", is equally misleading.

Bezuidenhout, it is true, was convicted and sentenced to death prior to 27 July 1990. His appeal was heard by the Appellate Division on 17 September 1990 and judgment was delivered by Mr Justice Hoexter (Mr Justice Nicholas and Mr Justice Goldstone concurred) on September 28 1990.

The Court, applying the criteria established by the new Act, dismissed his appeal. And his appeal for clemency by the State President also failed. Obviously there was no need for his case to go before the panel. His case had received full consideration under the new Act by the Appellate Division," said the Chief Justice.

5/3/91

Death of Mr W Ndadla. appeal against sentence

*10 Mr LUGHS asked the Minister of Justice

(1) Whether the State intends appealing against the sentence handed down by the

(252)

Hansard 5/3/91

HOUSE OF ASSEMBLY

Natal Provincial Division of the Supreme Court against certain persons, whose names have been furnished to the Minister's Department for the purpose of his reply, and whose action allegedly caused the death of a Mr W Ndadla in the vicinity of Vryheid, if not, why not,

- (2) what are the names of the persons concerned? **252**

Hansard 5/3/91 B321E

THE DEPUTY MINISTER OF JUSTICE


- (1) No, because the Attorney-General concerned is of the opinion that there is no reasonable prospect of success on appeal. In this regard it must be mentioned that the test which is applied by a court of appeal when considering whether a sentence should be altered, is whether it can be said that the trial court did not exercise its discretion reasonably.

In the case in question, the accused were only convicted of assault (common) and no sound reason can be advanced that the trial court did not exercise its discretion reasonably when passing sentence.

- (2) (a) Kenneth Thomas Edmund Westermeyer
(b) Johannes Fred Westermeyer

Certain person: torching of minor

*11 Mr L FUCHS asked the Minister of Justice

- (1) Whether the State intends charging a certain person from Messina, whose name has been furnished to the Minister's Department for the purpose of his reply, with purportedly attempting to set alight and burn a minor boy, whose name is not known at this stage, if not, why not, if so, (a) what are the relevant details and (b) what is the name of the person in question, *Hansard 5/3/91*
- (2) whether any charges have been laid against the minor boy, if so, with what has he been charged? 

B322E

THE DEPUTY MINISTER OF JUSTICE

- (1) The Attorney-General concerned referred the docket to the South African Police for further investigation

HOUSE OF ASSEMBLY

- (a) A charge of alleged assault with the intent to do grievous bodily harm is being investigated, but the results of the tests done by the Forensic Laboratories of the South African Police are being awaited. As soon as the investigation is completed, a decision will be taken *Hansard 5/3/91*
- (b) Jan van der Westhuizen

- (2) Yes. A charge of alleged housebreaking is presently being investigated by the South African Police. The Attorney-General concerned will make a decision in this regard as soon as a docket is submitted to him.

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Inquest: witness

*12 Mr P G SOAL asked the Minister of Law and Order

- Whether, with reference to the inquest into the deaths of certain persons killed in Mamelodi on 21 November 1985, the South African Police have ascertained the whereabouts of the witness referred to by the Minister of Justice in his reply to Question No 9 on 12 February 1991, if not, why not, if so, what is the name of the witness? **252**


Hansard 5/3/91

B325E

THE MINISTER OF LAW AND ORDER

Yes, after an intensive search since 6 November 1990, when the docket was received from the Attorney-General, the witness was traced on 15 February 1991. Tracing him was made very difficult due to the fact that he continually eluded the Police. He initially did not want to make any statement to the Police concerning the events in Mamelodi on 21 November 1985. Section 205 of the Criminal Procedure Act, 1977 (Act 51 of 1977) was subsequently applied. He then made a statement. The docket is presently in the possession of the Attorney-General.

Purchase of microwave ovens/refrigerators

*13 Dr W J SNEYMAN asked the Minister of Planning, Provincial Affairs and National Housing: *Hansard 5/3/91* 

- (1) Whether the provincial health department purchased microwave ovens and refrigerators for the administrative offices in the Northern Transvaal region round about March 1990, if so, (a) how many, (b) for what purpose and (c) what amount was spent,

- (2) whether a needs assessment had been carried out before these items were purchased, if not, why not, if so, what was its nature,

- (3) whether these purchases were made in accordance with the requirements of the tender system of the State, if not, what procedure was followed in this regard? *Hansard 5/3/91* B327E


THE MINISTER OF PLANNING, PROVINCIAL AFFAIRS AND NATIONAL HOUSING

- (1) During March 1990, no refrigerators were purchased for administration offices in the Northern Transvaal region, but microwave ovens were bought, ie

- (a) four of 38 litre each,
(b) for use by nurses to prepare food,
(c) cost was R699,99 each

- (2) Yes, nursing service managers responsible for community health and family planning investigated and assessed the need

- (3) Yes

Government Service Pension Fund—accumulated funds 

*14 Mr R M BURROWS asked the Minister of Finance *Hansard 5/3/91*

- (1) Whether there has been any change in the policy regarding the investment of accumulated funds of the Government Service Pension Fund, if so, (a) what change and (b) what effect has the change had in financial terms in regard to increased interest and/or dividends,

- (2) whether it is the intention to extend any investment policy to utilise most or all of the accumulated funds of other State pension funds, if not, why not, if so, (a) in what manner and (b) over what period,

- (3) whether he will make a statement on the matter? B342E

THE MINISTER OF FINANCE 

- (1) Since 1984—when the Public Investment Commissioners succeeded the Public Debt Commissioners—the management and investment policies of the Government Service Pension Fund have been drastically amended *Hansard 5/3/91*

- (a) The funds are now being actively managed according to accepted portfolio management principles. Firstly, the investment portfolio has been completely restructured so that the emphasis is no longer on long-term stocks. Secondly, the funds may now also be invested in recognised money market instruments whilst financial derivative instruments, like options and futures contracts, may be employed as hedging mechanisms. Thirdly, and this is a very important amendment, it could be noticed from the 1990/91 budget address that the PIC is no longer formally expected to fund the major portion of the budget deficit.

- (b) The effect of this more dynamic approach to the management of these funds cannot summarily be expressed in terms of improved interest income alone. The accepted principle in portfolio management is to express the combination of interest and capital appreciation of the assets in the portfolio as a portfolio yield. Since 1 April 1984 till the end of 1990, an average yield of 17,47% was obtained on the investment portfolio of the Government Service Pension Fund, which yield is substantially better than the 14,7% average inflation rate for the same period.

- (2) (a) and (b) All funds under the control of the Public Investment Commissioners—which also automatically include the accumulated funds of other State pension funds—are, since 1984, being managed in accordance with the principles outlined above.

HOUSE OF ASSEMBLY

*Precedence given to questions on general affairs on this day pursuant to the resolution adopted by the House on this day

QUESTIONS

Indicates translated version

For oral reply

General Affairs

Nadarajan Maistry, inquest

*1 Mr M RAJAB asked the Minister of Justice

(1) Whether the inquest findings on the death of a certain Nadarajan Maistry of Tongaat and the remarks made by the Verulam magistrate who conducted the inquest, and whose name has been furnished to the Minister's Department for the purpose of his reply, have been forwarded to the Attorney-General, if so,

(2) whether the Attorney-General has taken a decision on the matter, if not, when is he expected to take a decision, if so, what was his decision? *KS2*

D16E

The MINISTER OF JUSTICE

(1) The record of the proceedings is presently being transcribed and will as soon as possible be forwarded to the Attorney-General, Pietermaritzburg, after which he can decide whether to institute a prosecution or not, or to request the judicial officer to re-open the inquest and take further evidence generally or in respect of any particular matter

(2) Falls away

The LEADER OF THE OFFICIAL OPPOSITION Mr Chairman, arising out of the answer given, would the hon the Deputy Minister be prepared to inform the Attorney-General that in respect of the same matter a very serious crime was committed by an attorney with regard to sworn statements This occurred with the knowledge of a senior police officer, but for some unknown reason there was no prosecution Would the hon the Deputy Minister be prepared

HOUSE OF DELEGATES

to take this message to the Attorney-General, where we can substantiate this with evidence?

The DEPUTY MINISTER OF JUSTICE Mr

Chairman, this matter has run its course The inquest has been concluded, findings have been made and the Attorney-General must now take his decision If the hon the Leader of the Official Opposition has some information which he feels should be brought to the attention of the Attorney-General, then he is free to convey it to the Attorney-General with the assistance of the Police *KS2*

The LEADER OF THE OFFICIAL OPPOSITION Mr Chairman, further arising from the answer of the hon the Deputy Minister, will he agree with me that his answer gives one the impression that there is blind justice in South Africa?

The DEPUTY MINISTER Mr Chairman, certainly not

An HON MEMBER Thanks to you

*Precedence given to questions on own affairs on this day pursuant to the resolution adopted by the House on this day

QUESTIONS

Indicates translated version

For oral reply

Own Affairs

Arena Park: housing waiting list

*1 Mr M RAJAB asked the Minister of Housing *KS2*

(1) Whether any allocations have been made to applicants on the housing waiting list for accommodation in Arena Park, if so, (a) when and (b) how many were made,

(2) whether the approval of the Southern Durban Local Affairs Committee was received for such allocations, if not, why not, if so, when? *KS2*

D14E

The DEPUTY MINISTER OF HOUSING

(1) Yes

(a) 30 November 1990

(b) 104 provisional allocations
(2) Yes, 17 August 1990

The LEADER OF THE OFFICIAL OPPOSITION Mr Chairman, arising from the reply of the hon the Deputy Minister, will he be surprised if I inform the House that the hon the Deputy Minister's Department and Ministry do not know what they are doing, that the actual figure was 250 allocations given to people who applied 30 years ago, that 230 letters of allocation were returned by the Post Office marked "unknown", and that of the 20 that replied, 80% have already built their homes?

The DEPUTY MINISTER OF HOUSING Mr Chairman, the hon the Leader of the Official Opposition fully understands the circumstances of the allocations in the area in question

Mr M RAJAB He knows more about it than you do!

The DEPUTY MINISTER The regional office encountered difficulty in updating the waiting list of the local authority in order to ensure that those applicants whose names appear on the list do not, for instance, have other properties These things ought to be ascertained Besides that, these applications go back a long way, they are many years behind Therefore these applications that were sent were returned and not claimed, and as a result an alternative had to be found These were some of the difficulties which the department encountered

The figures that I gave the House are factual They are the figures of the Department I shall go back and recheck them in accordance with the figures given by the hon the Leader of the Official Opposition

Mr S PACHAI Mr Chairman, further arising from the reply of the hon the Deputy Minister, may I know from him whether his Department has any housing allocation policy at all and whether he can inform the House what this policy is? Do political office bearers allocate houses, do municipal officials allocate houses, and are the terms and conditions as embodied in the housing code applied strictly insofar as allocations throughout the country are concerned?

The DEPUTY MINISTER The era of political interference in the allocation of houses is behind us Allocations should not fall into the hands of

political office bearers As a result local authorities carry the responsibility with regard to allocations

Mr M RAJAB Mr Chairman, further arising from the reply of the hon the Deputy Minister, will he in the first place, please explain to the House the need for a provisional allocation, and secondly, in view of the fact that these allocations were made provisionally on 30 November 1990, when will they be confirmed?

The DEPUTY MINISTER I have already explained the circumstances prevailing in Arena Park and the circumstances with regard to the letters that were sent out and returned unclaimed As a result of the demand in those areas we also have to ascertain that those applicants do not hold properties elsewhere I want to concede that those properties were not allocated in good time I concede that At the same time the allocation of all these properties must be finalised as soon as possible so that the people can go ahead and develop their property

Mr M RAJAB Mr Chairman, further arising from the reply of the hon the Deputy Minister, when does he expect the allocations to be finalised? I would like him to give us a date

The DEPUTY MINISTER Mr Chairman, I have no distinct date at the moment, but the fact is that the provisional allocation has been made I want to assure the hon member for Springfield that this allocation will be finalised within the shortest possible space of time

Mr S PACHAI Mr Chairman, further arising out of the hon the Deputy Minister's reply to my question, would he indicate to the House whether, if his attention were drawn to the fact that members of the Indian Local Affairs Committee, who are political office bearers, were in fact allocating houses improperly, he would take immediate steps to stop these improper allocations being made by political office bearers

The DEPUTY MINISTER Mr Chairman, I understand that the hon member for Natal Midlands is speaking from experience and on the basis of certain facts that are emerging in his own area However, Parliament does not and should not interfere There is a local authority and there is a local affairs management committee These bodies are there to guide one and ensure that no preferential treatment is given to any applicant That is how this should actually function

HOUSE OF DELEGATES

Natal Provincial Division of the Supreme Court against certain persons, whose names have been furnished to the Minister's Department for the purpose of his reply, and whose action allegedly caused the death of a Mr W Ndadla in the vicinity of Vryheid, if not, why not,

- (2) what are the names of the persons concerned? *Hansard 5/3/91*

The DEPUTY MINISTER OF JUSTICE

- (1) No, because the Attorney-General concerned is of the opinion that there is no reasonable prospect of success on appeal. In this regard it must be mentioned that the test which is applied by a court of appeal when considering whether a sentence should be altered, is whether it can be said that the trial court did not exercise its discretion reasonably.

In the case in question, the accused were only convicted of assault (common) and no sound reason can be advanced that the trial court did not exercise its discretion reasonably when passing sentence.

- (2) (a) Kenneth Thomas Edmund Westermeyer
(b) Johannes Fred Westermeyer

Certain person: torching of minor

*11 Mr L FUCHS asked the Minister of Justice

- (1) Whether the State intends charging a certain person from Messina, whose name has been furnished to the Minister's Department for the purpose of his reply, with purportedly attempting to set alight and burn a minor boy, whose name is not known at this stage, if not, why not, if so, (a) what are the relevant details and (b) what is the name of the person in question, *Hansard 5/3/91*
- (2) whether any charges have been laid against the minor boy, if so, with what has he been charged? *Hansard 5/3/91*

B322E

The DEPUTY MINISTER OF JUSTICE

- (1) The Attorney-General concerned referred the docket to the South African Police for further investigation

HOUSE OF ASSEMBLY

- (a) A charge of alleged assault with the intent to do grievous bodily harm is being investigated, but the results of the tests done by the Forensic Laboratories of the South African Police are being awaited. As soon as the investigation is completed, a decision will be taken. *Hansard 5/3/91*
- (b) Jan van der Westhuizen

- (2) Yes. A charge of alleged housebreaking is presently being investigated by the South African Police. The Attorney-General concerned will make a decision in this regard as soon as a docket is submitted to him.

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Inquest: witness

*12 Mr P G SOAL asked the Minister of Law and Order

- Whether, with reference to the inquest into the deaths of certain persons killed in Mamelodi on 21 November 1985, the South African Police have ascertained the whereabouts of the witness referred to by the Minister of Justice in his reply to Question No 9 on 12 February 1991, if not, why not, if so, what is the name of the witness? *Hansard 5/3/91*

B325E

The MINISTER OF LAW AND ORDER

Yes, after an intensive search since 6 November 1990, when the docket was received from the Attorney-General, the witness was traced on 15 February 1991. Tracing him was made very difficult due to the fact that he continually eluded the Police. He initially did not want to make any statement to the Police concerning the events in Mamelodi on 21 November 1985. Section 205 of the Criminal Procedure Act, 1977 (Act 51 of 1977) was subsequently applied. He then made a statement. The docket is presently in the possession of the Attorney-General.

Purchase of microwave ovens/refrigerators

*13 Dr W J SNIYMAN asked the Minister of Planning, Provincial Affairs and National Housing + *Hansard 5/3/91*

- (1) Whether the provincial health department purchased microwave ovens and refrigerators for the administrative offices in the Northern Transvaal region round about March 1990, if so, (a) how many, (b) for what purpose and (c) what amount was spent,

- (2) whether a needs assessment had been carried out before these items were purchased, if not, why not, if so, what was its nature,

- (3) whether these purchases were made in accordance with the requirements of the tender system of the State, if not, what procedure was followed in this regard? *Hansard 5/3/91*

B327E

The MINISTER OF PLANNING, PROVINCIAL AFFAIRS AND NATIONAL HOUSING

- (1) During March 1990, no refrigerators were purchased for administration offices in the Northern Transvaal region, but microwave ovens were bought, ie

- (a) four of 38 litre each,
(b) for use by nurses to prepare food,
(c) cost was R699,99 each

- (2) Yes, nursing service managers responsible for community health and family planning investigated and assessed the need

- (3) Yes

Government Service Pension Funds—accumulated funds

*14 Mr R M BURROWS asked the Minister of Finance *Hansard 5/3/91*

- (1) Whether there has been any change in the policy regarding the investment of accumulated funds of the Government Service Pension Fund, if so, (a) what change and (b) what effect has the change had in financial terms in regard to increased interest and/or dividends,

- (2) whether it is the intention to extend any investment policy to utilise most or all of the accumulated funds of other State pension funds, if not, why not, if so, (a) in what manner and (b) over what period,

- (3) whether he will make a statement on the matter? B342E

The MINISTER OF FINANCE

- (1) Since 1984—when the Public Investment Commissioners succeeded the Public Debt Commissioners—the management and investment policies of the Government Service Pension Fund have been drastically amended. *Hansard 5/3/91*

- (a) The funds are now being actively managed according to accepted portfolio management principles. Firstly, the investment portfolio has been completely restructured so that the emphasis is no longer on long-term stocks. Secondly, the funds may now also be invested in recognised money market instruments whilst financial derivative instruments, like options and futures contracts, may be employed as hedging mechanisms. Thirdly, and this is a very important amendment, it could be noticed from the 1990/91 budget address that the PIC is no longer formally expected to fund the major portion of the budget deficit.

- (b) The effect of this more dynamic approach to the management of these funds cannot summarily be expressed in terms of improved interest income alone. The accepted principle in portfolio management is to express the combination of interest and capital appreciation of the assets in the portfolio as a portfolio yield. Since 1 April 1984 till the end of 1990, an average yield of 17,47% was obtained on the investment portfolio of the Government Service Pension Fund, which yield is substantially better than the 14,7% average inflation rate for the same period.

- (2) (a) and (b) All funds under the control of the Public Investment Commissioners—which also automatically include the accumulated funds of other State pension funds—are, since 1984, being managed in accordance with the principles outlined above.

HOUSE OF ASSEMBLY

CP and ANC join outcry over Staff Reporters

Staff Reporters

250
SFW 6/13/91

The State's efforts to force Patrick Laurence, a senior political writer on The Star, to reveal his sources, have caused outrage among journalists' organisations and human rights groups in South Africa and abroad

Mr Laurence was released on bail last night after being sentenced to 10 days' jail by a magistrate

South African political parties from the ANC to the Conservative Party have condemned the imposition of a jail sentence on a journalist for respecting the confidentiality of his sources

Calls have been made to President de Klerk and the Minister of Justice, Kobie Coetsee, to stop the harassment of journalists, and to halt the use of section 205 of the Criminal Procedure Act in terms of which journalists can be subpoenaed and jailed for failing to reveal their sources

The International Press Institute (IPI) sent faxes to both Mr de Klerk and Mr Coetsee condemning the magistrate's court sentence of 10 days' jail imposed yesterday on Laurence (53), who is now out on R500 bail following an urgent application to the Rand Supreme Court last night

press freedom," IPI director Peter Gallner told the President and the Minister

The British Ambassador to South Africa, Sir Robin Renwick, said in Pretoria that Laurence "was a highly respected journalist. The embassy welcomes the decision which was finally reached to grant him bail"

The deputy general secretary of the National Union of Journalists, Jacob Ecclestone, said in London "The NUJ applauds Patrick Laurence's courageous stand which is in the best traditions of journalism"

Within hours of Laurence's imprisonment yesterday, the international anti-censorship group, Article 19, telexed a let-



Out of jail Patrick Laurence with his wife Sandra after being released.

Laurence

The South African Media Council said it was dismayed by the proliferation of section 205 subpoenas against journalists

The council's alternate chairman, Mr Justice G P C Kotze, said "This is extremely damaging to the free flow of vital information which would not otherwise come to light"

An ANC spokesman said freedom of the press included the right of journalists to protect their sources, provided that the information published had been accurate

The South African Union of Journalists said it was outraged that Laurence, a union member, had been sentenced to jail for his ethical stand

The Association of Democratic Journalists said it was deeply disturbed by the sentence

The chairman of the Foreign Correspondents' Association (FCA), John Battersby, said news of Laurence's sentence would be prominently reported in the international press since Laurence, who contributes to overseas publications, was well-known abroad He said the FCA deplored the State's decision to compel Laurence to reveal his sources

Lawyers for Human Rights described the sentence as "shocking" Director of litigation Ahmed Motlala said the sentence imposed on such a highly respected journalist made a lie of the Government's

claim to a free press

Democratic Party leader Dr Zach de Beer said the judgment constituted a "very severe inroad" on press freedom

CP justice spokesman Chris de Jager said it was ironic that people who intimidated witnesses and created fear among journalists of exposing their sources were not prosecuted

"Those intimidating them are the ones who should be acted against and not the journalists"

The chairman of the Campaign for Open Media, former Rand Daily Mail editor Raymond Louw, said yesterday "A journalist should not be penalised in this drastic way for following the principled dictates of his profession"

Writer

Govt 'may probe Lubowski slaying'

252

Sowetan 6/3/91

Political Staff

STATE President Mr FW de Klerk on Monday night promised to order another investigation into the death of slain Swapo activist Anton Lubowski should new evidence come to light

He was replying to questions from the floor at the last National Party meeting in the Matland by-election campaign

Neither he nor anyone else in the Government would cover up crimes committed by South African agents.

If there was evidence of their alleged involvement in murder or any other criminal activity, he would order an investigation

The President's speech at the De Grendel High School hall was inter-



FW DE KLERK

rupted several times by interjections on the subject of hit squads and the SADF's secret unit, the Civil Cooperation Bureau

De Klerk told the hecklers "Put questions to me in question time and I will answer"

Mr Hannes Senekal, of the Campaign for a Judi-



ANTON LUBOWSKI

cial Commission of Inquiry into Hit Squads, asked De Klerk whether he was satisfied his promise that claims about hit squads would be "cut open to the bone" had been fulfilled

De Klerk said the Government was pursuing recommendations and facts contained in the

Harms Commission report

The Government would continue to try to solve unsolved crimes.

He, however, warned against the tendency to assume that the security forces were responsible for all the ills in South Africa

This was doing the country a "disservice". Everybody had a right to a fair hearing and nobody deserved to be tried on the basis of rumour and suspicion

Senekal also asked about murders committed outside South Africa, possibly by South African agents He mentioned the Lubowski case.

Said De-Klerk "If you give the information, it will be investigated I do not protect murderers"

Chief Justice Corbett on the hanging act

Southern 6/3/91

252

THE Chief Justice, Mr Justice MM Corbett, has expressed concern about incorrect and misleading comments that have appeared recently in the media about "the fate" of the so-called "death row prisoners".

Corbett said in a statement in Bloemfontein on Monday that some recent reports did not correctly reflect the present position of "death row prisoners".

He said one such report appeared on page 2 of the *Saturday Star* on March 2 1991 under the headline "Panel to decide on 170 death row prisoners".

The Chief Justice said it was evidently written by Pat Devereaux and, for convenience, he referred to it as "the Devereaux article".

He said that on July 27 1990 the Criminal Law Amendment Act, 1990 ("the new Act") was promulgated. Prior to the new Act the death penalty was mandatory in cases of murder where the accused person was 18 years of age or older at the time the offence was committed and where the court was unable to find extenuating circumstances.

The new Act abolished the mandatory death penalty. In its place it was provided that the death sentence should be imposed only after the court had made a finding on the presence or absence of any mitigating or aggravating factors, and the presiding judge, with due regard to that finding, was satisfied that the sentence of death was the proper sentence.

Interpreted

Corbett said that since the new Act came into operation the Appellate Division of the Supreme Court in Bloemfontein had interpreted these provisions to mean that "mitigating factors" were a wider concept than the old extenuating circumstances, that the burden to prove "aggravating factors" rested on the State and that proof of such factors beyond a reasonable doubt was required, that the burden was also on the State to negative beyond reasonable doubt mitigating factors suggested by the evidence or raised by the accused, that the words "the proper sentence" meant the ONLY proper sentence.

The result was that the

imposition of the death sentence would be confined to exceptionally serious cases where such a sentence was imperatively called for.

The Chief Justice said the new Act also provides for an automatic right of appeal against a death sentence and, in effect, that when the Appellate Division decides such an appeal, it exercises an independent discretion.

Since July 27 1990 the provisions of the new Act had been applied in all cases that came on trial before the provincial divisions of the Supreme Court and on appeal before the Appellate Division after that date.

Thus, where an accused person was sentenced to death in a provincial division prior to July 27 1990 under the old law, when his appeal came before the Appellate Division, the criteria laid down by the new Act were applied to his case.

Corbett said that in the current term and the next term, the Appellate Division will deal with a further 75 such appeals. These figures relate to the number of appellants and not the number of cases, as in some cases there are more than one

* CORBETT

appellant.

He said that the new Act also had to make provision for those persons convicted under the old law who had already exhausted all their legal remedies by way of appeal and the exercise by the State President of his prerogative of mercy and who, at July 27 1990, were awaiting execution of their sentences.

It did so by providing that the cases of all such persons should be considered by a panel of judges or retired judges and other legal experts.

The panel was to decide whether or not, in its opinion, the death sentence would have been imposed by the trial court had the new Act been in operation at the time sentence was passed. It further provided that

if the panel found that the death sentence would probably NOT have been so imposed, the case was then to be laid by the Minister of Justice before the State President for the extension of mercy to the accused.

It also provided that if the panel found that the death sentence WOULD probably have been so imposed, then the case was to come on appeal before the Appellate Division.

This division must then consider it under the provisions of the new Act, irrespective of the fact that it may previously have dismissed the appellant's appeal under the old law. If the Appellate Division confirms the death sentence, the accused person may still petition the State President for clemency.

Corbett said it was thus clear that those accused who, as at July 27 1990, were awaiting an appeal against their death sentences have had, or will have, their cases considered on appeal by the Appellate Division in accordance with the criteria laid down by the new Act. Also that those who, as at July 27 1990 had exhausted all their legal remedies will have their cases reconsidered by the panel and, in some instances, ultimately by the Appellate Division in the light of the criteria laid down by the new Act.

He said the Devereaux article created the impression that the panel of judges, headed by Mr Justice Viljoen, will have the final say in "the fate of at least 170 South African

death row prisoners". This is not correct. In cases where the panel decides that the death penalty would probably have been imposed under the new Act, the final say is with the Appellate Division.

All prisoners whose cases are not being considered by the panel are either (i) persons awaiting the hearing and/or decision of their appeals by the Appellate Division under the new Act, or (ii) are persons whose appeals under the new Act have been dismissed and who are awaiting the outcome of their pleas for clemency, or (iii) are persons whose appeals under the new Act and petitions for clemency have been dismissed and are awaiting execution of their sentences.

HOUSE OF ASSEMBLY

QUESTIONS

†Indicates translated version

*For written reply**General Affairs***Death sentences commuted**3 Mr D J DALLING asked the Minister of Justice *Hansard 6/3/91*.

How many death sentences in each race group were commuted in 1990?

252

B11E

The MINISTER OF JUSTICE

12 Black men

Laurence freed after judge grants bail

By Helen Grange

Journalist Patrick Laurence of The Star was last night granted bail of R500 by the Rand Supreme Court after a magistrate had earlier sentenced him to 10 days' jail

The urgent bail application was heard by Mr Justice Levy in a bid to reverse the decision of magistrate Hein Verhoef who denied bail for Laurence following his refusal to divulge his sources as demanded by a subpoena in terms of Section 205 of the Criminal Procedure Act

Mr Justice Levy granted bail pending an appeal against sentence and an application to have the validity of the subpoena reviewed.

Laurence walked out of Diepkloof Prison just before 11 pm. His wife, Sandra, the deputy editor-in-chief of The Star, Rex Gibson, and lawyer W Wendland met him.

Speaking soon after his release, Laurence described his stay in jail as "an interesting experience" and said he had been treated well

"Prison officers who received me were considerate and kind," he said

Mr Wendland said the review and appeal proceedings would be instituted soon

Mr Verhoef earlier yesterday refused Laurence's application for a review of a subpoena issued to him under Section 205 on the grounds that an inquiring magistrate could not review decisions by the magistrate issuing subpoenas.

Mr Verhoef sentenced Laurence to 10 days' jail with immediate effect for his refusal to name a source who had supplied him with information about the disappearance of a key witness in the "Winnie Mandela trial".

Laurence was then held at the court cells before being

transferred to Diepkloof

However, last night Mr Justice Levy found that Mr Verhoef should not have assumed that the subpoena was beyond appeal

The subpoena, he said, could be reviewed by an inquiring magistrate — and the subpoena should have at least been granted the hearing of a reviewing court

The judge said that although his decision to grant bail would deny the State the opportunity of exercising pressure on Laurence, he was not prepared to put the matter to test

In addition, Laurence's intended appeal against judgment and sentence would become academic since he would already have served his time in jail by the time the appeals were heard

Laurence refused to give the name of his source to the magistrate yesterday, saying he was bound by his word

and by journalistic ethics. It was only if and when the source relieved him of his commitment that he could disclose information for a police investigation into Gabriel Megkwe's disappearance

Webber Wentzel, the lawyers acting for Laurence, intend launching an immediate appeal against the magistrate's judgment and sentence — as well as applying for a review of the subpoena.

In a statement yesterday, the editor-in-chief of The Star, Richard Steyn, strongly criticised the use of Section 205 against journalists. "It is wrong for the State to use the press to gather evidence or to trace witnesses.

"Compelling journalists to reveal sources not only exposes them to danger, but has serious consequences for free flow of information"

● Outrage over sentence — Page 2

Not time to lift sanctions — Democrats

By David Braun
Star Bureau

WASHINGTON — Democratic congressmen made it clear to the Bush Administration yesterday that they would resist the lifting of sanctions even if Pretoria complies with all the requirements of American law.

The gauntlet was thrown down during a hearing of the

US House of Representatives Foreign Affairs Subcommittee on Africa. It prepared the way for a fierce debate when the committee meets on April 30 to get an update on US sanctions policy.

US Assistant Secretary of State for African Affairs, Herman Cohen, told the subcommittee the Bush Administration was committed to carrying out the provisions

of the Comprehensive Anti-Apartheid Act

However, ranking Democrat, Howard Wolpe, supported by others, said as encouraging as the recent changes were, it would be foolish to think they could not be reversed. Furthermore, nothing fundamental had changed with relation to the structure of power.

● Big US grant — Page 4



Herman Cohen . . . says he will follow the law on US sanctions policy.

8-2
8-2
6-1
2-2
1-1



Black Local Authorities	Male (a)(i)	Female (a)(ii)	Children (b)
Phahameng	6 533	6 917	6 800
Tikwana	()	*7 000	()
Kutlwanoeng	()	*55 000	()
Masilo	8 000	12 000	8 000
Mmamahabane	3 088	3 144	10 228
Meloding	()	*43 000	()
Thabong	120 000	70 000	50 000
Monyakeng	4 000	4 500	10 000
Bohlokong	11 571	10 736	28 263
Kgubetswana	260	325	486
Ntswanatsatsi	250	350	450
Mashaeng	2 000	3 600	3 000
42nd Hill	6 000	10 200	12 500
Tlholong	937	1 111	894
Zamani	340	460	1 200
Petsana	4 287	4 859	7 341
Thembalhle	1 500	2 500	9 000
Ezenzeleni	1 600	1 800	3 200
Namahadi	4 217	5 428	6 355
Purtona	3 900	4 800	11 400
Kwakwatsi	2 576	2 891	5 312
Meismaholo	357	450	1 693
Tumahole	13 300	17 400	15 300
Mafahlaneng	880	1 408	1 750
Qalebotjha	2 150	2 680	125
Mokwallo	546	1 902	4 075
Hlohlolwane	3 000	4 500	7 000
Mahlatswetsa	2 000	2 700	2 300
Megheleng	6 449	9 673	15 650
Dipelaneng	400	700	900
Manyatseng	4 840	5 460	7 200
Moemaneng	1 643	920	3 563
Pateng-Tse-Ntsho	1 269	1 372	1 370
Mause	800	1 000	1 200
Matwabeng	3 984	4 712	6 806
Borwa	1 500	2 500	2 000
Lephor	4 000	4 500	5 000
Morojaneng	2 150	3 350	2 500
Ha-Rasebel	2 100	3 500	2 600
Matoporong	500	700	1 300
Rweleleyathunya	2 100	3 400	2 500
Mofalatshope	1 135	1 424	1 295
Maphodi	1 600	1 700	1 700
Madirgetla	2 630	2 820	2 300
Thapelang	300	400	300
Qibung	1 822	2 355	4 323
Matlakeng	2 100	3 350	2 550

* Only total population figures are available

HOUSE OF ASSEMBLY

4 TRANSVAAL

(a)(i), (ii) and (b)

The Transvaal Provincial Administration uses the official figures made available by the Central Statistical Services. The Transvaal Provincial Administration did not undertake any surveys of its own and does not have the figures as required. The next census survey will take place on 7 March 1991 whereafter accurate figures shall be available

Indemnity: applications

47 Mr P G SOAL asked the Minister of Justice

(1) Whether his Department has received any applications from exiles for indemnity in terms of the Indemnity Act, No 35 of 1990, if so, how many applications (a) have been received in total, (b) have been received from (i) sentenced prisoners and (ii) detainees and (c)(i) had been processed as at the latest specified date for which information is available and (ii) were (aa) successful and (bb) unsuccessful in each category, *252*

(2) whether the number of categories is to be extended, if not, why not, if so, what are the relevant details,

(3) how many persons are employed in the office dealing with applications of this nature, *How served 6/3/91*

(4) whether it is the intention to increase the number of persons employed in this office, if not, why not, if so, (a) when and (b) why?

B89E

The MINISTER OF JUSTICE

(1) and (2) The honourable member is referred to the reply to question No 4 on 19 February 1991, a copy of which is attached (col 81)

(3) Twenty-nine persons

(4) The staff position is constantly monitored and personnel will be increased if and when circumstances so require

Land: Black community development

62. Mr C B SCHOEMAN asked the Minister of Planning, Provincial Affairs and National Housing †

(1) Whether any land for the development of Black communities has been purchased in the district of (a) Heidelberg (Transvaal) and (b) Nigel, if so, (i) what was the purchase price per hectare and (ii) from whom was it purchased, in each case,

(2) whether the State was the purchaser of the land; if not, who were the purchasers?

B174E

The MINISTER OF PLANNING, PROVINCIAL AFFAIRS AND NATIONAL HOUSING

(1)(a) and (b) No

Rest of question falls away

Sentences handed down

64 Mr L FUCHS asked the Minister of Correctional Services

How many sentences were handed down during the period 1 January 1980 up to and including 31 December 1990 in respect of the provisions of (a) section 54(2)(a), (b) section 54(2)(b), (c) section 54(2)(c) and (d) section 54(2)(d) of the Prisons Act, No 8 of 1959?

How served 6/3/91 252

B180E

The MINISTER OF CORRECTIONAL SERVICES

(a), (b), (c) and (d)

The information required is not centrally available and can only be obtained by a costly and manpower intensive country-wide survey. The files of prisoners who have been released are furthermore stored for a specific period only before being destroyed. It is therefore not possible to comply with the honourable member's request. I would however like to point out to the honourable member that section 54(2)(b) was repealed during 1978. The following information with regard to the periods mentioned are however available

(1) 1 January 1989 to 31 December 1989 During this period prisoners were reprimanded in 3 202 cases

(2) 1 January 1990 to 31 December 1990 During this period prisoners were reprimanded in 3 119 cases

section 54(2)(c) — 1 January 1989 to 31 December 1989 During this period prisoners were sentenced to the deprivation of one or more meals on any one day in 35 805 cases

How served 6/3/91 252

— 1 January 1990 to 31 December 1990 During this period prisoners were sentenced to the deprivation of one or more meals on any one day in 32963 cases

This represents respectively 9,61% and 9,01% of the total number of prisoners admitted to South African prisons from police and courts during the respective calendar years 1989 and 1990

section 54(2)(d) — 1 January 1989 to 31 December 1989 During this period corporal punishment not exceeding six strokes was imposed in respect of convicted male prisoners in 120 cases

— 1 January 1990 to 31 December 1990 During this period corporal punishment not exceeding six strokes was imposed in respect of convicted male prisoners in 102 cases

Citizen Force/Commando members: camp attendance

83 Lt-Gen R H D ROGERS asked the Minister of Defence *How served 6/3/91*

How many Citizen Force and Commando members called up to attend camps in 1990 (a) applied for and (b) were granted (i) deferment and (ii) exemption?

B95E

The MINISTER OF DEFENCE

The supplying of the figures can give an indication of manpower strengths and because the policy is not to divulge this information, the required information is given as percentages

(a) (i) 34,9%

(ii) 0,0000218%

(b) (i) 22,11%

(ii) 0,0000218%

HOUSE OF ASSEMBLY

Former Dale pupil is jailed for two years

Blouy 713191

EAST LONDON — A former Dale College pupil, Richard Bester, 18, was sentenced to an effective two years in jail and three other former pupils to suspended jail terms and community service for the death of a 70-year-old man on the school grounds

Bester, leader of the "Kaffir Bashing Society" at the school, and the three minors, who cannot be identified, were found guilty of culpable homicide and assault with intent to do grievous bodily harm

Their conviction was in connection with the death of Tom Reuters, a vagrant who had been sleeping on the school grounds when the boys attacked him

Bester has applied for leave to appeal against his sentence. He was sentenced to a total of three-and-a-half years imprisonment, 18 months of which were suspended. He was also sentenced to 18 months in jail on two counts of assault to do grievous bodily harm, suspended for five years on condition he was not found guilty of a crime involving violence against another person during that time

The effective jail term is two years

Bester was granted leave to appeal against the sentence and was released on bail of R300. His application for appeal must be lodged no later than March 22

The three minors were each sentenced to three years imprisonment for their part in Reuters' death and to 18 months on two counts of assault with intent to do grievous bodily harm

The jail sentences were suspended in their entirety for three years on condition the youths were not found guilty of crimes involving violence against another person. They were to do 750 hours of community service over a period of two years

Two of the boys were required to do their community service at the local Society for the Prevention of Cruelty to Animals and the other boy at the Stutterheim Hospital

Mr Justice Jennett described their actions as "detestable and filling one with revulsion". He said racism was an aggravating factor

The court was told the school headmaster encouraged the assault by urging students to drive vagrants from the school premises. Bester had also seen his father using a truncheon on blacks

The boys, who had pleaded not guilty to charges of culpable homicide and assault, killed Reuters after playing truant from the school with the specific intention of "sorting him out" — Sapa-Reuter

Special unit to probe violence

Blouy 713191

POLICE have set up a special unit to probe township violence

Police spokesman Maj Reg Crewe said yesterday the unit had been formed following the weekend's violence at a Soweto hostel which left at least 24 people dead and 12 injured

The unit would give its full attention to the hostel killings

All available investigative techniques, including aerial photographs taken at the hostel, were being used to find those responsible for the murders, he said

"The SAP gives the as-

WILSON ZWANE

urance that everything possible will be done to bring the perpetrators to book," Crewe said, appealing to people with information to come forward

Another police spokesman Lt Burger van Rooyen said the establishment of the unit underlined the police's desire to get "to the bottom of the matter as soon as possible"

The ANC's PWV Regional Office spokesman Ronnie Mamoepa said while the organisation welcomed the

police move to investigate the Mzimhlophe hostel murders, it would be satisfied only with an independent commission of inquiry into the attack — particularly "into the police behaviour in that violence"

Mamoepa said the ANC had received allegations from township residents that when asked why they were not intervening to stop the fighting, police at the scene said "they were there to watch developments"

The allegations were denied by police

Scarred for life by the law

By GAVIN EVANS

(252) (252)

EACH year South African courts sentence around 40 000 young men, and an unknown number of juveniles, to whippings which scar for life.

Outside of the Islamic countries this form of punishment is generally regarded as fitting with the United Nations definition of "cruel and unusual". It is said to cause excruciating pain for a long period.

The difference between adult and juvenile whippings is that with the former the cane is far heavier, the stroke is harder, and the target area is larger — frequently leaving hideous scarring as a permanent reminder of how to behave. *W/Mail 813-14/3/91*

A medical doctor examines the adult or juvenile recipient to see if he's ripe for his whipping. The physical trauma from an adult whipping is so severe that, according to the Criminal Procedure Act, "no person shall be sentenced to a whipping more than two times or within a period of three years of the last occasion on which he was sentenced to a whipping". No females or males over the age of 30 may be whipped and the maximum number of strokes is seven.

The Department of Justice said they had no information on the number of adults or juveniles whipped in 1989 or 1990.

In the year up to June 30 1988, 40 933 were whipped (5 529 in addition to being imprisoned). This is 1 605 more than in the previous year. Of those whipped in 1988, 97,1 per cent were black (25 983 Africans, 13 459 coloureds and 305 Indians compared with 1 186 whites)

No figures are available for juvenile whippings (those under 21).

Today you can be sentenced to a whipping when found guilty of offences such as receiving stolen property, breaking and entering, public violence, sedition, arson, malicious damage to property and stealing from a motor car, as well as more serious crimes like murder and rape, and several statutory offences.

According to the Department of Justice no change in the legislation permitting whippings is currently being considered.

But one SA Correctional Services brigadier, who spoke to *The Weekly Mail* off the record, said it had been decided to phase the practice out.

'Comedy of errors' as 100 witnesses are overlooked

By Melody McDougall
Vereeniging Bureau

252

A "comedy of errors" based on an apparent misunderstanding yesterday unfolded in the Supreme Court sitting in Vereeniging and led to a dramatic turnabout in the Sebokeng inquest.

This was the discovery that only 37 of the 137 people (allegedly all Inkatha supporters) arrested at the Sebokeng hostel on September 4, 1990 were being

represented by legal counsel Morris Basslian in the inquest.

Until yesterday, it was thought Mr Basslian was appearing for the whole group.

Bringing the matter to the court's attention, Transvaal Deputy Attorney-General Anton Ackermann, who is leading all evidence in the inquest, said this development changed the position as the evidence of the 100 people was of cardinal importance to the hearing.

He added that while under

the impression the group had legal representation, he was unable to approach any of them.

Mr Justice Eddie Stafford, who is chairing the inquest on the deaths of 42 people at the hostel on September 4, agreed it "was a totally different story" if

Mr Basslian was representing only 37. He said Mr Basslian had told him in chambers and put it on record that he was representing all 137 people.

In response, Mr Basslian stated that initially 137 people had

been charged after being arrested at the hostel on September 4. However, charges were later withdrawn against 100 of the group.

Since then, his legal team had been acting only on behalf of the remaining 37 witnesses.

Suggesting that the matter was based on a misunderstanding, Mr Basslian said the mistake was a genuine error, for which he accepted full responsibility, and not one made deliberately to mislead everyone

Referring to the matter as "a comedy of errors", the judge later instructed the investigating officer in the case, Warrant Officer Sidney Puth, to subpoena the 100 men — who are to be approached as people who do not have legal representation.

If they do not want to make statements to the police they could then request legal advice. Yesterday's development is expected to delay the hearing, which was scheduled to finish before the end of the month.

AG: No to appeal in Mdladla case

By CARMEL RICKARD Durban

NATAL'S attorney general has decided not to appeal against the sentence passed in the case of two white Vryheid garage owners charged with causing the death of a black man suspected of stealing parts from their business. (252)

William Mdladla died of burns when he was pushed into an industrial cleaning machine by the garage owners. He landed in scalding water and died soon afterwards.

The judge held there was no evidence proving that the accused knew the water in the machine was hot. The two accused were convicted of assault; one was fined R500 or three months, the other R200 or six weeks.

Lawyers for Human Rights in Johannesburg took up the case, and urged that under new legislation, the AG should appeal as the light sentence imposed was inappropriate. W/M 8/3 - 14/3/77

Explaining the decision not to appeal, deputy AG Les Roberts said an appeal against conviction was not legally possible in a case such as this. The new legislation allows an appeal by the AG against sentence, but such an appeal could be brought only in a case where the sentence was found to be strikingly inadequate or where there had been judicial "misdirection" about the sentence.

In this case, the judge had found the accused guilty of assault, rather than murder or culpable homicide.

During his judgment he said the offence which had to be punished was that the accused used force to push someone into a chamber (*kas*) to induce a sense of claustrophobia so the person would admit an act of which he was possibly guilty and possibly not guilty.

Roberts said that in the light of the assault conviction, based on these narrow grounds, the AG was of the view that it could not be argued the sentence passed was strikingly inadequate.

However, civil rights lawyers said yesterday that even if the law made it impossible for the AG to act in such a case, ordinary people would still gain the impression that "there is one law for prosecuting blacks and another for prosecuting whites".

LHR lawyer Ahmed Motala said that on a closer reading of the new law it appeared that an appeal by the AG was possible only against sentence, not against a conviction believed to be wrong. However, he said trials such as the Mdladla case would continue to cause public disquiet and he urged that the legislation should again be amended so that the AG could appeal against both conviction and sentence in the lower courts and in the supreme courts.

Abolitionists face new fight

PAUL BEZUIDENHOUT's close brush with the noose this week came as a great shock for many in the human rights community.

These abolitionists had formed the impression that the moratorium on hangings announced by the state president last year would lead to the scrapping of the death penalty.

Initially they hoped the death penalty would be abolished completely. When new legislation was introduced which kept hanging on the statute books, the expectation developed that it would not be used.

According to this theory, the state would not wish to pay the political price of discarding the death penalty, but was equally reluctant to face the cost of using it.

The projected scenario was that under the new legislation, the Appellate Division would relieve most of those who came before it on appeal. The sentences of relatively few would be confirmed and, according to this theory, these would be granted clemency by the state president.

Justice Minister Kobie Coetsee's announcement last week of an imminent hanging put paid to these hopes.

The first prisoner scheduled to be hanged was Bezuidenhout whose appeal against the death penalty was refused by the AD in September. A last minute application in the supreme court won him a temporary reprieve while a fuller report on his mental condition is researched and submitted to the minister of justice as part of a petition for his death penalty to be set aside.

Commenting on the media reports that Bezuidenhout's hanging would signal the end of the moratorium on executions, Coetsee's department said that the moratorium announced by the state president had ended with the enactment of the new legislation and claimed that the death penalty was approved of "by the majority of South

LAW & THE COURTS

CARMEL RICKARD

Africans"

But the resumption of hangings is at odds with the spirit of a "new South Africa" the government claims it is trying to create, and attempts are now being made to explain the political manoeuvring within government circles which might lie behind the decision.

According to some theorists, there is conflict between the departments of justice and of the state president, with justice determined to implement executions, even if this is contrary to the climate being created by the state president.

Another theory is that the Justice Department is throwing down the gauntlet, in effect challenging the state to scrap the death penalty or use it, so that the intolerable situation of hundreds of condemned prisoners waiting on death row does not continue indefinitely.

Whatever the political background, the announcement that hangings are to resume presents new challenges for abolitionist lobbying. It is also a challenge for lawyers, particularly those acting for clients charged with murder.

Under the old legislation, lawyers for such an accused had to show there were extenuating circumstances surrounding the crime. If they could not prove such circumstances existed, the judge was obliged to sentence the accused to death.

With the new law, judges are no longer obliged to sentence anyone to death. They have to consider all the mitigating and aggravating factors and then use their discretion to decide whether the death penalty would be appropriate.

This should act to the benefit of the ac-

cused because mitigation is a wider concept than extenuation.

If hangings are to resume, all lawyers in South Africa who act for accused in murder trials will have to develop the field of researching and presenting evidence on mitigation more thoroughly. Schooled in gathering extenuating circumstances, they will have to take a broader view, in countries such as the United States, this section of a murder trial can take an average of a week.

Judgments of the AD in confirming or setting aside death sentences under the new law will obviously prove vital in the development of this field.

There is also a challenge to the state.

The presentation of mitigation is a sophisticated aspect of defending a capital case, yet new legislation providing for mitigation to be presented in murder cases was introduced last year without additional resources to translate the concept into reality.

Efforts must be stepped up urgently to ensure *pro deo* counsel in death penalty cases are given the resources necessary to research and present every piece of evidence on mitigation which could be relevant. This would include a proper investigation into the accused's background, a full psycho-social assessment and a developmental history.

The work involved preparing this quality of evidence in mitigation would obviously go far beyond what is possible on the funds presently paid by the state to *pro deo* counsel.

If the changes in the law are to be given real meaning, the state will have to find the extra funding to compile and present this evidence.

● Denis Kuy, SC, assisted by De Wet Marais and instructed by Lawyers for Human Rights, appeared for Bezuidenhout.

HOUSE OF REPRESENTATIVES

QUESTIONS

Indicates translated version

For written reply

Own Affairs

Posts of assistant director

1 Mr C E GREEN asked the Minister of the Budget +

- (1) (a) How many posts of assistant director are vacant at each of the regional offices of the Administration House of Representatives in Port Elizabeth, (b) how long has each of these posts been vacant and (c) why the posts have not been filled permanently as yet,
- (2) whether the posts concerned are being utilised by the said Administration, if so, (a) in what way and (b) where,
- (3) whether Brown officials are available locally for these posts, if so, (a) from what date have these officials qualified for the posts and (b) why have they not been appointed to them as yet?

C17E

The MINISTER OF THE BUDGET

- (1) (a) One vacant post of assistant director exists at the regional office of the Department of Local Government, Housing and Agriculture
- (b) Since 1 May 1990
- (c) Since the candidate nominated by the Minister's Council does not occupy the first position on the current priority list, the Commission for the Administration has indicated that a thorough motivation be given for each of the officers occupying higher

Handwritten: 16/12/1991

positions than the nominated officer as to why they are not being considered suitable for appointment in the post This action is receiving attention

- (2) No, (a) and (b) Fall away
- (3) (a) and (b) Refer to paragraph (1)(c) above

Transport of personal effects

2 Mr C E GREEN asked the Minister of the Budget +

- (1) Whether the personal effects of a certain Ministerial Representative, whose name has been furnished to the Minister's Department for the purpose of his reply, were transported with Government vehicles to a private residence in Jeffreys Bay on or about 14 December 1990, if so, (a) why, (b) what are the circumstances surrounding this matter and (c) who is this Ministerial Representative,
- (2) whether these effects were transported in terms of regulations which apply to the Administration House of Representatives, if so, what regulations, if not, why not,
- (3) (a)(i) at whose request and (ii) on whose instructions were the above-mentioned effects so transported and (b) who authorised it,
- (4) whether any steps have been taken or are contemplated against the persons concerned, if not, why not, if so, (a) what steps and (b) when?

C18E

The MINISTER OF THE BUDGET

- (1) No, (a), (b) and (c) Fall away
- (2) Falls away
- (3) (a) (i), (ii) and (b) Fall away
- (4) (a) and (b) Fall away

HOUSE OF ASSEMBLY

QUESTIONS

Indicates translated version

For written reply

General Affairs

SA missions abroad

79 Adv T LANGLEY asked the Minister of Foreign Affairs +

- (1) Whether any (a) South African missions have been opened in (i) Eastern Europe and (ii) elsewhere since 1 January 1990 and (b) such missions are to be opened, if so, where, in each case,
- (2) what posts (a) are there, and (b) are manned by (i) South Africans and (ii) local citizens, at each of these new missions,
- (3) whether any South African missions in foreign countries have been closed since the above-mentioned date, if so, what are the relevant details?

Handwritten: 259

B222E

The MINISTER OF FOREIGN AFFAIRS

- (1) Yes
 - (a) (i) Budapest (Hungary)
 - (ii) Lomé (Togo)
 - Abidjan (Côte d'Ivoire)
 - Port Louis (Mauritius)
 - (b) (i) Prague (Czechoslovakia)
 - Bucharest (Rumania)
 - Sofia (Bulgaria)
 - Warsaw (Poland)
 - (ii) Antananarivo (Madagascar)
 - Rabat (Morocco)
- (2) (a) and (b)

BUDAPEST

- (i) South Africans
- 3 Line function posts
- 3 Administrative posts

Handwritten: 259

- (ii) Local Citizens 9 Administrative posts (this includes consular clerks, accountants, translators, typists, etc)
- 4 General posts (chauffeurs, cleaners, messengers, gardeners, etc)

LOME

- (i) South Africans
- 1 Line function post
- 1 Administrative post

(ii) Local Citizens

- 3 Administrative posts
- 6 General posts

ABIDJAN

- (i) South Africans
- 2 Line function posts
- 2 Administrative posts
- (ii) Local Citizens
- 6 Administrative posts
- 11 General posts

PORT LOUIS.

- (i) South Africans
- 2 Line function posts
- 2 Administrative posts
- (ii) Local Citizens
- 7 Administrative posts
- 7 General posts

POSTS PLANNED

PRAQUE

- (i) South Africans
- 2 Line function posts
- 2 Administrative posts
- (ii) Local Citizens
- 7 Administrative posts
- 4 General posts

BUCHAREST

- (i) South Africans
- 2 Line function posts
- 2 Administrative posts
- (ii) Local Citizens
- 7 Administrative posts
- 4 General posts

SOFIA

*Revised
8/3/71*

- (i) South Africans
 - 2 Line function posts
 - 2 Administrative posts
- (ii) Local Citizens
 - 7 Administrative posts
 - 4 General posts

259

WARSAW

- (i) South Africans
 - 2 Line function posts
 - 2 Administrative posts
- (ii) Local Citizens
 - 7 Administrative posts
 - 4 General posts

ANTANANARIVO

- (i) South Africans
 - 2 Line function posts
 - 2 Administrative posts
- (ii) Local Citizens
 - 6 Administrative posts
 - 9 General posts

RABAT

- (i) South Africans
 - 2 Line function posts
 - 2 Administrative posts
- (ii) Local Citizens
 - 7 Administrative posts
 - 4 General posts

(3) Yes

Saint Denis (Réunion)
La Paz (Bolivia)

Fw 8/3/91

Fw 8/3/91

252

CURRENT AFFAIRS

ants."

Hanekom says the ANC is already educating its membership that money paid out in reparations will, in fact, be money diverted from other State responsibilities, such as schools and hospitals "For the first time it will be our money. It will be a new way of thinking for people to realise a future government is theirs and that the way money is spent is dependent on them too."

The document notes that "how we get the land back needs a strategy in which land is redistributed without too much disruption of production and which does not cost too much." It cautions that land reform must be introduced carefully, "not only to meet demand for land by rural people, but also to allow the government to give the proper support services and training so that the land can be used most productively."

CAPITAL PUNISHMENT

IN THE AIR Fw 8/3/91

252

Double murderer Paul Bezuidenhout may have been saved from the gallows for the moment but at least 12 more people could hang at any time if government decides to continue with executions

The Department of Justice has given no reason for the decision to resume executions

after a 15-month moratorium. The timing is puzzling. The moratorium announced by President F W de Klerk expired on July 27 but continued unofficially until Bezuidenhout's execution was set down for Tuesday this week. Apart from the moral debate over capital punishment, observers are asking why De Klerk should be risking international condemnation at a time when he is creating such a good image.

On Monday, in the Pretoria Supreme Court, Acting Justice Human granted a stay of Bezuidenhout's execution to allow further evidence in mitigation to be gathered.

Another 12 condemned men have all had appeals rejected in terms of the new Criminal Procedures Amendment Act, introduced on July 27. There are 341 people on Death Row in Pretoria, according to Justice Minister Kobie Coetsee. Those sentenced in terms of the new law are likely to be hanged first.

A spokeswoman for Lawyers for Human Rights (LHR) — which initiated Bezuidenhout's successful last-minute action — says there is some controversy in legal circles whether people sentenced to death in terms of the old law and who have had appeals rejected in terms of the new law, can be executed. "An appeal can take its cue only from the evidence led at the trial court," she says. "If it is based on a court hearing under the old law, it is more restricted than the new legislation makes provision for."

Bezuidenhout's case now goes before the minister of justice who, before the court hearing on Monday, told the LHR he was "not prepared to grant a stay of execution." Under normal procedure he is now expected to send the case back to court.

The new evidence will primarily be from psychiatrists and psychologists who on Monday submitted that Bezuidenhout (22) might be retarded. He was convicted in 1989 of the murder of a 54-year-old woman and a two-year-old child. Bezuidenhout was severely disadvantaged socially, his mother was repeatedly beaten up by his stepfather and she died after one such beating. Bezuidenhout was himself a victim of severe beatings; and he received no education.

These are factors, argue some lawyers, that should have been taken into account as mitigating circumstances under the new law. Tension is high on Death Row between the 50 or more political prisoners, who could be indemnified in the near future, and ordinary criminals who fear they will be executed while politicals walk free.

ANC spokeswoman Gill Marcus has also called for a moratorium on executions until there is a new constitution — a view echoed by the LHR and the Black Sash. But Marcus says the ANC has no formal position on capital punishment. "It has to be discussed by our membership, this is not something we can issue a decree on."



KEN OWEN

571 words 10/3/91

ON SUNDAY



THE purpose of section 205 of the Criminal Procedure Act, against which foolish journalists have been railing in the past week, is to facilitate the administration of justice by the medieval device of applying increasing misery until the victim's spirit is broken. It is the pursuit of truth by torture.

The journalists' demonstrations and protests (what the newspapers, in their usual loose fashion, called "outrage") were precipitated by the sentencing to prison of Patrick Lawrence, a man much admired for his integrity.

Personally, I suspect that Lawrence's career has suffered — in an age when a gift for deceptive packaging is the most highly valued of all commercial skills — from his excessive insistence on precision, balance and truthfulness. He has mastered one essential part of modern journalism, which is to inform, but not the more pressing need to entertain.

He also tends to say what others dare not. It was he, for example, who first drew my attention to the evil practice of "necklacing" which other journalists had witnessed, but failed to disclose. He has, as I say, too much integrity.

That was why he found himself before a magistrate who sentenced him, and of necessity his family, to a spell of misery — 10 days in prison — in order to induce him to disclose the identity of an informant to whom he had promised anonymity. The matter is on appeal, and I shall not discuss the merits of the case, but the Criminal Procedure Act, following the Inquisition, provides for a progressive and unlimited increase in suffering until the witness, like Galileo, denies his own beliefs. Lawrence's first sentence can, in theory, be followed by another, and another, forever and ever, until he cracks.

The misery is cunningly heightened by the fact that he can himself end it. The moment the information is torn from him, he will be set free. So the Act promises.

South Africa is not alone in employing these barbarous methods in the noble cause of justice. In the United States one journalist who refused to name an informant was sent to prison until I (and most other journalists) lost track of him.

The reason for this harshness is obvious: some means must be found to compel recalcitrant witnesses to provide information necessary to the administration of justice. What does one say to the mother, or child, or

spouse, of a murder victim whose killer goes free because a witness refuses, whether from abject fear or noble principle, to assist the courts to arrive at the truth?

INDEED, the journalists who demonstrated in support of Lawrence this week seemed unconscious of the irony of doing so outside the court where two frightened witnesses were induced that very day, by threat of jail, to testify in the trial of Winnie Mandela. The duty to assist in the administration of justice rests on all citizens.

The exceptions, such as the right not to incriminate oneself, or the right to private consultation with one's lawyer, are those which are patently necessary to the administration of justice. I can think of no other justifiable exception.

Nevertheless, journalists around the world do observe an ethical duty to protect their informants for the simple reason that a free press cannot otherwise function at all. Ironically, the journalist who exposes corruption in government, or an impending military coup, may do great social good but end up in jail for refusing to identify his sources.

This ethical convention is so strong that journalists like Lawrence continually defy the law to uphold it. They pay a high price. Thami Mazwai of the Sowetan was sentenced to 18 months in prison for refusing to testify. Other journalists, dating back to George Hearst in the 30s, have served lesser sentences.

Some years ago the gifted political correspondent of the Sunday Express, Graham Watts, was forced by section 205 to affirm that a report he had written was correct. He was not actually asked to name the source, who was known and in police custody, but he nevertheless found the experience so distasteful that he emigrated.

He would not work as a journalist if it compelled him to be a police mark. He is mistaken when they demand the repeal of section 205. What is required is not its repeal but its amendment to eliminate the aspect of torture.

Nobody, surely, will argue that citizens be permitted to choose what laws to obey, and what to defy. Like conscientious objectors against military conscription, journalists who re-

fuse to disclose sources must expect punishment, if only to prevent the law itself from falling into contempt.

Less obvious, but equally true, is that punishment may separate the truly ethical journalist from the charlatan who uses "professional ethics" as a cover to manufacture quotes, to invent sources, and to embroider facts. (I once knew a reporter who invented a whole town, including ratepayers, town council, and local scandals. Then he committed suicide.)

As matters stand, a dishonest journalist may hope to invent a source, spend 10 days or so in prison, and go free a hero because the courts don't like using torture, at least not in a glare of publicity.

A punitive sentence for refusing to assist the administration of justice — say six months — would not deter the truly ethical journalist from protecting his sources, but it might persuade the dishonest journalist that the price of lying had become too high.

At the same time, given such a clear conflict between the law and the ethical convictions of journalists, one might expect the government to be circumspect in using section 205 in South Africa, the contrary is true. The law is used so often as to be seen as an instrument of intimidation. My own experience, in fact, sug-

gests it is most likely to be used when the police feel themselves to have been criticised.

On one occasion, my informant risked his career by identifying himself in order to keep me out of jail, on the other, I was able to identify my newspaper's source, with his permission, as an acting judge, author of a document already known to the police. In neither case, though the police got what they wanted, did any prosecution ensue. Surprise, surprise.

A pending amendment to the Act transfers the decision to use section 205 from public prosecutors to attorneys general. That is an improvement.

A further improvement would be achieved if the Act required the police to affirm under oath that they had exhausted all other avenues of inquiry and that the information they sought was available in no other way.

That would not, perhaps, keep people like Patrick Lawrence out of jail but it might reduce the number of occasions on which the police could invoke medieval methods in an attempt to break the spirit of a person of principle. At least it would put the police at some risk of prosecution for perjury if it turned out later that they had not been acting in good faith.

Majority of crime students 252 support capital punishment

Sowetan 11/3/91
SA PRESS ASSOCIATION

MORE than 60 percent of 746 criminology students support the continued use of the death penalty, according to a survey released on Friday by the University of South Africa

The research project polled students from 10 universities across the country. Of the respondents, 76 were Indian, 426 white, 12 coloured and 232 black.

The survey found that 61,53 percent of the group were in favour of the retention of capital punishment, while 38,47

thought it should be abolished.

Regarding the moratorium on executions, 40,8 percent of the group favoured it to a great extent, 23,32 to a lesser extent, 10,05 percent were uncertain, and 27,08 per cent were against it.

Negotiations

On the relation between the death penalty and constitutional negotiations, 56,9 percent of black respondents thought that if the death penalty was abolished, it would have a positive effect on negotiations, while only 30,75 percent of the white students believed this.

Political Staff

THE government has decided to extend community-based sentences, overruling police objections to the plan.

This was announced yesterday by the Minister of Correctional Services, Mr Kobie Coetsee, in reply to a question by Sandton's DP MP Mr Dave Dalling regarding prison overcrowding.

Legislation is to be introduced during the current session of Parlia-

Govt takes decision on sentencing

ment to authorise magistrates and judges to impose "a sentence option of probation or correctional supervision"

"The mentioned option will be managed by the Department of Correctional Services and is

expected to help minimise the overcrowding of prisons.

"This system is already successfully operated in various countries abroad, for instance in Canada."

However, in January this year, the deputy CID chief, Major-General Jaap Joubert, strongly criticised the increasing use of community service sentences because this did not have the same deterrent effect as prison sentences.

- (d) Approximately 44 000 cubic metres of effluent daily
- (2) Yes The discharge of effluent directly into the Mandini River was unacceptable as the assimilative capacity of the water is insufficient for the amount of pollutants discharged by the industry. Dissolved oxygen has been identified as the most critical variable as regards water quality. Aesthetical problems regarding colour and foam are still being investigated for possible improvements.

The Department of Water Affairs and Forestry required that an impact study be done by an independent consultant to determine the effect of dissolved oxygen on the recognised water uses in the lower Tugela River downstream of the point of discharge. The CSIR who acted as consultant found that if the organic substances of the effluent in terms of the biological oxygen requirement be limited to 315 milligram per litre, there will be no detrimental effect on the dissolved oxygen in the water environment. This finding and subsequent recommendation was accepted by the Department.

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Falcon 50 airliner

*8 Mr R V CARLISLE asked the Minister of Transport

- (1) Whether his Department recently acquired a Falcon 50 airliner for use by VIPs for approximately R13 600 000, if so, when, *Answered 12/3/91*
- (2) whether the current list price for this airliner is approximately R34 020 000 (13 500 000 American dollars), if so,
- (3) whether he will explain this transaction to the House?

B391E

The MINISTER OF TRANSPORT

- (1) The Department of Transport did not recently acquire a Falcon 50 airliner but it did rather acquire a Falcon 900 and therefore I will treat the question as if it was asked in connection with a Falcon 900 and not a Falcon 50. On 19 November

HOUSE OF ASSEMBLY

Notwithstanding the fact that a large number of accused appear in the courts without legal representation, it is notable that only about 18 percent of them are convicted and committed to prison. Our system of adjudication of criminal matters provides for various intrinsic safeguards to prevent miscarriages of justice and this means that accused appearing in courts are not necessarily prejudiced by a lack of legal representation. *Answered 12/3/91*

Furthermore, considerable progress has been made regarding the enquiry into and the establishment of a public defender system. It is envisaged that a pilot project will be launched on 1 June 1991 in Johannesburg. This is the first project on which various bodies and organizations combined forces and it is hoped that their efforts will lead to the establishment of a public defender system of unquestionable legitimacy which will eventually provide quality legal services to many more indigent accused.

Certain members, investigations

*10 Mr J VAN ECK asked the Minister of Correctional Services *Answered 12/3/91*

- (1) Whether any investigations have been instituted against certain members of his Department in King William's Town in connection with certain actions taken by them between 21 and 23 March 1990, if so, what actions, *Answered 12/3/91*
- (2) whether these investigations have been completed, if so, what were the (a) recommendations and (b) findings of the presiding officer,
- (3) whether the Commissioner of Prisons approved and/or accepted the above recommendations, if not, what steps did the Commissioner take against each of the members in question?

B406E

The MINISTER OF CORRECTIONAL SERVICES

- (1) Yes. Inquiries in terms of the provisions of Regulation 77 of the Prisons Regulations promulgated in terms of section 94 of the Prisons Act, 1959 (Act 8 of 1959) were instituted against thirty-six (36) members of the King William's Town Prison in order to report to the Commis-

sioner of Correctional Services on their suitability or otherwise of remaining in the Department of Correctional Services or retaining their ranks or seniority. The conduct of the members which gave rise to the inquiries was inter-alia the following — the members took part in a strike and this conduct was considered prejudicial to the administration, discipline and efficiency of the Department of Correctional Services,

— as a result of their participation in strikes the members were suspended and they failed to comply with the conditions of their suspension

- (2) Yes *Answered 12/3/91*
- (a) In compliance with Prisons Regulation 77(4) a presiding officer makes no recommendations following the conclusion of an inquiry. He only records his findings.

(b) The presiding officer found that twelve of the defendants were not competent to retain their rank, twelve were not suitable for retaining their seniority in rank while the remaining twelve defendants were found to be competent to continue their services in the rank and position they occupied before the inquiry.

(3) In terms of the stipulations of Prisons Regulation number 77(4) the commissioned officer who held the inquiry pronounced his findings and his reasons therefor at the conclusion thereof and submitted the record of the proceedings together with a written statement of his findings and his reasons therefor to the delegate of the Commissioner for a decision in terms of section 13 of the Prisons Act, 1959 (Act 8 of 1959). It was decided that four (4) members would be dismissed, two (2) members be demoted in rank and thirty (30) members be demoted in seniority.

Section 13 of the Prisons Act also states that a member may appeal to the Minister against any order discharging him or demoting him in rank or in seniority and in such event the Minister may confirm,

HOUSE OF ASSEMBLY

submitted for consideration, to the successor to the NTC, the South African Roads Board

Certain person appointed as attorney-general

*18 Mr A J LEON asked the Minister of Justice

(1) Whether a certain person, whose name has been furnished to the Minister's Department for the purpose of his reply, has been appointed as an attorney-general, if so, what are the relevant details,

(2) whether this person's appointment relates to the Harms Commission of Inquiry, if so, (a) what was the extent of his involvement in the said Commission and (b) what is the (i) nature, (ii) extent and (iii) jurisdiction of the duties he has had to perform since the termination of the Harms Commission of Inquiry?

Hansard 12/3/91 252 B462E

The MINISTER OF JUSTICE

(1) The person concerned has not been appointed, in terms of section 3(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), by the State President as an Attorney-General for a specific area of jurisdiction. He, however, holds the rank of an Attorney-General with corresponding salary. Officially he is assigned to the personnel of the Attorney-General, Cape Town. It may be added that it is possible in terms of the Public Service Act, 1984 (Act 111 of 1984), and the Public Service Staff Code to promote a person out of adjustment on sufficient cause. In this case he was prevented from filling the vacancy of Attorney-General, Kimberley due to his service with the Harms Commission of Inquiry

(2) No (a) and (b) fall away

Margit Rye seizure

*19 Mr R R HULLEY asked the Minister of Defence *Hansard 12/3/91*

(1) Whether he ordered, authorized, and/or was informed in advance of, the recent seizure of a vessel named the *Margit Rye* by members of the South African Navy or any other members of the South African Defence Force from its berth at Durban docks, if so, (a)(i) why was the seizure ordered and (ii) who carried it out and (b)

HOUSE OF ASSEMBLY

on what authority was the order given to members of the Defence Force to seize this vessel,

(2) whether any disciplinary steps have been taken arising from this matter, if not, why not, if so, what steps,

(3) whether the *Margit Rye* has been the subject of any recent legal procedures involving the Defence Force, if so, what procedures?

Hansard 12/3/91 B463E

The MINISTER OF DEFENCE

(1) I became aware of the matter in a routine manner. My authorization was not expected as the responsibility rests with the SA Defence Force

(a) and (b) The seizure was ordered by an officer of the SA Defence Force who had the necessary authority and who acted on legal advice and in good faith

(2) No, as above

(3) Yes. Two civil actions were brought before the Natal Provincial Division of the Supreme Court of South Africa. I am prepared to supply further information about this matter to the Honourable Member in confidence

Transkei Defence Force: amounts allocated

*20 Mr R V CARLISLE asked the Minister of Foreign Affairs *Hansard 12/3/91*

(1) Whether, in respect of Programme 3 of Vote 4 of the Estimates of Expenditure for the 1990-91 financial year, any amounts were allocated for the Transkei Defence Force, if so, (a) what amounts and (b) for what purpose,

(2) whether any training or equipment is provided for the Transkei Defence Force by the South African Defence Force, Armscor or any other South African body, if so, (a) what training or equipment and (b) by whom?

Hansard 12/3/91 B464E

The MINISTER OF FOREIGN AFFAIRS

(1) Yes

(a) R467 543

(b) The secondment of five members of

the South African Defence Force as pilots and air technical staff

(2) I suggest that this question be put to the Minister of Defence

Walvis Bay discussions

*21 Mr C W EGLIN asked the Minister of Foreign Affairs *Hansard 12/3/91*

(1) Whether the South African Government has received any request from the Government of Namibia to enter into discussions on the future of Walvis Bay, if so, what was the Government's response to this request, *Hansard 12/3/91*

(2) whether the Government will take steps to initiate such discussions? B469E

The MINISTER OF FOREIGN AFFAIRS

(1) and (2)

A joint statement by the Governments of South Africa and Namibia was issued in Cape Town and in Windhoek on 28 February 1991 to the effect that the South African and Namibian Governments had agreed to meet in Cape Town on 14 March 1991 to commence with negotiations on the subject of Walvis Bay

UNHC return of exiles

*22 Mr C W EGLIN asked the Minister of Foreign Affairs *Hansard 12/3/91*

(1) Whether, with reference to his reply to Question No 20 on 26 February 1991, the South African Government is considering extending an invitation to the United Nations High Commission for Refugees to play a role in connection with the return of exiles to South Africa, if so,

(2) whether a decision has been reached in regard to this matter, if so, what is the decision? *Hansard 12/3/91* B470E

The MINISTER OF FOREIGN AFFAIRS

(1) and (2) The matter is still receiving attention

Good Hope Teacher Training College

*23 Miss M SMUTS asked the Minister of Education and Training *Hansard 12/3/91*

(1) (a) When did the Good Hope Teacher Training College start functioning and (b) on what premises was it situated,

(2) whether it was promised or intended that a proper campus be built for this college, if not, why not, if so, (a) when will it be built and (b) at what estimated cost,

(3) how many students are studying at the college at present?

Hansard 12/3/91 B471E

The MINISTER OF EDUCATION AND TRAINING

(1) (a) January 1987 *Hansard 12/3/91*

(b) In buildings of the Eloxulweni Primary School in Khayelitsha

(2) Yes

(a) The planning of the new campus will be completed at the end of May 1991. The commencement of the building programme will depend on the availability of funds

(b) Approximately R9,5 million

(3) 771 fulltime and 110 part-time students (as on 7 March 1991)

Strategic stockpiles: value

*24 Mr K M ANDREW asked the Minister of Trade and Industry and Tourism *Hansard 12/3/91*

What is the current value of the strategic stockpiles (a) owned and/or (b) financed by the State? *Hansard 12/3/91* B472E

The MINISTER OF TRADE AND INDUSTRY AND TOURISM

The original objective of the stockpiling scheme of strategic commodities for general use, administered by the Department of Trade and Industry, was to give effect to the national stockpiling policy and strategy regarding identified commodities in order to promote the economic and security objectives of the RSA

The stockpiling scheme was established some 25 years ago, at a time of increasing threats of sanctions and boycotts against the RSA. The scheme comprised the build-up of stocks of essential strategic imported commodities to act as a buffer, should effect be given to such threats

HOUSE OF ASSEMBLY

Hospital chief needs support rather than censure ~~Masa~~

WELKOM — Goldfields regional hospital superintendent Dr Gert van Zyl has been found not guilty of unethical behaviour by the Medical Association of South Africa (Masa)

This follows charges of alleged racial discrimination laid against him by the Goldfields Hospital Desegregation Campaign Committee. The committee laid a complaint last week against Van Zyl for, it alleged, practising racial discrimination in the Welkom, Virginia and Odendaalsrus hospitals.

Masa's Goldfields branch said in a statement that Van Zyl did not, in terms of general patient care, discriminate in his management of hospital patients.

He had inherited the enormous problems of a fragmented health care system and seemed to have done everything possible within financial and administrative constraints imposed on him.

A meeting of Masa's ethical committee on Monday had been impressed with his integrity and commitment to a difficult task, and concluded he needed Masa's support

rather than censure

In Cape Town yesterday, Health Minister Dr Rina Venter asked all four provincial administrators to investigate implementation of policy guidelines on the orderly management of hospital patients laid down by the National Health Policy Council.

She said in a statement this request was a result of media reports on admission of patients to the Welkom Hospital.

As a result of Venter's request, Transvaal MEC for Health Services Fanie Ferreira yesterday ordered a survey at all hospitals in the province regarding the handling and admission of patients.

Free State Health Services MEC Roelf Dreyer yesterday denied allegations that he was resisting instructions from the Health Minister to desegregate his hospitals.

He added he would not bow to calls for his resignation.

Dreyer insisted he was doing his best to carry out government's stated desegregation policy, but that it was a slow process — Sapa

CP man is jailed for two weeks

PRETORIA — Conservative Party chief secretary Andries Beyers was sentenced to 14 days' imprisonment in the Pretoria Regional Court yesterday after refusing to divulge the identity of a source in terms of a subpoena served on him under Section 205 of the Criminal Procedures Act.

He was, however, granted bail of R500 pending appeal.

Beyers was subpoenaed following an article in the February edition of CP mouthpiece Die Patriot, which said that a key state witness in the Winnie Mandela trial, Gabriel Pelo Mekgwe, had been kidnapped by the state's intelligence services.

Pretoria magistrate M Kilian said the submission that the President had given the assurance there had not been a kidnapping, and therefore no crime, did not hold water.

He said it was Beyers and his source who alleged there had been a crime, and only a full police investigation could determine if a crime had been committed.

Beyers refused to divulge the identity on the grounds that he had promised not to do so — Sapa



... must have forgotten

SUPREME
MANUFACTURING
HOLDINGS
LIMITED
Number 8700962/06

Justice — if it can be paid for

w/ Matshili 15/3-21/3/91

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LAW & THE COURTS

CARMEL RICKARD

A potentially trend setting appeal heard in Bloemfontein last week could show the way forward for lawyers acting under new death penalty legislation.

It concerns five accused, four of them sentenced to death, who were convicted following the murder of four strike-breakers during a national strike by railway workers in 1987.

The appeal, by Wilson Matshili and four others, illustrates the kind of fully developed mitigation case which could increasingly be heard by the courts in the wake of changes to the law.

Under the new legislation, judges have discretion on whether to sentence an accused to death, and will consider what mitigating (and aggravating) factors are present, a far wider test than the previous requirement to prove whether extenuating circumstances existed. This makes the presentation of wide-ranging mitigation evidence a crucial part of a murder trial.

During the strikers' trial, their defence put up what is believed to be the most extensive extenuation argument yet to come before a South African court.

Under the new legislation, this was "converted" into an even more extensive mitigation presentation at the time the appeal was argued. It reviewed the circumstances of the strike as perceived by the workers, indicating the build-up of anger and frustration at what they believed was management intransigence and unfair behaviour, as a background to their actions.

But the significant innovation in the argument was the presentation of a fully developed picture of the social psychology dynamics involved during strikers' meetings. It was argued that the meeting place was hot and airless. People sang and danced, emotions were high and a feeling of group

solidarity was strong. People became increasingly angry and hungry as their money ran out without a sign that management would act justly and resolve the problems which had given rise to the strike.

This was the potentially explosive situation, it was alleged, which transformed normally law-abiding workers into men capable of participating in a mass killing.

In heads of argument the defence outlined the findings of five expert witnesses.

While some previous cases have involved evidence on de-individuation and related factors, it has tended to be piecemeal. In this case however, the defence developed a whole theory of social psychology combined with evidence on crowd behaviour. Counsel argued the trial court erred in its assessment of the overall impact of group dynamics, giving too little weight to the "processes inherent in de-individuation, the effect of situational forces, frustration-aggression, obedience, group polarisation and associated themes".

In argument the defence outlined these theories and how the conditions prevailing before and at the scene of the killings were likely to have impacted on the accused in line with these theories. Detailed attention was also given to each accused and how he was affected both by the background from which he came, and by his circumstances immediately before the killings.

Counsel submitted that the involvement of the accused in the strike and the "final fateful steps" which led to their participat-

ing in the killings, should be seen "as a tragic culmination of a lifetime of law-abiding effort to make ends meet".

A sketch of the background of each accused was given including "their morality, religious beliefs, obedience to law, employment history and their history as fathers and/or husbands", as these factors become important in establishing mitigation. It was argued that Matshili, for example, was "undoubtedly de-individuated", that he was frustrated, without food, subject to powerful conformity pressure and profoundly affected by a sense of relative deprivation and that he "perceived the power of the group as sovereign".

Because of the number of accused, and because unions were involved, finance was available to fund a detailed mitigation investigation, involving overseas and local experts. This level of funding would not be available to *pro deo* counsel in "normal" murder trials.

The groundwork has now been done in outlining mitigation based on social-psychology theory — how far it is acceptable to the AD will be seen when judgment is handed down — and it will be available for others working on similar cases.

But the chief problem remains finance. Without adequate funding, counsel for persons convicted in a murder case will not be able to research and present all the relevant mitigating factors.

The court must have before it everything that could help persuade against the death penalty. Otherwise it could be argued that the accused was sent to the gallows without the court considering all possible grounds for a reprieve.

● David Sogot SC assisted by Martin Luitingh and Gys Rautenbach, instructed by Bell, Dewar and Hall together with Nicholls, Cambanis, Koopasamy and Pillay appeared for the accused.

Magistrate acts on (252) *stow 16/3/91* 'unjust' court delays

A JOHANNESBURG magistrate boosted calls for speedy justice yesterday by setting a time limit on decisions by the Attorney-General in two murder cases.

Magistrate Chris Erasmus remanded two cases in which 11 men face charges of murder, but warned he would not grant further postponements. He also refused the dates requested by prosecutor Susan Hulme, saying he was not prepared to grant lengthy postponements.

He said although the court could not free people who had spent long terms in jail waiting for their trials, it could refuse further remands. If the court did not have this discretion, it would merely be a "rubber stamp" for the Attorney-General's office.

His decision follows representations by the lawyers of the ac-

SUSAN SMUTS

cused, six of whom have spent more than a year in custody. The other five have spent over six months in jail. None has been granted bail.

Mr Erasmus said he had found 32 cases where people had been held in custody before being asked to plead, or a decision by the Attorney-General had been made.

Skhumbuso Mkefa (19), Patrick Motha (18), Dibe Nhlapo (20), Simon Sibisi (19), Themba Nkosi (18) and Nicholas Chonga (19) will appear in court on March 20. Siphon Tshabalala (23), Siphon Madonsela (23), Pasco Tsum (19), Wellington Manana (20) and Paul Malinga (18) will appear on March 22.

New Look Labour court in focus

By 1988, government and business had had enough. The Industrial Court, in their eyes, had become altogether too sympathetic to worker interests. It had to be curbed, and a Labour Appeal Court (LAC), presided over by a Supreme Court judge, was to be the principal instrument for their purpose. If a judge was the overseer of labour law, they felt, good commercial commonsense would return to labour relations.

Government, now intent on reconciliation, seems to be ruing its actions. There seems to be regret, too, in the ranks of enlightened employers, whose concerns are now more with labour concord than confrontation. But many employers still endorse the amendments and mightily applaud the performance of the LAC, which are seen as restoring the prerogatives that were rightfully theirs.

That the LAC should please them is understandable. After a mere two years, its tally reads roughly like this: Bosses 13, Workers 2. In its short history the LAC has drastically altered labour practice in SA. Its judgments have done grievous bodily harm to the jurisprudence the Industrial Court painstakingly established on the right to strike, unfair dismissal and the rules of employer/union power play (for example overtime

bans; benefits for strikers and non-strikers; bargaining levels).

Anti-union and anti-worker decisions are by no means the only source of complaint. Appeal procedures are mercilessly long — in many cases they add a year or more to the dispute resolution process.

And a ruling by the LAC may be followed by a further appeal to the Appellate Division in Bloemfontein — another two years down the line.

The selection of judges for the LAC, and their selection of the assessors who sit with them, have also become sullied by controversy. On occasion judges have presided who seem to believe their own notions of right and wrong will be sufficient to dispose of the case, little realising how thoroughly those notions are infected by the individualism of the common law and how much can be gained from past Industrial Court decisions and international norms.

Frequently, too, both assessors in a case have been well-known employer advocates. We know they discharge their various roles with probity and conscientiousness, but the ambiguity of their position,

EDWIN CAMERON

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coupled with the apparent preceptions of the judges they sit with, do little to reassure workers of the impartiality of the proceedings.

Almost everyone accepts that there should be an appeal from the rulings of the Industrial Court. The concern, therefore, is not about the principle but about its application in practice. It is, moreover, shared by Saccola — the employer body, with whom the unions have been holding talks over the amendments — which has agreed that the LAC will have to be changed.

The debate now taking place among employer and union deal brokers and influential figures in government and the judiciary is about how to set up an LAC that enjoys maximum legitimacy on all sides.

A consensus seems to be emerging that the LAC must be divorced from the Supreme Court but enjoy equal status, and that the judges staffing it must have the ability and expertise

to make an appropriate contribution to the development of a responsive labour law.

Also tentatively emerging is agreement that:

□ Judges must be handpicked for their knowledge of labour law and their sensitivity to its claims,

□ The LAC cannot consist only of judges nor only of lawyers. There should be additional members drawn equally from two panels — one employer-nominated, one union-nominated. These "wingpersons" may or may not be lawyers. Experience in other countries has shown that wingpersons play a pivotal role in helping judges understand labour issues. It also shows that they can be independent-minded; wingpersons frequently make a decision adverse to the side which nominated them,

□ Wingpersons should have the power to outvote the professional judges on factual and legal questions.

□ There should be flexibility on how many judges and wingpersons are required to sit in any specific appeal, depending on the complexity of the case, and

□ Procedures should be expedited and the number of appeals limited. The double appeal system is cumbersome and serves no one's interests.

More than the details of these common thoughts, what is remarkable is that consensus about their broad outline has emerged at all. The fractious animosity of three years back seems to have been supplanted — at least for the moment — with a more realistic appreciation of the fact that economic life is a common enterprise indispensable to all, and that simple coexistence requires that deals between the major players be struck.

Does that sound familiar? Perhaps. In the constitutional arena some consider that events over the last year evidence the same prudent and reasonable insights. But the stakes in both spheres are high since failure means calamity for all. Perhaps the labour consensus — including, modestly enough, such details of judicial hierarchy and structure as the parties seem to have agreed on — can encourage further concord along the way.

□ This is an edited version of an article in the latest edition of Employment Law, of which Cameron is co-editor.

Reprieve 252 for two on Death Row

Sowetan 18/3/91

THE Appeal Court in Bloemfontein on Friday substituted 25-year imprisonment for death sentences two KwaMashu men had received for the murder of seven youths.

The men are Emmanuel Khanyile and Bhekani Wilfred Phewa of Lindelani squatter camp.

They were sentenced following the kidnapping of eight boys and a girl from KwaMashu on March 16 1987.

Girl

The girl was later released

Seven of the boys were butchered to death while the eighth was left for dead.

Mr Justice Nienaber said that the trial court could not be faulted for imposing the death sentence on the basis of the law at the time.

But the approach had since changed. Given the setting in which the seven children had been murdered, it could not be said

that the death sentence was the only proper one for Khanyile and Phewa

A severe sentence was nevertheless called for

To kill seven innocent children in cold blood, albeit in retaliation for harm they believed had been done by supporters of the UDF, was so abhorrent as to call for retribution by means of a sentence of the utmost severity, said the judge

He believed a sentence of 25 years' imprisonment was appropriate for both Khanyile and Phewa

Mr Justice Hoexter and Mr Justice Milne concurred in setting aside the death sentences - Sapa.

Judging African crimes of the supernatural

8 Feb 18/3/91

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WITCHCRAFT killings, a traditional African phenomenon still practised in rural areas, has placed South African courts in the situation of having to judge the merits of the crime committed in the context of a Third World tradition.

The gruesome revenge meted out on suspected "witches", as well as the terrible fate of ritual-murder victims, has been well documented in the past. And despite the advent of urbanisation and modernised lifestyles in South Africa's black communities, these traditions remain strong.

While SA law proclaims witch-hunting a crime, it nevertheless takes into consideration the cultural beliefs of those accused of witchcraft murder, according to Professor W Hammond-Tooke of the anthropology department at

A sentence of 12 years in jail for a brutal and premeditated murder might seem unjustly lenient to the casual observer. But when looked at in the context of witchcraft in the rural African scenario, it can be better understood.

HELEN GRANGE looks at how South African courts address this problem.

the University of the Witwatersrand.

This month, a multi murderer, David Tshethla, was sentenced by the Pretoria Supreme Court to 12 years in jail for the killing of his two-year-old step-daughter by cutting her throat.

Mr Justice Swart, in sentencing Tshethla, found that despite the terrible deed, the murder "had been committed in circumstances where Tshethla believed in witchcraft and the power of the supernatural".

Judges in the independent homeland of Venda have often

been presented with similar crimes and, in the same manner, dealt with the extenuating circumstances.

"It depends on how the lawyers handle a case as to how the intention behind the killing is summed up," says Professor Hammond-Tooke.

"Although anthropologists can adapt a relativist position in respect of witchcraft murders, the courts cannot adopt the same stance. If they did, what would be done with people like Saddam Hussein? I do think there are certain human absolutes based on common-law concepts like 'Thou shalt

not kill'".

Indeed, South African law has tried to prevent the witchcraft tradition from turning evil through a law passed in 1957 — the Suppression of Witchcraft Act.

This Act makes it a crime to accuse a person of being a witch, although Professor Hammond-Tooke is not aware of this law having led to arrests in the past.

Professor Hammond-Tooke explains that witchcraft in African society is often a metaphor for other socio-political tensions, and that the connection between the witch hunter

and the alleged witch should always be explored to get the true picture.

"The witch is seen as the 'traitor in the gates' and there is often a swift movement in perception from traitor to witch. The witch, established in the community, is therefore perceived as extremely dangerous, attacking his own kin and people in the neighbourhood," he says.

However, a distinction should be made between socio-politically inspired witchcraft killings and the straightforward traditional-style witchcraft murder.

Last week a court case was in progress to try five young men in Venda who had allegedly assaulted and killed a village believed to have been the source of lightning which destroyed a kraal. □

Professor admits his study defamed chief

Pretoria Correspondent

252

1971 and translated into English in 1987

A Pretoria University professor, who is being sued for R90 000 damages by an exiled Bafokeng tribal chief, has admitted to defaming the chief

Professor R D Coertze, of the department of anthropology and archaeology at Tuks, conceded in the Pretoria Supreme Court that he unintentionally defamed Chief E P L Molotlegi

Chief Molotlegi, chief of the Bafokeng tribe in Bophuthatswana, went into self-imposed exile after detention and allegations that he played a part in the unsuccessful Bophuthatswana coup attempt in 1988

His younger brother was then placed in charge of the tribe by Bophuthatswana President Lucas Mangope

Professor Coertze admitted the defamation and has tendered to compensate the chief

The only issues to be decided by Mr Justice de Villiers were the amount of damages to be awarded and an order in terms of the costs.

The defamation suit resulted from research work done in 1968 by Professor Coertze which was published in Afrikaans in

In March 1989, Professor Coertze issued a press statement apologising for "erroneous material" contained in the work and offered unconditional apology to the acting chief. The work, "Bafokeng Family Law and Law of Succession", apparently gave the impression Chief Molotlegi's younger brother, M G Molotlegi, had no claim to succession

Professor Coertze said in his apology, which was nationally published, that he had submitted his work to Chief Molotlegi three times, but the mistake had not been rectified

Chief Molotlegi contended that Professor Coertze had defamed him because the press statement implied he had tried to use Professor Coertze's work to discredit his younger brother's claim to succession of chieftainship of the Bafokeng tribe

He said the statement intended to mean and would have been perceived by a reasonable reader to mean that he (Chief Molotlegi) deliberately and dishonestly omitted to correct the errors in the work

The hearing continues

Mar 19/3/91

Tribal context plays crucial role in judging witchcraft murder cases

Aug 19/3/91
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A sentence of 12 years in jail for a brutal and premeditated murder might seem unjustly lenient to the casual observer. But when looked at in the context of witchcraft in the rural African scenario, it can be better understood. HELEN GRANGE looks at how South African courts address this unique problem ...

JOHANNESBURG — Witchcraft killings, a traditional African phenomenon still practised widely in rural areas, has placed South African courts in a peculiar situation

Well schooled in dealing with day-to-day crimes in a First World society, South Africa's legal system does occasionally find itself having to judge the merits of crimes committed in the context of a unique Third World tradition

The gruesome revenge meted out on suspected "witches", as well as the terrible fate of ritual murder victims, has been well documented in the past — and has naturally left a bad taste in the mouths of people in both black and white society

But despite the advent of urbanisation and modernised lifestyles in South Africa's black communities, these traditions remain strong

12 years jail

While South African law proclaims witch-hunting a crime, it does nevertheless take into consideration the cultural beliefs of those accused of witchcraft murder, according to Professor W Hammond-Tooke, of the Anthropology Department at the University of the Witwatersrand

This month a muti murderer, David Tshethla, was sentenced by the Pretoria Supreme Court to 12 years in jail for the killing of his two-year-old stepdaughter by cutting her throat. He wished to use her body for the purpose of curing him of illness

Mr Justice Swart, in sentencing Tshethla, found that despite the terrible deed, the murder "had been committed in circumstances where Tshethla believed in witchcraft and the power of the supernatural"

(Judges in the independent

homeland of Venda have often been presented with similar crimes and in the same manner, dealt with the extenuating circumstances)

"It depends on how the lawyers handle a case as to how the intention behind the killing is summed up," says Professor Hammond-Tooke

"Although anthropologists can adopt a relativist position in respect of witchcraft murders, the courts cannot adopt the same stance. If they did, what would be done with people like Saddam Hussein? I do think there are certain human absolutes based on common law concepts like 'Thou shalt not kill'"

Accusation

Indeed, South African law has tried to prevent the witchcraft tradition from turning evil through a law passed in 1957 — the Suppression of Witchcraft Act

This Act makes it a crime to accuse a person of being a witch, although Professor Hammond-Tooke is not aware of this law having led to arrests in the past

He explains that witchcraft in African society is often a metaphor for other socio-political tensions, and that the connection between the witch hunter and the alleged witch should always be explored to get the true picture

"The witch is seen as the 'traitor in the gates' and there is often a swift movement in perception from traitor to witch. The witch, established in the community, is therefore perceived as extremely dangerous, attacking his own kin and people in the neighbourhood," he says

However, a distinction should be made between socio-politically inspired witchcraft killings and the straight-forward traditional style witchcraft murder

Hansard 19/3/91
 Local Authorities Act, 1982 (Act 102 of 1982) is considered when a quorum for decision-making no longer exists at a local authority, in order to ensure the continued administration and rendering of municipal services in Black local authority areas

- (2) (a) Presently nil
 (b) Falls away

Reporting Organizations and Persons: report

*8 Mr D J DALLING asked the Minister of Justice

Whether the Registrar of Reporting Organizations and Persons has submitted a report in terms of section 7(1) of the Disclosure of Foreign Funding Act, No 26 of 1989, if not, (a) why not and (b) when is it anticipated that the report will be (i) completed and (ii) tabled?

B484E

THE DEPUTY MINISTER OF JUSTICE

Yes,

(a) and (b)(i) fall away

(b)(ii) The report will be tabled in Parliament shortly

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Pollsmoor Prison: differences in facilities

*9 Mr D J DALLING asked the Minister of Correctional Services

Whether there were any differences in the (a) accommodation, (b) recreational facilities and/or (c) remuneration offered to White and Coloured warders at Pollsmoor Prison as at 31 December 1990, if so, (i) what differences in each case and (ii) why?

Hansard 19/3/91

B485E

THE MINISTER OF CORRECTIONAL SERVICES

(a) I refer the Honourable Member to my reply in the House of Assembly to question no 18 of 20 February 1990 (Hansard col 78 and 79) in which I reacted to a similar question from him. With regard to part (a) of the Honourable Member's latest question, part (a) of my reply to question no 18 of 20 February 1990 still

HOUSE OF ASSEMBLY

applies. Nevertheless, I wish to inform the Honourable Member that against the background of the Government's initiatives, I have already approved a new policy which is presently being implemented in this Department.

In terms of this new policy living accommodation on premises country-wide is now accessible to all personnel in accordance with Prisons Regulation 25. This implies that accommodation is allocated discretionarily by commanders at the hand of inter alia the following

- functional requirements,
- allocation according to level of post;
- merit and efficiency principle; and
- advertising of available accommodation

The following norms will automatically be applicable in respect of the allocation of housing on reserves in order to ensure orderly community life.

- the combating of overpopulation on living premises,
- a prohibition on subleasing;
- keeping premises tidy and hygienic;
- promotion of healthy neighbour relations and the combating of behaviour which may upset these relations on such premises, and
- the orderly use of public facilities on reserves according to accepted norms and standards

The aforementioned policy will naturally not result in an overnight change in the current situation at Pollsmoor. A progressive phasing-in will be followed in order to prevent large-scale disruption, costs, dissatisfaction and artificiality.

(b) In order to keep abreast of government policy with regard to the utilization of recreational facilities, all available recreational facilities at the Pollsmoor Prison have been accessible to all members since November 1990. All the recreational facilities at Pollsmoor are now accessible to all members of the Department of Correctional Services.

(c) No *Hansard 19/3/91*

(i) and (ii) All disparity in respect of remuneration has already been eliminated with effect from 1 March 1988. There is thus no difference in the remuneration in respect of the mentioned population groups

Nuclear Non-Proliferation Treaty

*10 Mr C W EGLIN asked the Minister of Foreign Affairs.

Whether the Government has taken a decision to sign the Nuclear Non-Proliferation Treaty, if not, why not, if so, when does it intend to sign the treaty?

Hansard 19/3/91

B489E

THE MINISTER OF FOREIGN AFFAIRS.

The South African Government stated publicly in September 1990 that it was prepared to accede to the Non-Proliferation Treaty in the context of an equal commitment by other states in the Southern African region.

The South African Government together with a number of other Governments of Southern Africa supports the idea of a nuclear weapons-free zone in the Southern Africa region. The Government would also like to see this concept extended to the entire continent of Africa as a nuclear weapons-free zone and in this regard has noted with interest the support for this idea by a number of African states at the Fourth Nuclear Non-Proliferation Treaty Review Conference in Geneva during August-September 1990.

In the meantime the South African Government has agreed to conclude a comprehensive safeguards agreement with the International Atomic Energy Agency in respect of the country's nuclear facilities as a demonstration of the Government's commitment to adherence to non-proliferation responsibilities and objectives

Two persons: applications for indemnity

*11 Mr L FUCHS asked the Minister of Justice.

(1) Whether he has received any applications for indemnity by two persons, whose names have been furnished to the Minister's Department for the purpose of his reply; if so, (a) what are the names of the

persons concerned and (b) what was the outcome of these applications.

(2) whether the Government has any intention of entering into an agreement with the ANC in regard to the release of either of these two persons? *Hansard 19/3/91* B490E

Hansard 19/3/91

B490E

The MINISTER OF JUSTICE

(1) (a) The persons concerned have applied for release

(b) The applications are currently being prepared for consideration

(2) No

Certain prisoners: health

*12 Mr L FUCHS asked the Minister of Correctional Services *Hansard 19/3/91*

(1) Whether he will make a statement on the state of health of a certain prisoner, whose name has been furnished to the Minister's Department for the purpose of his reply, if so, (a) what is this prisoner's name and (b) what are the relevant details;

(2) whether the State intends releasing this prisoner on humanitarian or other grounds, if not, why not, if so, (a) when and (b) on what grounds? B491E

THE MINISTER OF CORRECTIONAL SERVICES

(1) No

The privacy of prisoners as well as the professional independence of the medical practitioners who are responsible for their health care, is respected. It is therefore policy not to make details available or to comment on the state of health of individual prisoners. However, it can be confirmed that he has access to adequate medical and psychiatric treatment

(a) and (b) Fall away

(2) The person in question was declared a State President's patient by the Cape Provincial Division of the Supreme Court of South Africa and his status can only be changed if the provisions of Section 29 of the Mental Health Act, 1973 (Act No 18 of 1973) have been fully met.

(a) and (b) Fall away

HOUSE OF ASSEMBLY

Angger over Skiety

THREE of the six indemnified Yengeni trialists have joined internal ANC chairman Mr Walter Sisulu in criticising the indemnity given to Order Boerevolk leader Mr Piet "Skiety" Rudolph.

Sowetan 20/3/91
Far rightwing organisations have welcomed Mr Rudolph's release.

On Tuesday night Minister of Justice and Correctional Services Mr Kobie Coetsee said the Government had given indemnity to Rudolph, the six Yengeni trialists and 33 others.

But Sisulu said: "I don't want to be used. The Government is giving me the impression that it is using the indemnity given to ANC members as a cover to indemnify the rightwing."

He said he was dissatisfied with the slow "trickle" of releases of political prisoners.

"I'm not concerned with what the Government does with the rightwing, but the slow trickle of releases of ANC members is annoying me. Why can't they release all of them at once instead of freeing them in ones and twos?"

"We want all ANC prisoners to be freed now."

● To Page 2

P. 1, 0.

Outcry over Piet 'Skiet'

●From Page 1



Indemnified at last . . . ABOVE: Umkhonto we Sizwe commander Tony Yengeni and his wife Lumka, who was charged on the Yengeni trial with him; BELOW: Militant rightwinger Piet "Skiet" Rudolph with his wife Breggie shortly after his release from prison.



Umkhonto we Sizwe commander Mr Tony Yengeni said it was a great relief to have been indemnified

"We have already given up hope because of the Government's inconsistencies in keeping its side of agreements."

He has a "lot of reservations" about being indemnified with Rudolph, he said *Sowetan 20/3/91*

"This says a lot about the Government's intentions. All political prisoners, and I mean those people who have been jailed for fighting apartheid, must be freed immediately

"The very fact that 'Piet Skiet' has been indemnified criminalises us and takes away the distinction of what we fought for and he stood for"

His wife, Mrs Lumka Yengeni, said she was happy to be free

"But I'm unhappy that we are being used with 'Piet Skiet'"

Former University of Cape Town lecturer Ms Jenny Schreiner said the indemnity given to "us and 'Piet Skiet' smacked of political tactics"

She hoped that their indemnity was the beginning of the release of all political prisoners, return of all exiles, full implementation of the Pretoria Minute, and the stopping of all political trials, she said

She would devote herself to strengthening the alliance between the ANC, South African Communist Party and Congress of South African Trade Unions and to promote demands for an interim government and a constituent assembly, she said

Mrs Olive Yengeni, Tony Yengeni's mother, welcomed the indemnity given to her son and his fellow-trialists

The 31 are CG Niehaus, SF Mkhonta, PM Williams, SGL Malamba, RM Dumisa, FK Morule, SN Maphululo, KF Mkhwamubi, D Hlongwane, WS Makhathini, MB Mokgosi, PNGqungwana, ZE Mazant, GP Ramahllo, A Pule, G Szzani, ZM Dikaza, HD Dipitse, GM Mabengeza, PM Selopo, ZA Molotsi, OB Nqubelani, SM Dlomo, NS Seboge and J Ngqondela.

A special amnesty to two others (Mr VJ Nene and Mr MM Moyiwa) both of whom have served a substantial portion of their life sentences was also announced.

Both were sentenced to life along with ANC leader in Natal, Mr Harry Gwala in July 1977 for attempting to overthrow the Government by force.

The three were serving their second term for political offences. Nene had earlier been arrested at the age of 16, and served a 10-year sentence from 1964 to 1974.

In the case of the "Yengeni trialists" unconditional indemnity has been granted to Tony Silembiso, Yengeni Jennifer Ann Schreiner, Lumka Elizabeth Yengeni, Michael Mzimkhulu Lumbambo, Mbutho Richmond Ndutke and Wellington Monyameli Mkwandla.

Justice stands in the dock

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AGREERING that the Winnie Mandela trial had highlighted the need for a witness protection system, Mr Southey said "You could get to a stage where there were no proper trials any more — when gangsterism would reign in criminal, political and major commercial trials. Something must be done quickly, but it is not as simple as it sounds."

Professor Mureinik pointed out that if witnesses were too frightened to give evidence, the public would believe the trial was unfair, both to the side relying on the testimony and to the side needing to discredit the evidence to vindicate itself.

He found it encouraging that the State was now reluctant to jail people in "protective custody" without even a suggestion that they had done anything wrong, which he said was even harder to justify than detaining people without trial.

The other three lawyers also found the idea of enforced protection abhorrent.

Protection after the trial presented different problems.

Mr Myburgh pointed out it would be far more difficult to hide a former witness in a country the size of South Africa than in a country as large as the United States.

Professor van Rooyen cautioned that a new identity should be arranged only if the witness wanted it.

Mr Southey suggested following the system used in Ireland in which witnesses too afraid of the IRA to testify were allowed to give evidence wearing hoods.

On the call by some attorneys for the reintroduction of the jury system, Mr Myburgh said he did not believe a jury could give a fair trial. Assuming the jury would be made up of people from different strata of society, with different educational, economic and racial backgrounds, they would be likely to have differing political views.

How would one constitute a jury to try a white farmer who had beaten his black farm worker, he asked. Could the jurors rise above their own feelings? Mr Myburgh said it took education, training and experience to make a good judicial officer, but juries

Three legal issues have attracted controversy recently — witness protection, the jury system and people's courts. CATHY STAGG discusses them with the chairman of the Johannesburg Bar Council, John Myburgh, SC; the chairman of the Association of Law Societies, Ed Southey; the dean of the faculty of law at Wits University, Etienne Mureinik; and professor of criminal and procedural law at Unisa, Jan van Rooyen.

were selected on an ad hoc basis. Professor Mureinik said the case for restoring jury trials rested largely on sentimentality. In a few celebrated cases over the centuries, juries thwarted unpopular (and sometimes politically inspired) prosecutions by refusing to convict, sometimes in the face of strong evidence. That won them the reputation of being a champion of liberty, undeservedly because juries convict unjustly far more often than they acquit in the defence of freedom, he said.

A jury exposed to evidence suggesting the accused had a criminal character tended to convict, irrespective of the evidence. Juries were given to irrational verdicts because they were required, without legal training, to apply subtle, complex directions given to them by the judge on the law and the evidence, he said.

Juries would clash with a powerful international trend towards requiring reasons for a decision, because they deliberated and voted in secret and did not justify their verdict.

might solve the problem. This was done in Europe, where such people were chosen by ballot and, with the judge, produced a joint verdict which was a powerful restraint against caprice or prejudice.

Professor van Rooyen referred to the difference between common law crimes, which everyone understood, and statutory offences, which a jury might not be able to decide on. And if juries did not cover all trials, he asked, what was the point of having them?

Mr Southey said South Africa could not afford a jury system. There would be jurors' fees, the necessity of rebuilding courtrooms, and there would still be all the difficulties which existed before juries were scrapped, because of the racially diverse population. Would a white accused be entitled to demand an all-white jury, he asked? "Desirable as they may be in theory, they cause more problems than they solve."

Mr Southey and Professor van Rooyen felt people's courts, in which lay people decided simple criminal matters, could work if they were strictly controlled.

They suggested something similar to the small claims court. But both said there would need to be a trained person, perhaps a justice of the peace, who could guide the proceedings.

Professor Mureinik preferred not to comment except to observe that everyone wanted the judicial system to be simpler and more accessible — but the simpler and more accessible it was, the easier it would be to forfeit procedural fairness.

Mr Myburgh said there would be no need for people's courts if law and order returned. He said courts manned by untrained people had sprung up in the townships because the victims of crime were aggrieved that the alleged criminal was not arrested, tried and punished.

"The justice system is at the end, we need to start at the beginning. We need a huge increase in the number of police, and proper compensation so that the right calibre person is attracted to the force. Once there is a return to law and order, there will be no need for kangaroo courts." □

SAA eyes USSR, Eastern Europe

B Day 20/3/91

LINDEN BIRNS

SAA was investigating the possibility of operating regular flights to the Soviet Union and Eastern Europe, and would probably fly three times a week to New York once the US reinstated its landing rights, CE Gert van der Veer said yesterday.

Van der Veer said in an interview that opening new commercial and trade markets in Eastern Europe and the Soviet Union would be carefully monitored.

Once market and traffic volumes warranted it, SAA would apply for routes to these areas.

"We are in contact with East European and Soviet airlines, but there's no immediate market," he said.

Criticism

"For the foreseeable future we'll continue to interline with these airlines via our European destinations.

"We already have an interline agreement with LOT of Poland through Frankfurt," Van der Veer said.

He denied criticism that SAA would operate flights to the US, once the ban on the airline's landing rights was lifted, only for political status reasons.

"We are a profitable business; we fly to make money out of it.

"The latest statistics show that SAA carries more US-originated passengers now — through Europe — than it ever did before

the imposition of sanctions," he said. American Airlines's SA spokesman Mike Tyler said although a bilateral agreement with SAA would be offered as a right to a US carrier, it was doubtful that this right would be exercised as SA represented a very small market.

"SAA will probably be the only party to operate on routes between Johannesburg and the US, as it really wouldn't be a worthwhile market for a US carrier," Tyler said.

Van der Veer said SAA would probably operate three flights a week to New York when the go-ahead to resume flights was given.

"Prior to the imposition of sanctions, SAA flew five weekly flights to New York, so we've no doubt of a market need," Van der Veer said.

He added SA's international civil aviation policy would come under review next month but it was unlikely that any meaningful liberalisation would take place on international routes to and from SA.

The focus would probably be on allowing new players into the market while maintaining the current bilateral agreement policy, rather than a complete deregulation, he said.

This was in line with international trends.

See Page 4



Winnie Mandela, flanked by a Court yesterday.

Trial trio's indemnity hopes high

PRETORIA — The three right-wingers allegedly responsible for the Melrose House bombing in Pretoria last year had applied to President F W de Klerk for indemnity, but had not received a reply, the Pretoria Regional Court heard yesterday.

Regional magistrate WF Kruger granted a postponement to June 6 at the request of counsel for Jan Dirk Heyns du Bruyn, 37, of Krugersdorp, Gert Johannes Jacobus du Bruyn, 30, of Elandsrand, and Artur Detlef Guderian, 23, of Blyvooruitzicht.

Counsel for the defence J Roussouw indicated that in the light of the "perpetrator" (presumed to be extreme right-wing Orde Boerevolk leader Piet "Skiet" Rudolph) being granted indemnity on Monday, the chances were his clients would receive similar treatment.

As yet, the three men have not been formally charged.

They face charges of sabotage and the illegal possession of an explosive device.

The charges are related to the explosion of a home-made bomb at Pretoria's historic Melrose House on May 23 last year.

The men's bail of R2 000 each was extended.

They have to report every Wednesday to their nearest police stations. — Sapa.

Alexandra mayor accused of 'importing murderers'

B Day 20/3/91

WILSON ZWANE

ALEXANDRA Civic Organisation (ACO) president Moses Mayekiso yesterday lambasted the township's mayor Prince Mokoena for allegedly fuelling instability by bringing in foreigners who "mercilessly murdered" residents.

Addressing a media briefing in Johannesburg, Mayekiso said his organisation condemned forces which wanted to reverse political gains made by Alexandra's people.

Alexandra has been the scene of intense factional violence in which more than 50 people have been killed over the past 10 days. Mokoena, who recently sought a home in Inkatha, had told the ACO leadership he would "hit the community very hard".

"There are also allegations that Mokoena facilitated the influx of foreigners into Alexandra," Mayekiso said. It was believed these "foreigners" included people

from Mozambique, as some were overheard speaking Portuguese.

"The importation of rooidoeke from the East Rand, West Rand, Natal and Mozambique was done behind the scenes, without the knowledge of political organisations, by the third force, which is manipulating structures and leadership of some political organisations.

"This shows how the supposedly progressive organisations are infiltrated by criminals to use innocent members to commit violence," Mayekiso said.

"ACO will intensify its campaign for the resignation of Mokoena and his council. People are staging a sit-in at Mokoena's offices and they have vowed to continue with their protest until Mokoena resigns."

Mokoena could not be reached for comment.

Cast denies trying to derail negotiations

THE Civic Associations of Southern Transvaal (Cast) charged yesterday that it was not a front for the ANC and that its campaign to isolate black town councillors had the support of most residents in townships where it operates.

In a statement in Johannesburg, Cast denounced allegations that its isolation campaign was aimed

at derailing the negotiation process.

"Cast is on record as being supportive of the ANC initiative around talks with the government.

"However, we have also said that the pace and content of the talks must be dictated by the majority of our people.

"The campaign is one way of involving our people

in this process," the organisation said.

In a similar statement, former Daveyton mayor Tom Boya distanced himself from reports that his resignation was precipitated by intimidation from the ANC and Cast.

"The system of the black local authorities is bankrupt," he said. — Sapa

ANC Opp's Indemnity Criticised

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Three of the indemnified Yengeni accused have joined ANC internal leader Walter Sisulu in criticising the indemnity given to Order Boerevolk leader Piet "Skriet" Rudolph

Far right-wing organisations have welcomed Mr Rudolph's release

Other political groupings yesterday cautiously welcomed the decision announced by Minister of Justice and Correctional Services Kobie Coetsee on Monday night which gave indemnity to Mr Rudolph, the six Yengeni accused and 33 others

In a statement issued yesterday, the ANC noted, in contrast, the alacrity with which the release of Mr Rudolph had taken place and the speed with which the Government had acted with regard to indemnity and release of rightwingers

This had taken place although these forces had clearly stated their intention to derail the peace process, the ANC said

Mr Sisulu said "I don't want to be used. The Government is giving me the impression that it is using the indemnity given to ANC members as a cover to indemnify the right wing"

He said he was dissatisfied with the "trickle" of releases of ANC members

Umkhonto we Sizwe commander Tony Yengeni said the indemnity was a great relief

"We had already given up hope because of the Government's inconsistencies in keeping its side of agreements"

But "the very fact that Piet 'Skriet' has been indemnified criminalises us and takes away the distinction of what we fought for and he stood for," he said

His wife, Luinka Yengeni, said she was happy at being freed "But I'm unhappy that we are being used with Piet 'Skriet'"

Former University of Cape Town lecturer Jenny Schreiner said the indemnity given to "us



Indemnity ANC member Carl Niehaus with his wife, Jansie, (right) and a supporter after his release on Monday. Mr Niehaus, who served seven years for treason, was one of 40 political prisoners granted indemnity by the Government this week

and Piet 'Skriet' smacks of political tactics"

She said the Yengeni accused were first arrested 42 months ago and had applied for indemnity in November "We've been complaining for a long time that we were being used as hostages," Ms Schreiner said

PAC publicity secretary Barney Desai said the PAC had always stood for the unconditional release of political pris-

oners and unhampered return of exiles

"The entire thrust has been to normalise and democratise the situation and it is a marvel that Piet 'Skriet' Rudolph, who is doing precisely the opposite in his bombing activities, should now also receive indemnity," said Mr Desai

Democratic Party MP on local government Tony Leon

said his party extended a cautious welcome to the Government's announcement

But this posed immense dangers because the system of justice could be perverted or abused

Azapo publicity secretary Strini Moodley said the major criminals involved in acts of violence had been and continued to be the "Nationalist regime and its agencies" and therefore no congratulations

needed to be offered to them

"Mr Rudolph's crimes remain crimes against humanity and in a liberated Azania such a person will be subjected to a Nuremberg trial," he said

Boerestaat Party leader Robert van Tonder welcomed with "great joy" Mr Rudolph's release and said the Boers' contempt for the Government was now a little less



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WEDNESDAY, 20 MARCH 1991

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Cramond	11	10	55	27	5	9	14	8	110	—
Hilton (N)	6	5	28	29	8	22	25	11	147	—
Howick	46	19	233	128	25	74	52	69	377	—
Impendle Mountain	17	2	63	38	7	24	1	19	96	—
Rise	112	34	416	957	80	237	275	282	877	23
Nottingham Road	7	5	98	28	6	11	23	25	215	—
Plessislaer	800	68	298	264	107	603	112	397	760	1
Preibury	3	4	11	25	—	11	39	7	174	—
Richmond (N)	74	20	76	64	14	55	45	51	289	—
Thorndale	16	4	49	27	5	22	18	25	91	—
Town Hill	3	2	27	21	5	31	56	7	294	—
Hammarisdale	24	6	30	39	2	111	19	29	169	—

Note

I also wish to draw the honourable member's attention to the note on the answer to written question no 4 which was asked in the House of Assembly

Berea police station: offences

33 Mr P H P GASTROW asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary of business premises, (g) burglary of residential premises, (h) robbery with aggravating circumstances, (i) robbery, (j) common theft, (k) theft of vehicles and cycles, (l) possession of drugs and (m) dealing in drugs were reported at the Berea police station in the Durban police district of the Port Natal Division in 1990?

The MINISTER OF LAW AND ORDER

- (a) 26
(b) 8
(c) 44
(d) 168
(e) 11
(f) 4
(g) 878
(h) 159
(i) 1

712

- (j) 1 081
(k) 1 360
(l) 1
(m) 0

Note

The honourable member is informed that the Port Natal Division is now known as Natal Region

I also wish to draw the honourable member's attention to the note on the answer to written question no 4 which was asked in the House of Assembly

C R Swart police station: offences

34 Mr P H P GASTROW asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary of business premises, (g) burglary of residential premises, (h) robbery with aggravating circumstances, (i) robbery, (j) common theft, (k) theft of vehicles and cycles, (l) possession of drugs and (m) dealing in drugs were reported at the C R Swart police station in the Durban police district of the Port Natal Division in 1990?

The MINISTER OF LAW AND ORDER

- (a) 75
(b) 42

713

WEDNESDAY, 20 MARCH 1991

- (c) 351
(d) 859
(e) 86
(f) 1 033
(g) 245
(h) 1 078
(i) 666
(j) 3 746
(k) 2 618
(l) 75
(m) —

Note.

I also wish to draw the honourable member's attention to the note on the answer to written question no 4 which was asked in the House of Assembly

Point police station: offences

35 Mr P H P GASTROW asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary of business premises, (g) burglary of residential premises, (h) robbery with aggravating circumstances, (i) robbery, (j) common theft, (k) theft of vehicles and cycles, (l) possession of drugs and (m) dealing in drugs were reported at the Point police station in the Durban police district of the Port Natal Division in 1990?

The MINISTER OF LAW AND ORDER

- (a) 15
(b) 3
(c) 84
(d) 292
(e) 20

714

- (f) 196
(g) 173
(h) 105
(i) 103
(j) 1 266
(k) 462
(l) 25
(m) —

Note

I also wish to draw the honourable member's attention to the note on the answer to written question no 4 which was asked in the House of Assembly

Persons without legal representation

39 Mr L FUCHS asked the Minister of Justice

How many persons appeared in (a)(i) district and (ii) regional courts and (b) the Supreme Court in each province in 1990 without legal representation?

The MINISTER OF JUSTICE

- (a) *659
(b) 75

*Public secondary schools

Cape Town police district offences

40 Mr C W EGLIN asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) robbery, (g) theft of vehicles and cycles, (h) damage to property, (i) housebreaking with intent to steal and theft and (j) possession of drugs were reported at each specified police station in the Cape Town police district in 1990?

The MINISTER OF LAW AND ORDER

- (a) 50
(b) 9
(c) 15
(d) 538
(e) 8
(f) 97
(g) 806
(h) 52
(i) 424
(j) 71
(k) 1 490
(l) 210
(m) 31
(n) 1
(o) 2

Differences over a constitutional court

A CONSTITUTIONAL court system in a new South Africa could become an extension of government should it be managed by government officials or supporters.

On the other hand, a new South African constitution was generally accepted as unavoidable, and a new constitutional court was of the utmost importance.

These were the contrasting views of two senior counsel who debated the issue of a constitutional court for South Africa.

Mr Arthur Chaskalson and Mr Mac van der Merwe were members of a panel at a debate organised by Lawyers for Human Rights in Pretoria on Tuesday.

A constitutional court may have to address the redistribution of land and in-

OWN CORRESPONDENT

come, test the validity of acts passed by Parliament and have the power to declare them null and void.

The constitutional court had to be the highest court and its judgments should be binding on all courts, including the Appellate Division, he argued.

Opposing his stance Van der Merwe said he believed the Appeal Court had to be the highest forum, even in constitutional matters.

"A constitutional court can easily become a political body and just become an extension of Parliament although it would be called a court," Van der Merwe said.

Sowetan 21/3/91

(252)

Advocate's fees queried in Parliament

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Sowetan 21/3/91

HEFTY fees paid by the State to a prominent Pretoria advocate have again come up in questions in Parliament.

This is the second time in a week that Mr Louis Visser's name has arisen in the House of Assembly - he was named too in questions about fees paid those who represented the police at the Harms Commission.

The Minister of Foreign Affairs, Mr Pik Botha, said yesterday that Visser was sent to the US in 1988 to help combat economic sanctions against South Africa.

It was important then that people thoroughly acquainted with the state of

emergency, which had caused a negative reaction worldwide, go to the US to explain it to decision-makers and to be available to answer critical questions.

Visser received travel expenses and applicable subsistence costs.

Payment

"Is the minister saying that other than his expenses, he received no remuneration?" asked Mr Robin Carlisle (DP Wynberg).

"Not from my department."

Carlisle asked if Visser could have been paid by any other department.

"Most probably," said Botha.

"Would the honourable minister be

able to steer me, perhaps, in the direction of the department that did pay him?" asked Carlisle.

"Consult Sherlock Holmes," said Botha.

Carlisle described the exchange as more "ministerial evasion" involving Visser's remuneration.

"We now know that Visser's fees have been as high as R66 000 a month; that he has been fairly continuously retained by the State over a period of years; that his earnings from the State exceed R1 million and may be more than double that amount, and that he had his fees reduced at least twice by the Pretoria Bar Council," Carlisle said.

Sowetan Correspondent

We were not told of probe - lawyers

Sowetan 22/3/91

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LAWYERS acting for the family of a 16-year-old boy who died in police custody about a year ago have criticised the authorities for holding an inquest into his death without their knowledge.

Nixon Mayibuye Phiri, of Khutsong, died during police interrogation at Welverdiend Police Station, near Carletonville, in January last year.

According to post-mortem results, the cause of death was cerebral haemorrhage associated with external injuries.

The lawyers said they

were notified of the inquest on March 1 - two weeks after it had been held at the Oberholzer Magistrate's Court, Carletonville.

They claimed that normally they would have been informed 14 days before the date of the hearing so that affidavits could be prepared.

Questions

Neither witnesses nor lawyers were at the inquest. Family members should attend an informal inquest so that they could raise questions.

In the case of a formal inquest, witnesses and

others involved are subpoenaed and cross-examined.

Family members and their lawyers have to be present, they said.

The lawyers said letters were submitted to the senior prosecutor at Oberholzer, Mr E Erasmus, magistrate Mrs C Potgieter and Transvaal Attorney-General Mr Don Brunette demanding that the inquest be reopened so that witnesses could be called.

Potgieter said she had not yet received any correspondence from the Phiri lawyers and would make a decision after

studying the facts.

She said the court had previously found that the cause of death was unknown.

Erasmus said the Phiri family were notified of the informal inquest by post, but he could not say whether they had attended the hearing.

The lawyers said: "Since Phiri's death, we have been battling with the authorities to hold a formal inquest and nothing has come of it.

"Phiri died a sinister death. We believe there should be a formal hearing." - *Sowetan Correspondent.*

'Formal inquest needed on death'

By Shehnaaz Bulbulia

Lawyers have criticised the fact that a formal inquest was not held into the death of 16-year-old Nixon Mayibule Phiri of Khutsong, Carletonville, who died during interrogation in police custody more than a year ago.

Lawyers representing the Phiri family told The Star yesterday they had been notified of an informal inquest only on March 1, almost two weeks after it had been held at the magistrate's court in Carletonville.

They claimed that the normal procedure in the case of an informal inquest was that lawyers be notified 14 days before the hearing so that affidavits could be submitted.

Neither witnesses nor lawyers have to be present, but family members should attend an informal inquest so that they can raise questions.

In the case of a formal inquest, witnesses and others involved are subpoenaed and cross-examined. Family members and their lawyers have to be present.

The lawyers representing the Phiri family said letters were submitted to the senior prosecutor of the Oberholzer Magistrate's Court, E Erasmus, to magistrate C Potgieter and to Transvaal Attorney-General Don Brunette demanding that the inquest be reopened so that witnesses could be called.

Mrs Potgieter said yesterday she had not yet received any correspondence from the Phiri lawyers and would make a decision after studying the facts before her.

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formal inquest by post, but she could not say whether they had attended the hearing.

The lawyers said, "Since Phiri's death, we have been battling with the authorities to hold a formal inquest, and nothing has come out of it."

"Phiri died a sinister death. We believe there should be a formal hearing."

Nixon Phiri died on January 16 1990. The postmortem showed the cause of death was cerebral haemorrhage associated with external injuries, which had contributed to shock.

Captain Reg Bloomberg of police headquarters in Pretoria told The Star that the youth died during interrogation while in police custody at Welverdiend police station near Carletonville.

After Phiri's death, people also detained at Welverdiend gave lawyers detailed accounts of how he was allegedly brutally tortured.

Shot dead

Since his death, two key witnesses who were also members of the Khutsong Youth Congress were shot dead by police in two separate incidents last year.

Thomas Tshabalala, who was shot dead on March 7, and Pule Mac Mothupi, who was shot dead on March 4, were allegedly tortured and jailed with Phiri at the police station.

Police said the deaths occurred during unrest-related incidents. Pule was fatally wounded after police fired shots into a mob who were resisting arrest after they allegedly threw a petrol bomb at police vehicles.

Thomas was fatally wounded after police fired birdshot and rubber bullets after an police patrol was trapped by about 100 armed youths.

Section 205 threatens the free flow of information, says Raymond Louw

The watchdog's painful muzzle

Star 22/3/91

THE State's stepped-up use of the legalised torture of the "reveal-your-sources-and-tell-what-you-know" section 205 of the Criminal Procedure Act, to try to force journalists to disclose sources of information, has created confusion about the law and its application.

The other day a newspaper commentator, who should know better, described journalists' protests against the law as "foolish" and wrote that they were mistaken in demanding the repeal of the law. Rather, he said, they should demand its improvement so that the torture aspect could be eliminated. He then proposed an "improvement" whereby police would have to affirm under oath that they had exhausted all other avenues of inquiry and that the information they sought was not available in any other way.

If one looks cynically at what police are prepared to swear to as revealed in court cases and commissions of inquiry, this is meaningless. It merely requires the police to take one small extra step that poses no problems for them to justify starting the torture procedure. And their testimony that they cannot acquire the information in any other way will, in the public view, merely add weight to the justification for using this obnoxious law against journalists.

It is quite true that most countries have a section 205 on their statute books that enables them to extract information from citizens who are thwarting justice. Indeed, it is a necessary adjunct to the legal weapons required by society to deal with criminals.

The original intention of the legislation was to provide a stick to force lesser villains who knew about the activities of bigger villains to disclose information so that the latter could be brought to justice. However, even in regard to crime, democratic states use this legislation sparingly.

Changed

The increasing use of this law against journalists has grown as the emphasis of the journalist's role has changed from chronicler of events and admirer of the accomplishments of the establishment to watchdog of the public interest. In earlier years, too, the public interest generated by disclosures of deceit, corruption or mismanagement in public affairs was so great that authorities were more cautious about acting against the messenger.

But today a biased public is much more apathetic about public issues and journalists are regarded in much less esteem. Some sections of the public are defensive of

the political order and thus antagonistic towards journalists whom they believe are trying to break down that cosy arrangement. These attitudes make it much easier for the authorities to act against journalists.

In South Africa, the situation has been compounded because the Government criminalised opposition politics, extending the range of criminal acts into what would normally be regarded as political matters. With a police force compelled, willingly or unwillingly, to support Government policies and, indeed, helping to carry them out, it is but a small step to torturing journalists with section 205 demands for their sources of information.

Overseas sensitivities are more acute, although even in the United States and Britain, journalists have been jailed for refusing to reveal sources.

But apart from the raw political implications of tackling journalists, the more sophisticated democracies appear to have an understanding of the implications of interference with the free flow of information for the wellbeing of their countries. There are severe detrimental implications for the public.

The first victim is, of course, truth and the disclosure of corruption and maladministration in the

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public domain. People who become aware of such things and want to bring them into the open normally go to the newspapers — generally as an act of last resort when all other avenues prove fruitless. They have always known that newspapers protect sources of information.

But as the police invoke section 205 and try to force journalists to reveal their sources, these informants become increasingly nervous, fearing that the journalist may crack, or worse, that they themselves may feel obliged to come forward to prevent the journalist from going to jail. The inevitable result is that they don't tell — and without public exposure, the likelihood is that the malpractice, or whatever, grows and permeates the administration.

The second result is that journalists and editors will avoid publishing information from confidential sources for fear of the journalist spending long periods in jail.

And in South Africa, of course, one of the overriding dangers ever present in the minds of editors and journalists is the real physical danger that informants could be exposed to if their identities were revealed. There are too many hit squads of all political persuasions and colours.

And so the flow of information

becomes unfree

At least one country, Sweden, is acutely aware of this danger and has gone to great lengths to ensure that the public is informed, particularly about the conduct of public administrations. Its Freedom of the Press Act expressly protects journalists against having to disclose sources of information.

Swedish law provides for a "responsible publisher" to be appointed to be accountable for all breaches of law. This means that no legal action can be brought against persons who contribute to a newspaper as reporters or sources of information.

Demand

Except where State security is involved, State and municipal officials are generally free to give information to newspapers and other media without running the risk of prosecution, and the authorities cannot demand disclosure of a newspaperman's sources.

The law is such that a policeman, who is under an obligation to maintain silence and could be prosecuted for disclosing information about his work to a private person, is free to give that information to a journalist.

But the law goes further in its protection of informants. It lays

down that an author of an article or other contributors to newspapers are entitled to remain anonymous and the "responsible publisher" and the newspaper staff are expressly prohibited from revealing their identities against their wishes. If they do, the publisher or staff can be prosecuted.

The exception to this rule is in criminal cases where freedom of the press is not involved or where the gathering or divulging of information constitutes or involves high treason, espionage or other related serious crimes, in which event a witness may be summoned, but this seldom arises.

Sweden believes that in the interests of clean administration newspapers should have the maximum opportunity to print information on matters of public importance, especially regarding the conduct of public agencies, and therefore, that their sources should be protected.

Exponents of clean administration in South Africa — such as President de Klerk and his Government — may want to take note.

● Raymond Louw, editor and publisher of the weekly current affairs newsletter, Southern Africa Report, is chairman of the Campaign for Open Media. □

Sorting out disputes without standing in the dock

YEARS of complaint that the existing legal system is alienated from communities and too expensive for ordinary people seem suddenly to be bearing fruit

First came the Alexandra Civic Association (ACA) with a carefully worked out proposal for what is in essence an alternative community disputes resolution mechanism. The suggestion was put to the government earlier this year and a joint working group has been established to investigate the matter further

In the meantime, facilities are being established to train people from the community as mediators and arbitrators in disputes which might arise in Alexandra

At about the same time as the ACA met state officials to outline its plan, the government itself introduced a similar concept in its Short Process Bill. This will allow for the appointment of arbitrators and mediators to deal with matters which it is not appropriate for the magistrate's courts to hear

This was followed by another government step. The White Paper on land reform tabled earlier this month provides for a Residential Environment Bill and this in turn is to contain details of mechanisms for settling "disputes that disturb neighbourhood and community relations".

The private sector has now also become involved in the trend, and last week saw the launch of the first alternative dispute resolution centre run by a major law company

All these developments follow growing frustration with the existing mechanisms to deal with disputes, frustration which was at least in part responsible for the development and popularity of people's courts

Many in the communities felt the legal system was discredited, it was fashioned and administered by one racial group only. Many of the laws meted out by the courts

w/ Mail 22/3-27/3/91 (252)

LAW & THE COURTS

Carmel Rickard

were oppressive, the language foreign; the mechanics expensive and too technical.

At the same time as community frustration was growing, increasing legal costs and long delays in bringing cases to court influenced commerce to favour alternative ways of settling business disputes. This is in line with similar moves in the United States and the United Kingdom

Last week, at the launch of an alternative dispute resolution (ADR) centre set up by the Johannesburg legal firm Webber Wentzel, senior partner Carveth Geach underlined this trend. He said in 1980 17 of the biggest US corporations had signed a letter requesting other corporations to pledge themselves "to negotiate and settle by alternative dispute resolution processes early, before litigation takes on a life of its own"

Four years later 46 corporations had adopted the pledge, and, by 1990, the number which had agreed to use alternative disputes procedures had grown to 500. In 1988, it was estimated that between them 61 companies saved about \$49-million by using alternatives to the courts

Geach said he believed it was necessary in South Africa to have a centre where these alternative dispute procedures could be used. It would save business and individuals time, money and stress

"We also hope that in this way we are contributing towards adapting the South African legal system to becoming a more accessible and acceptable mechanism for everyone in the new South Africa."

Associate in the company, Sara Gon, said the ADR centre would provide all the facilities needed by parties wanting to try alternatives to the courts. These included a Johannesburg city centre venue with parking, caucus rooms, a large meeting room and secretarial facilities — phones, faxes and a taping and transcription service

She said the service would probably be used primarily by the commercial sector, but that it would also be available for individuals — in divorce dispute resolution for example — and for communities to resolve disputes, when the facilities would be available at reduced rates

Anyone wanting to use the facilities could use their own arbitrators or mediators, or they could ask for suggestions from the ADR centre, which would provide names of people with expertise in the particular field of the dispute

Some lawyers have expressed concern that use of alternatives to the court will result in fewer precedent-setting cases, Gon said she felt it was too early to tell whether this would be a problem

However, in the US where alternative disputes resolution mechanisms — like the federal mediation and conciliation service — have been available for some time, it has not prevented key issues from getting to the courts for a ruling

As the trend towards alternative dispute resolution mechanisms grows in South Africa it appears likely that more ADR centres, similar to that launched last week, will soon be established in other parts of the country. This is a move which has been welcomed in principle by human rights lawyers working on the Alexandra project, who say ADR centres are a necessary adjunct to the existing legal and court system

● The ADR centre can be contacted at Johannesburg 833-1273

By EMMA GILBEY

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AS the wheels of justice continue to grind on in the Winnie Mandela trial, two patterns of behaviour are beginning to emerge.

One is that the judge, Mr Justice M Stegmann, is scrupulous in ensuring that the trial continues and that every fact that could possibly be relevant to the eventual verdict emerges.

His ruling this week, allowing the state to enter two more cases of kidnapping and assault as "similar fact" evidence, made that clear. His reasons — that Winnie Mandela is a public figure, that the trial has aroused considerable public concern and that the trial must be seen to air all the relevant issues so no one can accuse him of having passed up the opportunity of hearing evidence which could influence his final ruling — indicated the kind of pressure he is under.

It also indicated that Mr Justice Stegmann is aware of those pressures and — more importantly — wishes his comprehension to be recognised.

Both the state prosecutor, Jan Swanepoel, and the judge repeated the point in court this week that justice must be seen to be done in this case. In the pursuit of justice, Mr Justice Stegmann

Justice? No questioning it

22/3-27/3/91

ruled at the beginning of the trial that the charges against the accused should not be dropped, that the defence were entitled to further details about the charges and that state witnesses Kenneth Kgase and Thabiso Mono were not entitled to refuse to testify — even though both said they feared for their lives following the disappearance of the third state witness, Gabriel Mekgwe

It has since emerged that it was the judge's toughness on this issue which caused Mono and Kgase to change their minds and give evidence. Having ruled that they must testify, he ordered them into immediate custody. In those few minutes in the cells the prospect of five years' imprisonment for recalcitrance became real. Without their evidence, there was a real possibility that the state's case would collapse.

The judge prevented that outcome. Now, having ruled the admissibility of the "similar fact" evidence, Mr Justice Stegmann is to rule on another trial within this trial — on

whether a statement made by Mandela's co-defendant and former driver, John Morgan, about the December 1988 kidnapping and assault case is admissible in court. Morgan maintains that the statement he gave to the police was forced out of him and should not be entered into the court record.

With this issue, as with the matter of "similar fact", the state is introducing information into court before the judge rules whether that information is admissible

This ensures that even if the ruling goes against them, the state has made sure that certain facts enter the public domain by being picked up and reported by the press.

So, when arguing that the facts of the September and November 1988 kidnappings and assaults should be allowed, Swanepoel said:

"The state proposes leading evidence of two incidents which is admissible as similar fact evidence. The gist of the evidence is as follows

He then read two detailed accounts of men allegedly being taken against their will in a minibus, in which Mandela was a passenger, to Mandela's house. There, he said, they were allegedly assaulted — in one case being lifted and dropped, much the same as the allegations in this case. In the first case the men were released, but Swanepoel's concluding line of the second case: "He was never seen again," was sinister in its implications, and merited a prominent place on the evening news and in the morning papers.

Similarly with the Morgan case. The statement might not yet be admitted, but, in having Colonel Oosthuizen, of the Soweto murder and robbery squad, read out helthy portions of it, the public now knows that Morgan is alleged to have said that Mandela slapped Stormie Seiper, that she is alleged to have said to Stormie, "Such a little person, do you also sleep with Paul Verryn and let him f--- you up the a---?" When Stormie denied this she is alleged to have said "This thing speaks s—"

Some newspapers may have softened the language but, as Swanepoel would say, the gist of the statement is out there

Internal probe a whitewash, inquest is told

Star 23/3/91

MEMBERS of the SA Defence Force have been accused of conspiring to defeat the ends of justice by the judge heading the inquest into the deaths of 42 men, women and children at Sebokeng on September 4 last year.

Mr Justice Eddie Stafford said that an earlier SADF internal inquiry had been a "total whitewash". He presented his findings in the Vereeniging Supreme Court yesterday.

A member of the SADF was held accountable for one death, that of Mr Hamilton Golela.

He is Rifleman John Booyesen (22), who after the judge's findings could possibly face a charge of murder arising out of Mr Golela's death. The findings have been forwarded to the Attorney-General.

Probability

Mr Justice Stafford further said "on probability", Unit 17 of the SADF, stationed at Vereeniging, could be responsible for the death of another three people, although he could not make a finding as to which individuals were responsible.

Mr Justice Stafford said with regard to the 38 other deceased, who appeared to be mainly ANC supporters, that the "probability" was that Inkatha members were responsible for their deaths. He said judging from the wounds, it was clear they had been savagely and brutally murdered.

Mr Justice Stafford said due to the limitations of the inquest, it could not be established which individuals were responsible for the deaths.

Altogether 19 people had died from gunshot wounds, 13 had been stabbed to death and 10 others died from multiple injuries, including one who had "shrapnel" wounds.

CARINA LE GRANGE

The judge's broadside against the SADF prompted further calls last night for the immediate resignation of Defence Minister General Magnus Malan.

Cosatu (the Congress for South African Trade Unions) last night called for General Malan's resignation, while the African National Congress said in a statement that General Malan must "assume full responsibility for the action of soldiers under his command".

Cosatu said that if General Malan did not voluntarily resign, State President F W de Klerk should

"simply dismiss him".

Pan Africanist Congress spokesman Barney Desai told Saturday Star that the inquest found that SADF members had "once again fired at their own instance and that we have once more seen a trigger-happy reaction" such as the country was "unfortunately" used to.

An SADF spokesman told Saturday Star that the defence force had noted the judgment handed down by Mr Justice Stafford.

The spokesman added that in terms of the Inquest Act "the matter must now be referred to the Attorney-General for his consideration for a possible prosecution" and the whole matter was therefore regarded as sub judice.

Mr Justice Stafford yesterday found that a member of the SADF could possibly be held responsible for the death of one man, Hamilton Golela.

Lawyers for Human Rights expressed its shock at the findings and a director, Ahmed Motla, said the LHR believed the findings clearly indicated that the police and the judiciary could not find solutions to the violence which is currently "racking our country".

The ANC said Mr Justice Stafford's findings indicated that Inkatha must assume responsibility for the actions of its members and followers.

Cosatu condemned Inkatha for its action which it said resulted in the deaths of 38 women, children and men, stating it expected Inkatha to institute an internal hearing to discipline the 137 members who had been arrested at the hostel at the time.

Research

Peter Fabricius reports from Cape Town that Democratic Party leader Dr Zach de Beer said he had not had an opportunity to read the inquest judgment, but it was disappointing that it appeared to have made a finding on only one of the 42 deaths.

"We would like to see all possible steps taken to research this matter further," he said.

National Party defence spokesman Dr Boy Geldenhuys said he believed in the rule of law and stood by the findings of the judge.

Conservative Party law and order spokesman Moolman Mentz said he would prefer not to comment before studying the judgment properly.

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Sebokeng: judge lashes SADF

Cell death inquest rumpus

S/ Times 24/3/91

By SIPHO NGCOBO

LAWYERS representing the family of a 16-year-old boy who died while under police interrogation are seeking to reopen an inquest into his death, claiming that the state held an informal inquest without notifying his relatives.

Nixon Mayibule Phiri of Khutsong township near Carletonville died on January 16 last year of "a cerebral haemorrhage associated with external injuries" according to a post-mortem.

Senior public prosecutor at the Oberholzer magistrate's court, Esiné Erasmus insists that she notified the family by post at least six weeks before the inquest in February.

"We demand that the inquest be reopened," said a lawyer for the firm, which declined to be identified after receiving threatening phone calls because

of its association with the Phiri family. (252)

"If the state refuses to reopen the inquest, we will take it up with President FW de Klerk himself," said the lawyer.

He said letters had been sent to the Oberholzer magistrate's court and to Transvaal attorney general Don Brunette demanding that the inquest be reopened so that witnesses can be called to testify.

A spokesman for the South African Police public relations directorate in Pretoria confirmed that Phiri had died while in custody.

Two youths who were held at Welverdiend with Phiri and who may have been witnesses at an inquest into his death were shot dead by police.

Thomas Tshabalala and

Pule Mac Mothupi, who with Phiri were members of the Khutsong Youth Congress were shot dead in what police called "unrest-related" incidents.

Tshabalala was killed on March 7 when police fired birdshot and rubber bullets at 100 youths who had ambushed a police patrol.

Pule was killed when police opened fire on a mob that allegedly threw a petrol bomb at a police vehicle.

11 being held by police 'for murder of chief'

BY S'BU MNGADI

ELEVEN men are being held at Maritzburg Security Branch cells in connection with the assassination of chief Mhlabuzima Maphumulo last month, five former Internal Security Act detainees claimed this week.

But the SAP in Maritzburg would not comment yesterday on the claim because "it would interfere with investigations".

Released this week after four months in detention, the five detainees from Swayimane, near Maritzburg, told their lawyers Kwenza Mlaba and Bheka Shezi that they had shared the same floor at SB headquarters with the 11 men. They identified some of them.

The five detainees were released by the Maritzburg Regional Court on R1 500 bail each this week after being charged with illegal possession of arms and ammunition.

Mlaba said that according to the detainees, the 11 men had been brought to the SB cells during March.

They disclosed what they were being held for and security policemen allegedly made no bones about the fact that they had been detained in connection with the chief's death, Mlaba was told. Maphumulo, 42, chief of the 250 000-strong Magonggo tribe and former president of the ANC-aligned Congress of Traditional Leaders of South Africa (Centralesā), was shot dead outside his home in central Maritzburg on February 25.

Government's indemnities win cautious ANC welcome

BY SEKOLA SELLO

THE ANC has reacted cautiously to the government indemnity this week of some of its members.

Nine members of "Operation Vula", including two senior ANC members and a high-ranking military commander, and about 2 000 ANC-affiliated exiles, were among those indemnified by the govern-

ment.

The organisation has expressed "unhappiness" that most exiled members were granted only conditional indemnity and that the terms of the amnesty given to the Vula nine were not clear.

The Vula nine were granted an unconditional indemnity and 1 819 exiled ANC and MK members who had undergone military training were granted con-

ditional indemnity.

Five members of the rightwing organisation, Orde Boerewolk, who aided OB leader Piet "Skier" Rudolph when he was a fugitive, were also unconditionally indemnified.

A spokesman for the ANC said the organisation's lawyers were busy studying the terms of the indemnities and could not comment.

The members of Operation Vula, under the leadership of Mac Maharaj, were arrested last year for allegedly plotting with the SACP's secretary general Joe Slovo.

Maharaj — a former member of the ANC's National Executive Committee and the SACP's central committee — is reportedly threatening to sue the government for unlawful arrest.

Maharaj, who has resigned both his ANC and SACP posts, was not available to comment on the claim that he intends suing the government.

Among those allegedly involved in Operation Vula was MK commander Siphiwe Nyanda (40).

Nyanda said the indemnities would have been meaningful if "comprehensive and unconditional for all".

He said the simultaneous granting of amnesty to rightwingers "creates the impression that we were involved in similar activities as these reactionaries".

Nyanda, now secretary of the ANC's campaigns committee, told City Press the organisation would launch marches to prisons and police stations on April 6 and institute a consumer boycott between April 8 and April 13 to force the government to "remove all impediments to a negotiated settlement".



Police must pay, says bomb hero

BY ELIAS MALULEKE

A MAN who says he reported a bomb found in a Pretoria parkade last year is going to court to claim the reward.

John Mathlare — who works at Wilson's parking garage in Vermeulen Street — says he is going to court to claim the reward which was given to an SADF sergeant.

Mathlare told City Press he was not going to let the matter rest.

"I found the bomb and many lives were saved. The police must pay up or face legal action."

Other workers at the garage confirmed Mathlare had warned them not to approach the minibus as it contained a bomb.

John Mathlare... wants his reward.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Two cheers for lifting of ban on political meetings 252

Political Staff Star 26/3/91

The Human Rights Commission yesterday welcomed the Government's decision not to renew the blanket ban on outdoor political gatherings when it expires at the end of this week.

The decision, the HRC said in a statement, was an important step towards the removal of obstacles to free political activity.

However, it nevertheless fell "substantially short of achieving the kind of freedom of assembly demanded by any reasonable bill of rights", the statement said.

The HRC was commenting on the announcement by Justice and Correctional Services Minister Kobie Coetsee on Friday that the ban on all outdoor political gatherings, imposed

more than 15 years ago, would not be renewed. Permission will not be required to hold outdoor political meetings.

The HRC said that under the Internal Security Act it was "still perfectly possible" for specific gatherings to be banned by district magistrates or even by the Minister of Law and Order. While the Act remained unchanged, the ban could be reinvoked.

"It is clear, nearly 11 months after the Groote Schuur accord, that the Internal Security Act stands as the major obstacle to negotiations and puts into question the Government's political will and stated commitment to ongoing review of security legislation in order to ensure free political activity," said the HRC statement.

FW grants
Star 26/3/91 252
indemnity to

Rudolph aides

President F.W. de Klerk has granted indemnity to two people who assisted Orde Boerewolk leader Piet Rudolph while he was a fugitive from justice.

The two were named as Elsie Johanna Tubb (25) and Rudolph Christiaan Tubb (26).

They were also indemnified from prosecution for the possession of arms, ammunition and explosives.

Mr. Tubb was also indemnified for having kept observation of the Swartruggens Commando with the intention of stealing arms and ammunition.

Others indemnified were:

- Allen Marnewick, for arson of the Roman Catholic Church and other buildings at Boekenhoutfontein in June last year and the unlawful possession of arms.

- Barend Bartlomeus Burger, for arson of the same church, theft of ammunition from the SADF and the unlawful possession of arms.

- Izak Wybrand Venter, for keeping observation on the Swartruggens Commando with the intention of stealing arms, and the unlawful possession of arms — Sapa

Lifting of meetings ban hailed

Sowetan
26/3/91
252

THE decision not to renew the blanket ban on outdoor political gatherings was an important step towards the removal of obstacles to free political expression

This was said in a statement yesterday by the Human Rights Commission following an announcement by the Minister of Justice, Mr Kobie Coetsee

The ban expires at the end of this week.

The HRC warned,

however, that the decision by the Minister still fell substantially short of achieving "the kind of freedom of assembly demanded by any reasonable Bill of Rights"

Under the Internal Security Act, specific gatherings could still be banned by any of the 350 district magistrates or by the Minister of Law and Order

While the Internal Security Act continued unchanged on the Statute

book, the Minister could reinvoke the blanket ban at some future date.

The HRC said the Internal Security Act still stood as the major obstacle to negotiations

This put into question the Government's political will and stated commitment to ongoing review of security legislation in order to ensure free political activity, the statement concluded - *Sapa*



Policeman charged with perjury

THE nine policemen who face murder charges in connection with the Sebokeng shootings in March last year in which 11 protestors were shot and killed have not been suspended from the force.

Transvaal Attorney-General Don Brunette announced that the men would be prosecuted after the findings of the Golstone Commission of Inquiry

into the shootings. Brunette said no court date had been set.

He said he had instructed police in Vereeniging to press perjury charges against a security policeman, Warrant-Officer Kalman Csajaghy, who had allegedly contradicted an initial statement he made about the incident.

11/3/91
Soweto

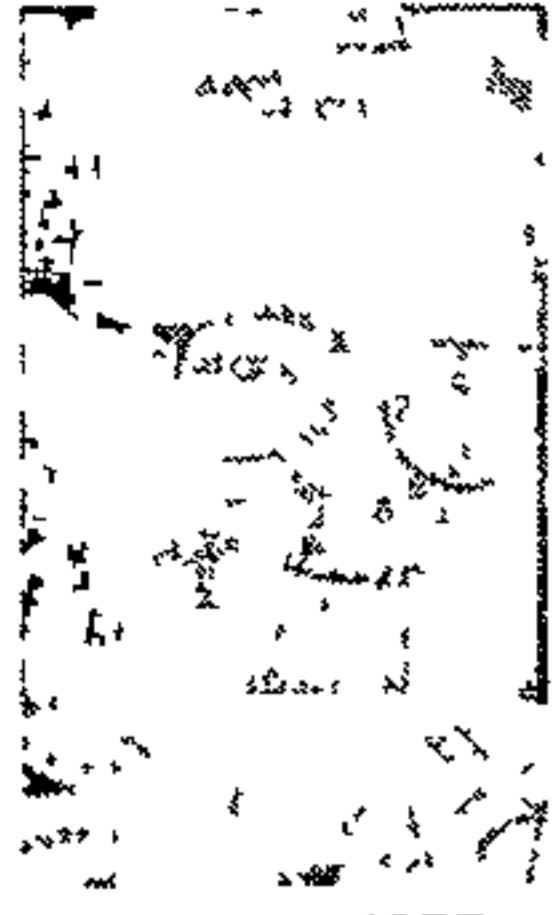
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Indemnified ANC pair still on wanted list

8/Day 27/3/91

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PATRICK BULGER



● GROSSKOPF

GOVERNMENT has indemnified "Red Pimpernel" Ronnie Kasrils and alleged Krugersdorp bomber Hein Grosskopf — but the two remain wanted men

As the April 30 deadline for ANC members' indemnification draws closer, government faces the prospect of having to deal with politically "difficult" cases like Kasrils, Grosskopf, Magoo's Bar bomber Robert McBride and right-wing mass murderer Barend Strydom

Death Row prisoners Strydom and McBride have yet to be indemnified

But Kasrils and Grosskopf, who have been indemnified from prosecution for

having undergone military training, will still have to answer for other deeds.

Law and Order spokesman Capt Craig Kotze said Kasrils was still being sought in connection with Operation Vula — an alleged SACP plot to overthrow government if negotiations failed — while Grosskopf was wanted in connection with 1988 bombings in Krugersdorp — in which three people died — and one at the SADF Wits Command headquarters

"If we find Grosskopf we will arrest him"

□ To Page 2



● KASRILS

Wanted

8/Day 27/3/91

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From Page 1

in connection with those bombings," Kotze said last night

While the other Operation Vula accused applied for and last week received indemnity, Kasrils has not yet applied. He has been on the run since late last year

Yesterday the ANC demanded indemnity for McBride, saying his case fell within government guidelines

Sapa reports the organisation said in a statement that it had recently become aware of the plight of 61 political prisoners held at the Barberton prison

"These political prisoners are not being treated as political offenders and we believe their position is indicative of the kind

of treatment being meted out to many hundreds of political prisoners held in jails dotted around the rural areas

"They are not in separate sections within the prison, have no access to reading materials of their choice, have a totally inadequate diet and are being forced to do hard labour," the ANC alleged

"We demand the government launch an immediate investigation into the situation at Barberton and other rural prisons. The political prisoners must be transferred to a separate section, pending their long overdue release. The conditions in Barberton are a sad reflection on the government's intentions regarding political prisoners"

'Courts oppose use of law to stifle criticism'

27/13/91 SUSAN RUSSELL (252)

THE courts had repeatedly emphasised that their jurisdiction to convict individuals for contempt should not be used to stifle legitimate criticism, it was argued in the Rand Supreme Court yesterday.

This submission was made by counsel Gilbert Marcus on behalf of The Star editor-in-chief Richard Steyn when he appeared before Mr Justice J H Coetzee on contempt of court charges yesterday.

Mr Justice Coetzee ordered Steyn to appear before him last Friday following a report about a legal dispute between Cape Town Spurs and African Wanderers soccer clubs over membership to the National Soccer League's First Division.

The judge had ruled that Cape Town Spurs be excluded from the NSL First Division in favour of African Wanderers. In its story The Star quoted Spurs chairman Eric Dalton as saying that "justice had not been done".

Mr Justice Coetzee gave Steyn until yesterday to show cause why there was not a prima facie case of contempt of court against him.

Marcus submitted that Dalton's anger had been directed at the NSL and not the Supreme Court.

Alternatively, Marcus argued, even if Dalton's statement could be construed as referring to the court, this did not in itself amount to contempt.

He also submitted that if the comment was found to be in contempt a "vast body" of legal academic criticism would be rendered vulnerable to criminal liability.

Judgment is expected this morning.

Grosskopf, Kasrils indemnified

Pretoria Correspondent

for other charges, spokesman Gill Marcus said yesterday

Two of South Africa's most wanted men — senior Umkhonto we Sizwe members Ronnie Kasrils and Hein Grosskopf — have been indemnified against prosecution for undergoing military training

However, lawyers and police have advised the African National Congress that NEC member Mr Kasrils and Mr Grosskopf are definitely still liable

Law and Order Ministry spokesman Captain Craig Kotze said that unless Mr Grosskopf had been granted blanket indemnification, he could still be charged in connection with three separate car-bomb blasts on the Witwatersrand — which killed seven people and injured 102 — to which he was linked by police during 1987 and 1988

At the time of going to press,

the Department of Justice had not responded to The Star's questions on this issue

The two men's names were published in a Government Gazette on Friday with 1 817 other names, including Operation Vula accused Mac Maharaj

The other three wanted by the police in connection with Operation Vula are Janet Love, Charles Ndaba and Christopher Manye

1989-90 tax year and (b) what percentage of each group of taxpayers is Black?

B334E

The MINISTER OF FINANCE.

- (a) See attached schedule
- (b) This information is not available. The reason for this is that since the introduction of the Standard Income Tax on

(a)(i) and (ii)

TAX YEAR 1990

INCOME GROUPS	MARRIED		SINGLE		TOTAL	
	NUMBER	TAX R'000	NUMBER	TAX R'000	NUMBER	TAX R'000
LOSS	5 889	0	674	0	6 563	0
0-5 000	141 544	1 247	57 816	1 285	199 360	14,78
5 000-10 000	36 870	4 160	9 904	3 859	46 774	3,47
10 000-15 000	57 940	21 463	12 055	12 145	69 995	5,19
15 000-20 000	73 444	82 850	17 380	36 472	90 824	6,73
20 000-25 000	127 797	313 926	38 976	140 046	166 773	12,36
25 000-30 000	119 807	483 121	32 074	170 265	151 881	11,26
30 000-35 000	111 394	648 863	24 254	176 334	135 648	10,06
35 000-40 000	96 980	748 752	16 484	153 279	113 464	8,41
40 000-45 000	80 103	777 468	11 290	128 548	91 393	6,78
45 000-50 000	63 148	740 519	7 410	99 934	70 558	5,23
50 000-60 000	82 672	1 211 992	8 134	134 478	90 806	6,73
60 000-70 000	44 301	833 278	3 460	72 184	47 761	3,54
70 000-80 000	22 957	529 749	1 643	41 397	24 600	1,82
80 000-90 000	12 913	354 371	846	24 917	13 759	1,02
90 000-100 000	7 847	249 117	460	15 603	8 307	0,62
100 000-150 000	13 471	560 334	678	29 188	14 149	1,05
150 000-200 000	3 134	200 231	160	10 128	3 294	0,24
200 000-250 000	1 226	104 735	70	5 669	1 296	0,10
OVER 250 000	1 447	241 982	100	17 247	1 547	0,11
TOTALS	1 104 884	8 108 158	243 868	1 272 978	1 348 752	100,00

DATA IR O 48,86% OF ALL REGISTERED TAXPAYERS ARE REFLECTED IN THESE TABLES

Total taxable earnings

increase or decrease for each such race group in comparison with the previous year?

119 Mr K M ANDREW asked the Minister of Finance **27/3/91** ~~780~~ **B335E**

- (a) What were the total taxable earnings for Whites, Coloureds, Indians and Blacks, respectively, in 1989-90 and (b) what was the total taxable income earned by each of these race groups in that year and (ii) percentage

HOUSE OF ASSEMBLY

Standard Income Tax on Employees (SITE) system, taxpayers earning remuneration not exceeding a certain amount (currently R40 000) are relieved of the obligation to submit returns of income and statistics are therefore no longer kept in respect of the various population groups

Magistrates

124 Mr D J DALLING asked the Minister of Justice **27/3/91** ~~781~~ **B285E**

- (a) How many persons in the Republic, excluding the self-governing territories, held the position of (i) regional court magistrate and (ii) magistrate, (b) how many such persons were (i) White, (ii) Black, (iii) Coloured and (iv) Indian, and (c) in which magistrates' courts were these (i) Black, (ii) Coloured and (iii) Indian persons employed, as at 31 December 1990?

The MINISTER OF JUSTICE

- (a) (i) 152
- (ii) 829

(b) Regional Magistrate

- (i) 152
 - (ii) 0
 - (iii) 0
 - (iv) 0
- Magistrate
- (i) 811
 - (ii) 2
 - (iii) 5
 - (iv) 11

(c) Regional Magistrate

- (i), (ii) and (iii) fall away
- Magistrate
- (i) King William's Town (1)
 - Stanger (1)
 - Wynberg (1)
 - Queenstown (1)
 - Krugersdorp (1)

- Malmesbury (1)
- Johannesburg (1)
- Durban (1)
- Verulam (4)
- Stanger (1)
- Ladysmith (1)
- Chatsworth (3)
- Pinetown (1)

Prosecutors

125 Mr D J DALLING asked the Minister of Justice **27/3/91** ~~782~~ **B286E**

- (a) How many persons in the Republic, excluding the self-governing territories, held the position of (i) regional court prosecutor and (ii) prosecutor, (b) how many such persons were (i) White, (ii) Black, (iii) Coloured and (iv) Indian, and (c) in which magistrates' courts were these (i) Black, (ii) Coloured and (iii) Indian persons employed, as at 31 December 1990?

The MINISTER OF JUSTICE

- (a) (i) 200
 - (ii) 869
 - (b) (i) 938
 - (ii) 41
 - (iii) 64
 - (iv) 26
- Prosecutor (Regional Court)
- (i) Pietermaritzburg (1)
 - Pretoria (1)
 - Empangeni (1)
 - Johannesburg (1)
- (District Court)
- Pretoria (3)
 - Pretoria North (1)
 - Pietermaritzburg (1)
 - Johannesburg (10)
 - Verulam (4)
 - Springs (2)

HOUSE OF ASSEMBLY

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Wynberg 1 Relief Staff
 Slanger 1 Randburg
 Alberton 1 (c) Prosecutor (Regional Court)
 Durban 3 (iii) Durban
 Benoni 1 Port Shepstone
 Mtunzini 1 (District Court)
 Krugersdorp 1 Verulam
 Greytown 1 Chatsworth
 Moutse 1 Durban
 Kimberley 1 Scottburgh
 Vanderbijlpark 1 Pietermaritzburg
 Empanangeni 1 Pinetown
 Witbank 1 Johannesburg
 Potgietersrus 1 Wynberg
 (c) Prosecutor (Regional Court) Queenstown
 (ii) Cape Town 1 Kimberley
 Wynberg 4
 Worcester 4

(2) The required information is not readily available
 Income tax written off
 6 Mr K M ANDREW asked the Minister of finance
 Whether any income tax was written off in the 1989-90 financial year as irrecoverable, if so, (a) in respect of how many (i) individuals and (ii) companies and (b) what was the amount of tax written off in each category?
 B413E

Transcription of court proceedings: contracts

175 Mr R V CARLISLE asked the Minister of Justice

KwaZulu	1 53,39	1 41,87
Kwandebele	1 36,57	1 36,63
KaNgwane	1 39,62	1 36,68

Note
 All teaching staff at schools (CS Educatōry) including principals, are regarded as "teachers" for purposes calculating the teacher/pupil ratio

144 Mr A LLEON asked the Minister of Justice
 (1) How many persons were sentenced in South Africa in 1990 to a whipping (a) with and (b) without the option of a fine (1) or imprisonment by (i) regional magistrates' courts and (ii) Divisions of the Supreme Court,
 (2) how many (a) such whippings were carried out in 1990 and (b) cuts were administered in each case?
 B409E

3 Mr R M BURROWS asked the Minister of Education and Training
 (a) What is the teacher/pupil ratio in his Department for (i) primary and (ii) secondary schools and (b) in respect of what date is this information furnished,
 Teacher/pupil ratio
 Amount written off in respect of individuals R20 697 164,24
 Amount written off in respect of companies R9 738 049,97

(1) Whether, during the latest specified 24-month period for which information is available, any contracts for the transcription of court proceedings were awarded to certain bodies and persons, whose names have been furnished to the Minister's Department for the purpose of his reply, if not, who was awarded such contracts during the above period, if so, (a) what are the names of these bodies and persons and (b) in respect of what courts and areas were contracts awarded to each such body or person.

(2) whether, in respect of the contracts so awarded, he will furnish the House with the names of the shareholders and directors in the case of companies and the names of the members in the case of close corporations or partnerships, if not, why not, if so, what are the relevant particulars?
 B483E

The MINISTER OF JUSTICE
 (1) The required information is not readily available In an effort to be of assistance to the Honourable Member, the following statistics for the period July 1989 until June 1990 were obtained from the Central Statistical Services
 Total number of persons sentenced to whipping only 31 647
 Total number of persons sentenced to whipping and imprisonment (not suspended) 84
 Total number of persons sentenced to whipping and imprisonment (partially suspended) 4 975

(i) Primary Farm School 1 37,77
 Other Primary Schools 1 41,19
 Total 1 40,17
 (ii) Secondary Farm School 1 32,26
 Other Secondary Schools 1 34,17
 Total 1 34,13

(1) Contracts for the transcription of court proceedings were, *inter alia*, awarded to the following bodies and persons with effect from 1 September 1989 for a period of 4 years
 (a) Names of Bodies (b) Areas of contract awarded to Bodies and Persons
 (i) Mrs H Maré Magistrates' Court Worcester
 (ii) Paarl Tikdienste Magistrates' Courts Paarl Stellenbosch Wellington

Port Elizabeth 5
 Witbank 1
 Johannesburg 6
 Springbok 1
 Evander 2
 King William's Town 1
 East London 1
 Goodwood 4
 Grahamstown 1
 Malmesbury 1
 Kullstriver 2

(b) 4 March 1990
 Yes
 Owa 1 32,11
 Lebowa 1 41,35
 Gazankulu 1 42,35

(1) Mrs H Maré Magistrates' Court Worcester
 (ii) Paarl Tikdienste Magistrates' Courts Paarl Stellenbosch Wellington

Wynberg 1 Relief Staff
 Stanger 1 Randburg
 Alberton 1 (c) Prosecutor (Regional Court)
 Durban 3 (iii) Durban
 Benoni 1 Port Shepstone
 Mtunzi 1 (District Court)
 Krugersdorp 1 Verulam
 Greytown 1 Chatsworth
 Moutse 1 Durban
 Kimberley 1 Scottburgh
 Vanderbijlpark 1 Pietermaritzburg
 Empangeni 1 Pinetown
 Witbank 1 Johannesburg
 Potgietersrus 1 Wynberg
 (c) Prosecutor (Regional Court) Queenstown
 (ii) Cape Town 1 Kimberley
 Wynberg 4
 Worcester 4

144 Mr A J LEON asked the Minister of Justice

Port Elizabeth 4
 Vanderbijlpark 4
 (District Court) 1
 Cape Town 2
 Bellville 2
 Wynberg 19
 Paarl 2
 Worcester 1
 Port Elizabeth 5
 Witbank 1
 Johannesburg 6
 Springbok 1
 Evander 2
 King William's Town 1
 East London 1
 Goodwood 4
 Grahamstown 1
 Malmesbury 1
 Kullsviver 2

144 Mr R M BURROWS asked the Minister of Education and Training

Relief Staff
 Randburg
 Durban
 Port Shepstone
 Verulam
 Chatsworth
 Durban
 Scottburgh
 Pietermaritzburg
 Pinetown
 Johannesburg
 Wynberg
 Queenstown
 Kimberley

144 Mr R M BURROWS asked the Minister of Education and Training

Relief Staff
 Randburg
 Durban
 Port Shepstone
 Verulam
 Chatsworth
 Durban
 Scottburgh
 Pietermaritzburg
 Pinetown
 Johannesburg
 Wynberg
 Queenstown
 Kimberley

144 Mr R M BURROWS asked the Minister of Education and Training

Relief Staff
 Randburg
 Durban
 Port Shepstone
 Verulam
 Chatsworth
 Durban
 Scottburgh
 Pietermaritzburg
 Pinetown
 Johannesburg
 Wynberg
 Queenstown
 Kimberley

144 Mr R M BURROWS asked the Minister of Education and Training

Relief Staff
 Randburg
 Durban
 Port Shepstone
 Verulam
 Chatsworth
 Durban
 Scottburgh
 Pietermaritzburg
 Pinetown
 Johannesburg
 Wynberg
 Queenstown
 Kimberley

144 Mr R M BURROWS asked the Minister of Education and Training

KwaZulu	1 53,39	1 41,87
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KaNingwane	1 39,62	1 36,68

Note
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Transcription of court proceedings: contracts

175 Mr R V CARLISLE asked the Minister of Justice

(1) Whether, during the latest specified 24-month period for which information is available, any contracts for the transcription of court proceedings were awarded to certain bodies and persons, whose names have been furnished to the Minister's Department for the purpose of his reply, if not, who was awarded such contracts during the above period, if so, (a) what are the names of these bodies and persons and (b) in respect of what courts and areas were contracts awarded to each such body or person.

(2) whether, in respect of the contracts so awarded, he will furnish the House with the names of the shareholders and directors in the case of companies and the names of the members in the case of close corporations or partnerships, if not, why not, if so, what are the relevant particulars?

The MINISTER OF JUSTICE

(1) Contracts for the transcription of court proceedings were, *inter alia*, awarded to the following bodies and persons with effect from 1 September 1989 for a period of 4 years

(a) Names of Bodies (b) Areas of contract awarded to Bodies and Persons

(i) Mrs H Maré Magistrates' Court Worcester

(ii) Paarl Tskdienste Magistrates' Courts Paarl Stellenbosch Wellington

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(iii) Mrs Erika van Rooyen (formerly Bester)

Magistrates' Courts
George
Kanyisa
Gijffshoorn

son of the Supreme Court of South Africa

Eshowe
Kakstad
Munzini

Managing director—
J S Theron

(iv) Sneller Recordings (Cape) (Pty) Ltd

Magistrates' Courts
Beaufort West
Bellville
Caledon
Goodwood
Cape Town
Kuilstraver
Malmesbury
Mosssel Bay
Parow
Simons town
Somerset West
Strand
Vredenburg
Vredendal
Wynberg
Alwal North
Craddock
Fort Beaufort
Graaff-Reinet
Grahamstown
King William's Town
East London
Port Alfred
Port Elizabeth
Queenstown
Somerset-East
Uitenhage
De Aar
Kimberley
Upington
Vryburg

(v) Mrs J H de Wet

Magistrate's Court
Ceres

Pinetown
Port Shepstone
Scottburgh
Stanger
Verulam

(ix) Sneller Recordings (Pty) Ltd, Durban

(vi) Mrs M S D Botha

Magistrate's Court
Middelburg (TV)

(vii) Resource Date Services (Pty) Ltd

Magistrates' Courts
Ermelo
Belfast
Bethal
Standerton

Durban and Coast
Local Division of the Supreme Court of South Africa

(x) Secretarial Services, Durban
Mrs C V Gardner—Sole proprietor

(viii) Floreat Trust (Pty) Ltd

Magistrates' Courts
Bethlehem
Bloemfontein
Bothaville
Ficksburg
Harrismith
Heilbron
Kroonstad
Odendaalsrus
Sasolburg
Virginia
Welkom
Botshabelo
Orange Free State
Provincial Division of the Supreme Court of South Africa

(2) The relevant particulars of the shareholders, directors and partners in the specified cases are as follows
Bodes and Persons Shareholders, Directors and Partners

(i) Mrs H Maré
Paarl
Tikdienste
Partners W L Gaun and S de Beer

(ii) Mrs Erika van Rooyen (formerly Bester)

Sole proprietor

(iii) Sneller Recordings (Cape) (Pty) Ltd

Shareholders—
H W Hurter
I Hurter
C J van Tonder
L G van Tonder
Managing director—
H W Hurter

(ix) Sneller Recordings (Pty) Ltd, Durban

Magistrates' Courts
Camperdown
Dundee
Estcourt
Greytown
Howick
Ladysmith
Newcastle
Pietermaritzburg
Vryheid
Natal Provincial
Division of the Supreme Court of South Africa

(iv) Mrs J H de Wet

Sole proprietor

(v) Mrs M S D Botha

Sole proprietor

(vi) Resource Date Services (Pty) Ltd

Shareholders—
W D Blygnaut
G M Smuts
Managing director—
W D Blygnaut

(x) Secretarial Services, Durban

Magistrates' Courts
Chatsworth
Durban
Empangeni

(viii) Floreat Trust (Pty) Ltd

Shareholders—
J S Theron
D F Theron
H F Holtzhausen

Sandton post offices/postal services

176. Mr D J DALLING asked the Minister of Mineral and Energy Affairs and Public Enterprises **27/3/91**

Whether it is the intention to provide any additional (a) post offices and (b) postal services in the Sandton area in 1991, if so, (i) where, (ii) what services, and (iii) when, in each case?



B486E

THE MINISTER OF MINERAL AND ENERGY AFFAIRS AND PUBLIC ENTERPRISES

(a) Yes

(i) Kelvin,

(ii) post office, and

(iii) 30 June 1991—

unforeseen circumstances have unfortunately caused further delay in the matter. According to the owner of the Kelvin Shopping Centre, the accommodation for the proposed post office will now be ready for occupation at the end of June 1991

(b) yes

(i) Limbro Park and Buccleuch,

(ii) Limbro Park—new mail collection point with 1 500 private boxes to serve Limbro Park and Extensions
Buccleuch—new mail collection point with 2 000 private boxes to serve Buccleuch and Extensions, and

(iii) Limbro Park—30 March 1991—problems are still being encountered with the contractor and the date of com-

Probe of political killers' fate

PATRICK BULGER

TWO former judges and an Appeal Court judge will examine the claims to freedom of 42 political killers, including Wit Wolf mass murderer Barend Strydom and Magoo's Bar bomber Robert McBride.

While most of the indemnities and prisoner releases granted so far have been dealt with administratively, Appeal Court judge Mr Justice Steyn and former judges Mr Justice Solomon and Mr Justice Leon now have to examine the claims of people such as Strydom, McBride and alleged Krugersdorp bomber Hein Grosskopf.

Grosskopf was recently indemnified for having undergone military training, but police reiterated he remained a wanted man with a R50 000 reward on his head.

Mr Justice Steyn said yesterday. "We will be dealing with the more serious cases where there has been a loss of life or serious injury."

He will deal with cases in the Cape and

the Free State, Mr Justice Leon will hear cases in Natal, while Mr Justice Solomon will deal with cases in the Transvaal.

Neither the names of people being examined nor details of the proceedings will be public.

However, a Justice Department spokesman confirmed the judges were considering the cases of 42 people, including Death Row prisoners and exiles.

Meanwhile, the Political Prisoner Release Programme (PPRP) yesterday expressed concern over what it described as a trickle of releases and said only 50 out of a total of 800 applications for release had been granted.

"We are very concerned at the apparent distinction now being created between non-violent and violent offences, as this is

□ To Page 2

Killers

not in accord with the undertaking made by government in the Pretoria Minute"

The PPRP said the judges appointed to decide upon the fate of political prisoners were themselves responsible for sentencing some of those on Death Row.

A PPRP source said there were 55 people on Death Row who could be termed ANC supporters.

"If the government's way of dealing with

the releases is reflective of its attitude towards the entire process of reconciliation in the country, we are beginning to doubt government's sincerity"

□ Government yesterday announced indemnity for former Witwatersrand University student leader Sammy Adelman who left the country in 1981. Indemnities were also announced for Mxolise Mahlalela, who escaped from custody in 1985, Ronald Vuuruit and Stephen Mtomba

□ From Page 1

Ashton residents claim R2m from Vlok

South 28/3-3/4/91
FORTY-ONE residents of the Boland town of Ashton are suing the Minister of Law and Order for an amount totaling R2m in two Supreme Court and 39 Magistrate Court actions.

The actions result from the alleged police action in Ashton between May 25 to July 5 last year. Residents in the townships of Zolani and Oukamp had embarked on numerous protest actions to force the municipality to open facilities to all races and improve conditions of the township facilities.

This led to arrests and injuries after police allegedly fired birdshot and tear-gas at residents.

The individual claims range from R1 000 to R750 000, the biggest single claim in the action.

A lawyer, Ms Patricia Neer, confirmed that papers have been served on the

Minister of Law and Order, Mr Adriaan Vlok.

"We served papers on the Minister on February 27 and we are still waiting for him to notify us if he will defend the matter," said Neer.

In the biggest single claim, 21-year-old Jan Gertse is suing Vlok for R750 000 for the loss of sight in both eyes. In an affidavit, Gertse said he was shot by police on Monday July 2 after he and a group of people had come from a candlelight service at the Anglican Church.

He was admitted to Montagu hospital and later transferred to Tygerberg Hospital where he spent over a week. Gertse also sustained shotgun wounds to the back and face.

In the second biggest claim, Mr Karel Opperman, 27, who lost the sight of his left eye as a result of a shotgun wound, is suing the Minister for R101 020.

Who will judge the judges?

Star 28/3/91

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WHO POLICES the police is a vexing enough question. Who judges the judges — and does so without bringing contempt-of-court charges upon him — is an even more complex issue.

A dramatic miscarriage of justice such as the British case of the Birmingham Six, awakens the public to the fallibility of judges. The six were sentenced to life in 1974 after conviction for IRA bomb attacks. Their conviction was overturned a few weeks ago — 16 years into their sentence and on their second appeal.

With the vindication of the Birmingham Six have come demands for the resignation of Britain's Chief Justice, Lord Lane, who dismissed the men's first appeal in 1988.

"It is time he threw in his w/g," insisted The Independent. The successful appeal has also coincided with the announcement of the first royal commission appointed in 13 years to inquire into the British justice system.

But what about the times and places when there are no commissions — royal or otherwise — scrutinising the system of justice and the performance of judges?

Aside from legal systems of appeal and petition, the press and — through the press — public opinion represent the main checks.

It is a role which was particularly eloquently recognised by Britain's Lord Atkin, addressing the Privy Council in 1936:

"Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

In the United States, it seems, the bounds of acceptable comment on the judiciary are broad indeed. A journal called The

American Lawyer does annual polls on judges. Examples from one of these raised eyebrows this week when they were read out in the Rand Supreme Court. Judge Andrew Caffrey, then of the Massachusetts Circuit, was described by two dozen Boston lawyers as possessing "a volatile temper and severe prosecutorial bias."

A partner in a major Boston law firm was quoted as saying: "There are times you have the feeling that you are appearing before the god of vengeance and testing his wrath."

The reason for Johannesburg counsel Gilbert Marcus citing this United States criticism was to persuade Mr Justice JH Coetzee that the editor-in-chief of The Star, Richard Steyn, should not be found in contempt of court for publishing an article in which an aggrieved party stated "justice has not been done." This and other aspects of Mr Marcus's argument pre-

valued, the charge against the editor was dropped.

South African law on the form of contempt known as "scandalising" the court conforms closely to the British judgments which span centuries. They suggest some fairly clear dos and don'ts to trouble-free criticism of the courts:

- In general it is necessary to stick to language which may be robust but which cannot be outrightly insulting.
- It is safer to confine criticism to the question of the judge's efficacy or capability — even if the assessment of this errs.
- Above all, it is vital to keep clear of questioning the judge's

What institutions do societies depend on to check the balance in the scales of justice? Who can criticise judicial decisions without fearing contempt-of-court charges? JO-ANNE COLLINGE investigates the issue.

motives, suggesting that he is acting improperly or in terms of racial religious sexist or political bias.

Former Chief Justice O'Flaherty Thompson put it this way: "No criticism of a judgment however vigorous can amount to contempt of court providing it keeps within the limits of reasonable courtesy and good faith."

In South Africa where the courts have been bound at times by explicitly racial laws and have been called on to intervene in essentially political affairs surprisingly few contempt actions have arisen from allegations of political or racial bias in the judiciary.

One reason may be that contempt must involve a direct attack on the judge — not on the laws, the police the prosecutor the 'system' or the State.

For instance at the end of the marathon Delmas trial in which United Democratic Front leaders were found guilty of treason (a finding overturned on appeal) the Sunday Star commented: "The Delmas decision is a watershed. A vital distinction between violent and peaceful political mobilisation has been blurred."

After Delmas some may conclude that if this is the way that the law is to be interpreted and applied they will have to delay it — openly or secretly.

The Pretoria News however was fined R10 000 by a regional court magistrate for carrying the comments of a British barrister on the Sharpeville Six case where the accused were sentenced to death for taking part indirectly in a mob murder during political rioting.

Magistrate W A J van Zyl expressed the view that the independence of the South African judiciary was attacked by the author of the article which brings the judicial system into dispute.

Academic criticism of judgments including that in the Sharpeville Six case, flows reasonably thick and fast, generally passes without creating a storm in court. According to Wits University's Professor John Dugard contempt cases are often investigated but actions seldom brought.

But in the heightened political climate of the '80s although academic opinion on judges escaped court action it did not always elude heavy political censure.

Three years ago Professor Edwin Cameron of Wits University, who criticised the conduct of three judges including the

then Acting Chief Justice Rabie was accused by Justice Minister Kobie Coetzee of denying "magnified pleasure in denigrating great chief justices."

Among other remarks Professor Cameron accused Mr Justice M T Steyn of prefacing judgment with "a politically partisan, emotive and one-sided exposition of the Government's view for the necessity for the state of emergency," and questioned why Mr Acting Justice Rabie remained on as chief justice after retirement age.

While prosecutions for scandalising the court have become rare in an age where scrutiny of public institutions is accorded greater weight than in the past, they still occur — sometimes where least expected.

And as Mr Justice O'Flaherty Thompson observed, within the confines of court the line between scandalous comment and fair and legitimate criticism is not always easy to draw. □

Mysterious rites of indemnity

CAN anyone be happy about the current procedures for indemnity — apart from civil servants trudging through applications piled high enough to ensure job security for the foreseeable future?

The courts — as in the Yengeni and Vula trials — are not charmed at the uncertainty and the waste of court time while the status of the accused is resolved

For the accused in these and other political trials the delay means severe personal hardship including great expense — pointless pain, since in all likelihood indemnity will be granted once they have jumped through the correct bureaucratic hoops

Taxpayers continue to feed and house political prisoners whose virtually inevitable release is delayed by mysterious indemnity rites. Exiles wait expectantly, week after week, for their names to feature in the *Government Gazette*

Both the African National Congress and the government proclaim they urgently want to begin negotiations, so indemnity procedure delays — holding up the start of negotiations — can't please them either

Aspects of the extraordinarily complex arrangements for indemnity applications will not be unfamiliar to Catholics

People seeking indemnity make a (written) political "confession" to a body of civil servants. These confessors consider the matter, asking questions to determine the exact nature of the sins committed, how many and how often, and then recommend to the state president whether to grant absolution

Even if successful, however, they will be "shriven" of only those sins to which they confessed. The rest remain unforgiven and could be the basis for prosecution

This strange procedure flowed out of discussions between the government and the

w/ Mon 28/3 - 4/4/91 - 252
LAW & THE COURTS

Carmel Rickard

ANC The ANC has blamed the government for the system saying it is unworkable, urging that it be scrapped and replaced by a general amnesty

But the feeling among some human rights and labour lawyers is that there was poor negotiating over the issue.

Best case would have been a general amnesty and blanket indemnity for all political prisoners, trialists and exiles. Failing that, the next best might have been the establishment of a neutral adjudicating body of human rights experts acceptable to both sides. Such a body would have made recommendations to the state president, who would have been guided closely by the committee.

Consolation is that the present system cannot last for much longer. Overloaded by its own complexity, it is showing signs of splitting at the seams and broader guidelines and procedures could be in the offing

One of the apparent after-thoughts to improve the image of the system is a consulting body or indemnity committee to hear "borderline cases", as distinct from the presumably "obvious" cases to whom indemnity will be granted after consideration by the bureaucrats and a final decision by the state president. It is believed the government has in mind as possible "borderline" cases people such as those on death row for murders the ANC would contest were politically motivated

The ANC has chosen four professionals including senior advocates to consider these cases, the government has named

three former judges. They have not yet sat, but it is understood office space and other facilities are now being prepared and their work could begin soon.

It is a situation which has left many lawyers unhappy. They argue against asking judges — even though they are retired — to become involved in making essentially political decisions

Their view is that the law has expressed itself on the sentence of those being considered and that the government should take responsibility for deciding on amnesty, rather than seeking to stamp a political decision with judicial approval. It is a view shared by both ANC officials and Lawyers for Human Rights director Peter Motlale

Bringing judges in on political decisions such as this has opened the way for critical comment on their past "human rights record" and could compromise them for future work such as heading commissions of inquiry. Already the ANC has publicly criticised the record of the three judges involved on the committee and the criticism could grow once they begin their work

It is understood some judges, strongly aware of the need for judicial independence, are concerned at what they perceive to be yet another government effort to use the judiciary for political purposes. They are still smarting from an incident earlier this year, when Defence Minister Magnus Malan tried to obtain judicial connivance at a secret application brought by someone using a false name, wanting to force a CCB secret agent to hand back a "spy" ship to the state. The judge before whom the initial request was brought in chambers flatly refused to have anything to do with it, but it would be reasonable to expect the incident has left his colleagues suspicious of government motives and more jealous than ever of their political independence.

PUBLIC SECTOR-COUNT. JUSTICE

1991

APRIL — JUNE

Etienne Mureinik has doubts about the system to review 'old' death sentences

Umpires in a deadly game

Spw 21/4/91.

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IMAGINE that the frequency of cricketing injuries rose so high that the rules of the game were reformed

Imagine that the ball was made softer, and the batsmen given comprehensive padding, and radar introduced to limit the speed of any delivery

Imagine now that a committee of umpires is convened to watch video replays of last year's Currie Cup matches and to decide who would have won had the new rules been in force

Would the umpires' task be a sensible one? Any radical change in the rules would cause a change in the tactics of the game. Every reform would amplify or dampen the effect of a player's weaknesses or strengths

The game would be played differently, and the players would perform differently. To say how a match contested closely under the old rules would have ended under the new, would very often be a matter of mere conjecture

Now imagine that the effect of the umpires' decision is that the umpires must hang

Such is the nature of the responsibility entrusted to the panel of umpires, under the chairmanship of Mr Justice Viljoen, charged with reviewing the cases of those condemned to die under the death law swept away by Parliament

last year. The panel has to say whether men and women sentenced to hang under the old rules, and having exhausted their rights of appeal under the old rules, would have been condemned had they been tried under the new rules.

Under the old rules, a conviction for murder made the death penalty semi-compulsory: the court had to condemn unless the prisoner could prove extenuating circumstances. To escape the gal-lows, it was for the prisoner to make a case that might persuade the court. Many failed, and our execution rate was among the highest in the world.

Condemn

Under the new rules, the court has an open discretion and there is no obligation to condemn an unpersuasive prisoner. The discretion depends upon all the mitigating and aggravating factors found. And it is for the prosecution to prove the aggravating factors and disprove the mitigating factors.

What is more, our Appellate Division has decided that the concept "mitigating factors" is wider than the concept "extenuating circumstances". And, to its credit, that court has interpreted the new rules to mean that the death sentence is proper only in cases

which are "exceptionally serious". These new rules differ radically from the old. They entirely alter the fatal game that they govern the trial for the life of a capital prisoner.

The trial is now a different inquiry. It has different objects. The tactics of the parties may therefore be different, and their strategies may be different.

The trial, moreover, used to be weighted against the prisoner. The handicap has now been shifted, quite correctly, to the prosecution. All the pressure is now on the prosecution and it has to satisfy a much more demanding standard. It may therefore be that a prisoner whose case was hopeless under the old rules, and who might well have given up in advance, would now stand a fighting chance.

Nor is it likely to be possible to cure this difficulty by permitting fresh evidence. The trial, in many cases, took place years ago, and it will often be impossible to find witnesses whose memories are still reliable, to assemble all the necessary evidence and to present it as effectively as it can be in a full judicial hearing.

What is more, the Viljoen panel will not be watching a neutral video replay. A most important part of the record that it has to review will be the judgment of the trial court. That judgment will be

an evaluation of the evidence driven by assumptions determined by the old rules.

Arguments, for instance, that the new rules require to be weighed respectfully might very properly have been dismissed, or even disparaged, under the old. It would require superhuman strength of mind to detect all the unconscious assumptions that depend upon the old rules and to correct them.

So how safe can the outcome be? Some cases will no doubt be so starkly clear that none of these difficulties can affect the justice of the decision.

But many cases, probably most cases, are not so clear. In those cases, no one can read a record created under old rules and predict with confidence what the outcome would have been under the new. Any such prediction would largely be speculative.

Nor is it possible to draw the line with confidence between clear cases and unclear cases. A large cloud of doubt will therefore hang over the entire review procedure.

The Viljoen panel reviews the cases of Death Row prisoners who had exhausted all their judicial remedies by the time the new rules came into force. If the panel upholds the death sentence, its decision goes to the Appellate Division for confirmation. The cases of prisoners tried under the old rules, but who had not yet appealed when the new came into force, go directly to the Appellate Division.

But in that court, the inquiry is much the same as it is in the Viljoen panel. In essence, it is whether the prisoner would have been condemned if the new rules had governed the trial. That is an inquiry fraught with the same conceptual difficulties as cast such a large shadow of doubt over the efforts of the Viljoen panel.

Tainted

So the entire exercise of confirming the sentences of those tried and condemned under the old rules, whoever does the confirming, is tainted with doubt. What can be done about that?

The answer is to be found in the new rules, properly understood. They introduce a compulsory system for the reconsideration of death sentences which diverges radically from ordinary criminal procedure.

Under this system, no one may be hanged unless the case has been considered by the Appellate Division and the State President, whether or not the prisoner wants their scrutiny.

Even the Minister of Justice has been empowered, without the con-

sent of the prisoner, to refer his own doubts about the case to the Appellate Division. And that court has a duty to decide for itself whether the death sentence should have been passed. It cannot confirm the sentence merely on the ground that it is reasonable, and has been considered properly.

These are extraordinary safeguards, unique to capital cases. They reflect a deep commitment to eliminate all doubt about the correctness of a death sentence. They acknowledge that mortal doubt, because it is mortal and because it is incapable of restitution, cannot be countenanced.

But if mortal doubt cannot be countenanced, then a procedure to confirm death sentences which is tainted with doubt cannot be tolerated. By its fundamental reforms, the Government has accepted that the sentences of those tried under the old rules are unsafe. Those sentences cannot be made safe by a confirmation procedure which itself is unsafe.

There is only one defensible solution commensurate to imprisonment the sentences of all who were tried under the old rules. The old rules are, after all, discredited rules.

● Professor Etienne Mureinik is dean of the faculty of law at the University of the Witwatersrand □

Alex seeks substitute for 'white justice'

Sowetan 2/4/91

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FOCUS

AN elderly black woman walks into Tex Molobi's office in Alexandra Township seeking a form of justice no white South African court can dispense.

The Alexandra Civic Organisation Advice Centre is an experiment by anti-apartheid activists that might be a foretaste of future black-run justice.

Molobi, a 45-year-old former shop steward, sits behind a desk in sparsely-furnished offices and smiles reassuringly as the elderly woman reports her landlord is threatening to evict her

Molobi, a portly figure in collar and tie, picks up a telephone and calls the local town council's property department to investigate Molobi could make his "judgment" within days.

If Molobi rules the woman has been wronged, the landlord will be shunned by residents unless he abides by the finding

"He will feel: 'If I don't cooperate today people won't cooperate with me tomorrow I'll be the polecat of the community'," civic organisation president Moses Mayekiso said.

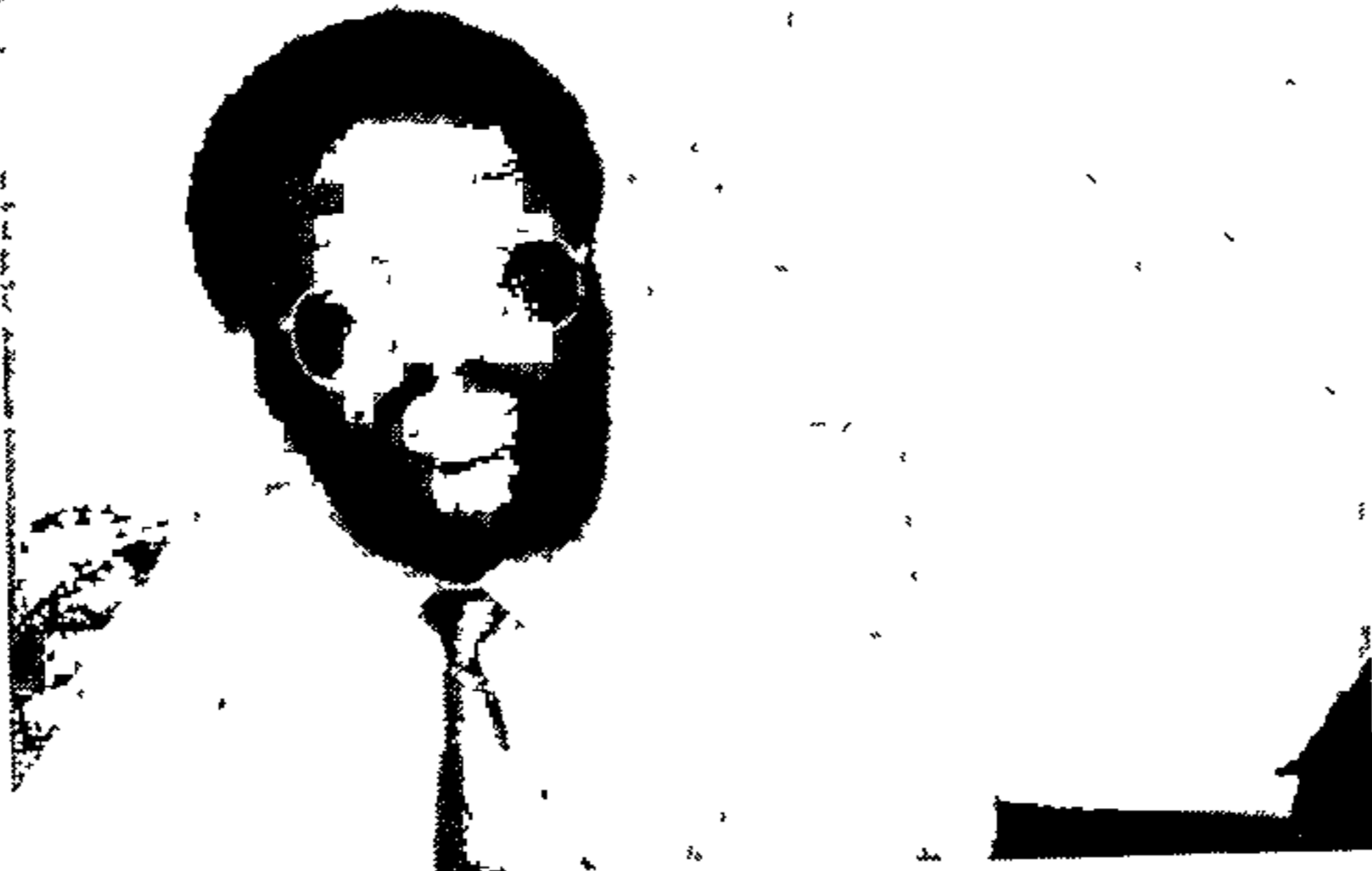
Role

"That feeling plays a great role," he said.

The procedure is a far cry from that of "people's courts" which sprang up in townships around the country in the 1980s, dispensing rough and ready justice with often horrific results

But staff at the centre say their work is a development of people's courts and draws on African traditions of justice through community consensus, traditions that have long been suppressed by apartheid.

"We hope this will be the thing of the future," Molobi said "If other townships adopt this



Mayekiso . . . acquitted after a three-year trial.

system they will minimise their problems"

Justice Minister Kobie Coetsee said in 1987 that people's courts were "arbitrary and cruel and reminiscent of the Middle Ages when witch-hunting was still the order of the day".

But this year Coetsee established a joint working group with Mayekiso's officials to study ways of establishing what he called "alternative dispute resolution mechanisms" in townships

Coetsee is studying whether to train township residents to work as lay magistrates and justices of the peace

"That is a frank recognition that black alienation from the current system is profound," said liberal Democratic Party parliamentarian Tony Leon. He commented that Coetsee had accepted part of the "people's court philosophy and practice"

"The doubling of the judiciary since 1965 to its strength of 140 judges has failed to address the absence of black jurists and its agonisingly slow delivery system," Leon said.

Most blacks see 'white' courts as illegitimate because they have applied apartheid laws. Most

blacks cannot afford lawyers and only five per cent of the country's 7 000 lawyers are black.

When people's courts sprang up around the country in early 1985, respected anti-apartheid leaders administered relatively mild punishments and focused on domestic disputes.

The practice became so entrenched that some police told complainants to take their problems to people's courts.

But younger, less educated "comrades" took control of the courts in 1986 when thousands of anti-apartheid activists were detained under emergency rule, said Wilfried Scharf, director of Cape Town University's Institute of Criminology.

Families

This created an opportunity for marginalised, unemployed school dropouts who were alienated from their families "to assert some control over the streets," Scharf wrote.

Whipping by youth-run courts became common One 32-year-old woman was ordered to pay 200 rand or face 100 lashes for stabbing a man in the arm when he tried to rape her.

After giving her 42 strokes on the buttocks, youngsters said she would receive the remaining 58 when her wounds healed.

An Alexandra man was whipped 200 times for trying to stop his common law wife having an affair with another man

People breaking anti-apartheid consumer boycotts were made to drink or eat the washing powder or petrol they bought.

Mayekiso said: "Those courts played a great role because our country was plagued with crime. The snag was the solutions would sometimes be extreme, like whipping and other atrocities"

Such courts still exist in Alexandra and other townships.

While youths have killed blacks suspected of being police informers - usually by placing a blazing tyre "necklace" around their necks - there is no convincing evidence that people's courts have passed or executed death sentences, Scharf said

Acquitted

Mayekiso, acquitted after a three-year trial of trying to make Alexandra ungovernable through people's courts and other activities, said most disputes in the township of 200 000 were over access to communal water taps and toilets

He said the new township judicial system he envisaged would restrict itself to petty crime and domestic disputes Murder and rape would be left to the formal courts But he added:

"We do not want 'white' structures, because these are far removed from our tradition, cumbersome and time-consuming

"Our system is not expensive, it doesn't take too long a time. The community feels that this is our thing." - Sapa-Reuter

Political comment in this issue by Aggrey Klaaste and Deon du Plessis. Newsbills by Sydney Matlhaku Sub-editing and headlines by Ivan Fynn
All of 61 Commando Road, Industria West, Johannesburg
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New fighter for disabled

At Lawyers for Human Rights, a young lawyer, who is blind, has set himself a monumental task, a task he is tackling in the cause of his own kind the disabled

Michael Tshililo Masutha has been just two months in his position as director of the Socio-economic Rights Research Unit of Lawyers for Human Rights, but already he has very definite goals Mr Masutha's appointment was the direct result of close cooperation between HLR and Disabled People South Africa (DPSA)

The most important of these aims, says Mr Masutha, is the drawing up of a charter for the disabled It must be produced through the demo-



Monumental task
Michael Masutha

cratic process and in close consultation with disabled people

To get the charter off the ground, he will visit the various regions, setting up workshops and conducting seminars The purpose is to educate the disabled about their rights and encourage them to raise demands pertinent to their lives

"I hope during the the year to assemble all this information," says Michael, "and then to draft the charter and, probably next year, to hold a national conference at which the charter will be discussed and adopted by the DPSA's national assembly"

The real value of the charter, he points out, will be as a model for future legislation affecting the rights of disabled people

"It's the most democratic way for the disabled to participate in policy making that directly affects their rights"

Sammy Davis jun once said he had three strikes against him he was black, one-eyed and a Jew Michael reckons that is nothing compared to being disabled, black and a woman

"Women are the worst hit, the most disadvantaged of all," says this

Steep Talk

MICHAEL
SHAFTO



soft-spoken young man who was born in Louis Trichardt

It was his childhood experiences with suppression, the submissive way his fellow-blacks allowed racism to dominate their everyday lives, that decided Mr Masutha early on to become a lawyer

He says the Catholic School for the Blind, run by Belgians, was even more conservative and strictured than the repressive Afrikaners of his home town

He witnessed in anger the expulsion of Steve Kekana, now a well-known blind singer, for inadequate reasons

"The injustice of that perhaps was the beginning of my love affair with the law"

It seemed such a simple way to define right from wrong

Michael was a victim of cataracts at an early age At 18 months, he lost the sight of his right eye while vision in the left was substantially reduced

He earned his B Juris degree at the University of the North, and his LLB at Wits

Outspoken as he is on human rights, he cast some interesting light on the recent university boycott over the "exclusion" policy for failed students He strongly condemned the "pass one, pass all" philosophy

"It would make a mockery of the whole education system," he said "You have to work for it What I achieved, I deserved"

However, he feels that Wits could be more sensitive to the problem

"It isn't easy to study in the middle of riots, when you are under threat of attack There is a perception, rightly or wrongly, that certain lecturers see blacks as inferior

"Both this kind of lecturer and certain white students need to know we at least deserve the chance to prove we are their equals"

Judge's ruling on Neethling queried

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87er 3/4/91

By Brendan Templeton

Former police captain Dirk Coetzee's death squad claims are playing a central role in Lieutenant-General Lothar Neethling's attempt to appeal against the judgment given in a recent R1,5 million defamation case

The general's case against the Vrye Weekblad and Weekly Mail newspapers was dismissed by Mr Justice JC Kriegler in the Rand Supreme Court in January when he found the newspaper articles, on a balance of probabilities, to be true

Poison

In so doing, the judge accepted Mr Coetzee's evidence that the general had on four occasions provided him with poison to assassinate ANC activists

General Neethling's counsel, Fanie Celliers, SC, claimed in the Rand Supreme Court yesterday that the judge had based much of his findings on evidence by Mr Coetzee not directly related to his client

Mr Justice Kriegler ques-

tioned whether a person dying after being given poison supplied by the general was an unrelated fact

The general's counsel also undermined the improbability of Mr Coetzee's evidence — a natural reaction to the fantastic and horrifying claims he had made, the judge said

Mr Celliers said his client stood a reasonable chance of having the January finding overturned in the Appellate Division

The general also faced high legal costs and the case was extremely important for him and the newspapers, he said

The application is being opposed by the newspapers, counsel Bobby Levin, SC, confirmed

Mr Celliers argued that Mr Coetzee's evidence before the Harms Commission should not have been used as evidence in the defamation case

The judge pointed out that a transcript of the hearing was put before him on consent of the legal teams of both sides

Other findings by the judge brought into question by the general's counsel were

● That the Weekly Mail was entitled to publish an untruth in the public's interest

Although Mr Justice Kriegler said in his finding that the newspaper's situation was unique, Mr Celliers said it had never been found that an untruth could be in the public's interest. That could apply only to an individual who had a direct personal interest in the claim, he said

● That, because the general did not call easily accessible witnesses to clear his name, it should necessarily reflect badly on his case

Notebook

● That Mr Coetzee's knowledge about the contents of the general's office and home, and that he had his telephone numbers written in his police notebook, necessarily indicated the former captain had met the general

Mr Celliers questioned the judge's finding that the forensic department where Mr Coetzee allegedly met the general to receive poison was a high-security building. It was possible other means could have been used to get into the office, he said

● That Mr Justice Kriegler had not paid sufficient emphasis to "crucial" faults in Mr Coetzee's evidence

Move to start community court

A JOINT working group of Justice Department and Alexandra Civic Organisation (ACO) representatives will meet soon to discuss the possible formation of a community court in Alexandra, Justice spokesman Johan Grobler said yesterday

Grobler was unable to say exactly when the group would begin its work

But ACO general-secretary Richard Mdakane said it was expected "the group's first meeting will take place within weeks"

The working group was

WILSON ZWANE

established after a February meeting between Justice Minister Kobie Coetsee, and delegates from ACO and Resource Group, an organisation of legal experts

Another Justice Department spokesman said the working group was agreed on after it had become clear to Coetsee that ACO proposals for a community court had much in common with government's "initiatives aimed at making the administration of justice

accessible to people of all levels" (252)

"Proposals emanating from the group's discussions will be considered by the minister in due course," the spokesman said

ACO's Moses Mayekiso recently said the proposed community court for Alexandra would involve trained people who would resolve community disputes through mediation, arbitration and negotiation

The Resource Group has undertaken to train people in dispute-resolution mechanisms

BUSINESS DAY, Wednesday, April 3 1991

Neethling challenges court findings on 'poison' claims

SAP forensics chief Lt-Gen Lothar Neethling has applied for leave to appeal against a Supreme Court judgment which found he supplied poison to former police captain Dirk Coetzee for use in an attempt to murder ANC members

Neethling sued Vrye Weekblad and Weekly Mail for R1,5m in damages for stories published in November and December 1989 which alleged Neethling had supplied Coetzee with the poison

The general denied he had ever supplied Coetzee with poison or had ever met the man

Both newspapers defended the action on the grounds of truth and public interest

Mr Justice Kriegler dismissed Neethling's claim with costs in January this year after finding that Coetzee's disclosures about the poison and the existence of a covert police hit squad were true and had been published in the

B/day 3/4/91
SUSAN RUSSELL

public interest

While the judge did not accept that the specific allegations published in the Weekly Mail article had been proved to be true, he held that debate over the issue had been of such importance that the public had a right to be informed

The judge also found that Neethling had deliberately misled the court and the Harms Commission on several aspects

Neethling's appeal began before Mr Justice Kriegler in the Rand Supreme Court yesterday

His counsel Fanie Cilliers SC submitted that there was a reasonable prospect of success on appeal

Cilliers said the court had erred in finding that the self-supporting statements Coetzee gave to journalists and the Harms Commission were admissible evidence

252 1991
The court, he argued, had also erred in making a factual finding that Neethling had personally supplied Coetzee with poison

This finding was based mainly on the court's acceptance of Coetzee's description of Neethling's office and house

Cilliers said Coetzee was a single witness who had a motive for discrediting the police and senior officers

Coetzee was also known to have fabricated evidence

He said the court had also erred in making factual findings about the alleged offences committed by Coetzee and other members of the security forces which he said were too remote and wide-ranging to be relevant to the dispute between them

Sapa reports the two newspapers gave notice that they would oppose the application, which is also aimed at reversing the "with costs" ruling against Neethling

Argument continues today

only sub-division (2) of Question 14 can be answered.

(1) No (Vested in the Administration House of Assembly) This question relates to Question 5 in the House of Assembly

(2) Yes, the area in question was proclaimed a nature area in 1984. The nature area was not deproclaimed. On 6 August 1985 a permit for the use of land (75 ha) within a nature area was granted by the Department of Environment Affairs. A further permit for 50 ha was granted by the Cape Provincial Administration on 3 September 1990, this permit was issued because the changed land-use is more acceptable from an environmental point of view.

(3), (4) and (5) Vested in the Administration House of Assembly

Schools in Lindaleen area: transfer

*15 Mr R M BURROWS asked the Minister of Education and Training

- (1) Whether a decision was taken to transfer to his Department schools currently falling under the KwaZulu department of education in the area of Lindaleen near Durban, if so, (a) when, (b) by whom and (c) why,
- (2) whether it is his intention to proceed with this transfer, if not, why not, if so, when will the transfer be effected,
- (3) whether he will make a statement on the matter?

B824E

The MINISTER OF EDUCATION AND TRAINING

- (1) No
 - (a) Falls away
 - (b) Falls away
 - (c) Falls away
- (2) No

The area falls under the jurisdiction of KwaZulu
- (3) No

HOUSE OF ASSEMBLY

Lakehaven Children's Home: placement denied

*17 Mr M J ELLIS asked the Minister of Planning, Provincial Affairs and National Housing

- (1) Whether the Natal Provincial Administration recently denied three children, whose names have been furnished to the Minister's Department for the purpose of his reply, placement in the Lakehaven Children's Home, if so, (a) when and (b) on what grounds,
- (2) whether representations in regard to this matter were made to the said Administration by a certain social workers' association in Durban, the name of which has also been furnished to the Minister's Department, if so, (a) when and (b) what is the name of this association,
- (3) whether the Administration has responded to these representations, if not, why not, if so, what was the response?

B826E

The MINISTER OF PLANNING, PROVINCIAL AFFAIRS AND NATIONAL HOUSING

- (1) Yes
 - (a) During November 1990
 - (b) The Lakehaven Children's Home is registered with the Department of Health and Welfare House of Delegates and not with the Natal Provincial Administration. The Natal Provincial Administration has no jurisdiction over this home.
- (2) Yes
 - (a) November 1990
 - (b) South African Black Social Workers' Association Durban and the Society for Social Workers Durban
- (3) The associations were informed that the Lakehaven Children's Home is registered with the Department of Health and Welfare House of Delegates and not with the Natal Provincial Administration. The Natal Provincial Administration has no jurisdiction over this home. The Administrator is empowered to execute the provisions of the Child Care Act,

1983 (Act No 74 of 1983) in respect of the Black population group only.

Desegregation of hospitals

*18 Mr M J ELLIS asked the Minister of National Health

- (1) Whether she laid down guidelines in May 1990 in regard to the desegregation of hospitals, if so,
- (2) whether the Welkom Hospital is being desegregated in terms of these guidelines, if not, why not,
- (3) whether she will make a statement on the matter?

B827E

The MINISTER OF NATIONAL HEALTH

- (1) The Health Policy Council approved a management model to manage hospitals. The purpose of the management model is to furnish superintendents with fixed guidelines in order to provide patients with all the means at the State's disposal,
- (2) the situation at Welkom Hospital and also at other hospitals are being evaluated according to these guidelines. I will discuss the matter at the next meeting of the Administrators Health Council,
- (3) no

Pretoria Minute, progress

*19 Mr D J DALLING asked the Minister of Justice

- (1) What progress is being made in giving effect to paragraph 7 of the Pretoria Minute of 6 August 1990 in regard to the (a) repeal of various sections of the Internal Security Act, No 74 of 1982, and (b) review of security legislation and its application in order to ensure free political activity,
- (2) whether legislation arising from deliberations on the matters referred to above is to be submitted during the current session of Parliament, if not, why not, if so, when?

B829E

HOUSE OF ASSEMBLY

THE MINISTER OF JUSTICE (252)

Hansard 23/4/91 (1) and (2) A Bill to amend the Internal Security Act, No 74 of 1982, has now been finalised and will be submitted during the current session of Parliament. A further announcement in this regard will be made soon.

Cape provincial hospitals: reductions in services

*20 Miss M SMUTS asked the Minister of National Health

- (1) Whether any reductions in services were introduced at Cape provincial hospitals in March 1991 in order to effect savings, if so, (a)(i) what reductions and (ii) on what dates were they (aa) introduced and (bb) discontinued and (b) what total amount was saved as a result,

- (2) whether any of these reductions are still in force, if so, (a) which reductions and (b) when is it anticipated that they will be discontinued?

Hansard 23/4/91

B830E

THE MINISTER OF NATIONAL HEALTH

(1) Yes,

- (a) (1) the cessation of the admission of non-emergency cases (in-patients)

The restriction of out-patient visits to specialist and academic hospitals

The curtailment of certain specialist services and medicines

The curtailment of contracted patient transport in the Cape Peninsula and the cessation of all out-patient transport services from the rural local hospitals to the Peninsula and the large specialist referral hospitals in the Port Elizabeth metropole, East London and Kimberley

The intensive elimination of superfluous and duplicated services

The curtailment of specific services to hospital personnel

The cessation of subsidised and free personnel catering services

HOUSE OF ASSEMBLY

The immediate cessation of subsidised transportation of personnel

Keeping unfilled posts vacant, apart from those to which the Hospital and Health Services Branch is contractually bound

The implementation of such savings measures as heads of institutions are aware of and which they have themselves offered to implement and

- (ii) (aa) 4 March 1991 and (bb) 27 March 1991 and

(b) figures not yet available,

(2) yes,

- (a) keeping unfilled posts vacant

The curtailment of out-patient visits to specialist and academic hospitals

The curtailment of certain laboratory services and special examinations

The curtailment of patient transport and visits to specialists and

- (b) unknown

INTERPELLATION

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

Own Affairs

Goedgevonden: squatters

*1 The CHAIRMAN OF THE HOUSE ORDER† The interpellation which appeared on the Question Paper has been withdrawn in terms of a ruling by Mr Speaker that this matter is *sub judice*. We shall therefore proceed to deal with the questions for oral reply.

*Mr F J LE ROUX Mr Chairman, I should just like to have the question of the interpellation rectified. The question was not withdrawn, Mr Speaker ruled that it was *sub judice*, that is why it is not on the Question Paper.

*The CHAIRMAN OF THE HOUSE ORDER† I apologise. The word I actually intended to use,

was "removed" and not "withdrawn". The hon the Chief Whip is correct.

*1 Mr S P van Vuuren—Agricultural Development [Withdrawn]

QUESTIONS

*Indicates translated version

For oral reply

Own Affairs

Pre-primary schools: subsidies/admission

*1 Mr K M ANDREW asked the Minister of Education and Culture

- (1) Whether any pre-primary schools in the Cape Province received subsidies from his Department, *Hansard* 23/4/91
- (2) whether there are any restrictions or other requirements affecting the admission of children who are not White to such schools, if so, what restrictions or requirements,

- (3) whether any changes to such restrictions or requirements are being considered, if not, why not, if so, what changes?

B712E

†THE MINISTER OF EDUCATION AND CULTURE

(1) Yes,

- (2) yes, in terms of regulation 2(2)(d) promulgated in terms of the Education Affairs Act (House of Assembly) (Act 70 of 1988) "the number of White children attending such school shall at all times be an absolute majority of the total pupil enrolment of the school",

- (3) no, on account of the primary responsibility of my Department in terms of the Constitution
- *private pre-primary schools only

Certain school: accommodation for pupils of colour

*2 Mr A GERBER asked the Minister of Education and Culture † *Hansard* 23/4/91

- (1) Whether a certain school, particulars of which have been furnished to the Minister's Department for the purpose of his reply, has obtained and/or provided overnight accommodation for pupils of colour, if so, (a) what education model has been implemented at the school concerned, (b)(i) for what period and (ii) for what reasons has the said accommodation been provided and (c) what is the name of the school concerned,

- (2) whether this meets with the approval of his Department? *Hansard* 23/4/91 B775E

THE MINISTER OF EDUCATION AND CULTURE

(1) Yes,

- (a) model B,
- (b) (i) the night of 31 January 1991 (ii) because the unrest situation could possibly have prevented pupils from reaching the school on the next day,

- (c) the name given to my Department by the hon member,

(2) yes

†Mr A GERBER Mr Chairman, arising from the hon the Minister's reply, I would like to know whether there is any connection between what happened at this school and the legislation which is currently being considered to introduce health inspections at school buildings and at school hostels

†The MINISTER Mr Chairman, the reply is no

Agricultural schools management board elections

*3 Mr A GERBER asked the Minister of Education and Culture † *Hansard* 23/4/91

- (1) Whether his Department has directed that management board elections for agricultural schools in the Cape Province be called off, if so, why,

- (2) whether his Department will itself nominate management board members for such schools, if not, what procedure will be followed in this regard, if so, why,

HOUSE OF ASSEMBLY

Rightwingers seek indemnity

Star 4/11/71
The brother-in-law of "Wit Wolf" Barend Strydom and two other men, appearing in the Pretoria Regional Court in connection with bomb blasts, have applied for indemnity

Applications for indemnity by Strydom's brother-in-law Deon Christiaan Rautenbach (26), Paul Johannes Kruger (22) and Pieter

(252)
Johannes Venter (41) were received by the court yesterday

They are appearing in connection with charges relating to the explosions at the National Party offices in Brooklyn, Pretoria, and the American ambassador's residence in Waterkloof last year

The case was postponed to June 24

Neethling 'erred due to stress'

Star 4/4/91
(252)
By Brendan Templeton

Self-confessed hit squad killer Dirk Coetzee tried to spread the load of his guilt by implicating top police officers, once allegations about the squad's activities came to light, the Rand Supreme Court heard yesterday.

Fame Celliers, SC, counsel for Lieutenant-General Lothar Neethling, said this in an application to have the general's failed R1,5 million defamation case against two newspapers moved to appeal.

The newspapers — Vrye Weekblad and the Weekly Mail — reported allegations that General Neethling, who is head of the police forensic laboratory in Pretoria, provided Mr Coetzee with poison to assassinate political activists.

Mr Celliers claimed the former police captain acted out of self-interest and revenge after a former member of his unit said while on Death Row that the squad under Mr Coetzee had been involved in killings.

This needed to be kept in mind when summing up the former captain's evidence. It also explained why he tried to falsely implicate General Neethling.

Claimed

Mr Celliers claimed that several discrepancies in Mr Coetzee's evidence were overlooked by Mr Justice Kriegler.

- The use of an untraceable poison on two people whose bodies were cremated. Why use this when all traces of the corpses were to go?

- Other weapons were used. Why use them if an overdose of the poison could kill them? Or, why use poison if other weapons were available and all evidence was to be destroyed?

- The poison allegedly failed repeatedly. Why would the squad continue using it?

● General Neethling was an internationally renowned chemist. Why would he continue using poison that did not work?

In his January judgment, the judge ruled the general deliberately tried to mislead him by misreading recorded evidence given before the Harms Commission. He found the general was also evasive.

But Mr Celliers yesterday said this was because the general was trying to construct a hypothetical reason why Mr Coetzee had an intimate knowledge of his house. The general misread the commission record because few could read accurately, under stress, he said.

Mr Coetzee might have received details of the general's house from another source.

(Proceeding)

Neethling did not try to mislead, court is told

252
B/Don 4/4/91

SUSAN RUSSELL

SAP forensics chief Lt-Gen Lothar Neethling had not deliberately set out to mislead the Harms Commission or the court which heard his R1,5m defamation claim against Vrye Weekblad and The Weekly Mail, his counsel Fanie Cilliers SC submitted in the Rand Supreme Court yesterday.

Cilliers made his submission in an application for leave to appeal against Mr Justice J Kriegler's dismissal of Neethling's claim in January this year.

Neethling sued the newspapers for articles published in November and December 1989 in which former police captain Dirk Coetzee claimed Neethling had supplied him with poison to be used to murder ANC members.

Neethling denied he gave Coetzee poison or that he had known Coetzee.

The judge dismissed the claim after accepting Coetzee's evidence that Neethling had supplied him with poison and that he had visited Neethling's office and home on several occasions to collect poison and "knockout drops".

The judge also found that Neethling had deliberately misled the Harms Commission during evidence in which he said Coetzee could have obtained information about his home from a video tape made by a British news team.

Mr Justice Kriegler found that, during cross-examination at the defamation hearing Neethling had then deliberately misread the record of his evidence at the Harms Commission on that aspect.

In his judgment, Mr Justice Kriegler said Neethling had two misleading versions which were "a fruitless attempt to reconcile the irreconcilable".

Neethling denied Coetzee had visited him at his office and at home.

Cilliers submitted yesterday that Neethling had not deliberately misread the record but had been attempting to explain his theory that Coetzee could have described his house after watching the video.

Neethling, he said, had not made factual statements in this regard to the Harms Commission and at the defamation hearing, but had given his opinion on how Coetzee could have obtained his information.

He said the discrepancy between Neethling's evidence at the Harms Commission and his reading of the record during the civil trial was not put to Neethling during the trial.

Neethling could have been recalled and asked for an explanation, Cilliers said. Argument continues today.

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Cape Times, Friday, April 5 1991 5

Strydom and 328 others still on death row

Political Staff

THERE are 328 people on death row including 33 convicted of politically related offences according to the Human Rights Commission (HRC). The HRC's list of political prisoners facing the death penalty does not include the wife of a leader. Barend Strydom was sentenced to death for the murder of eight people and the attempted murder of a further 16 in Strydom Square, Pretoria, in 1983.

The case of more than 50% of the death row prisoners, who were sentenced before last year's Criminal Law Amendment Act came into effect, are being reviewed by the specialist panel established in terms of the law.

The panel is expected to complete its investigations soon. Among those on death row is Robert McBride, sentenced to death in April 1987 for the car bomb which exploded outside Masoor's Bar on the Marine

Parade, Durban, killing three people.

They also include the Uppington 14, sentenced to death in May 1989 for the murder of a policeman. Their appeal is to be heard next month.

Two men, Mncube Mchetheledi and Nondula Mzondeleli, sentenced in May 1988 for terrorism and the murder of two Messina farming families, are also on death row. Another is Oupa Alex Seheri, sentenced in February 1989 for killing

two men with an AK-47 assault rifle taken from the home of Mrs Winnie Mandela.

A number of the others, many of them from the Eastern Cape, were convicted of murdering policemen and suspected informers.

The HRC said that at the end of February this year, 128 people — 52 of them in Transkei — were being detained in terms of security legislation

Neethling's appeal affects media focus on corruption

w/ mail 5/4-11/4/91.

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LAW & THE COURTS

Carmel Rickard

THE South African Police forensic chief, Lothar Neethling, desperate to restore his name and credibility, wants the Appellate Division to take another look at the judgment dismissing his "hit squad" libel suits against *Vrye Weekblad* and *The Weekly Mail*.

But the appeal has wider implications than Neethling's honour, or the survival of the papers which faced a claim of R1,5-million and legal costs of a similar order.

Media lawyers have stressed the legal significance of the judgment by Mr Justice Kriegler. Calling it more than just a vindication of the papers' decision to publish, they believe it should be seen as a "charter" for investigative journalism, particularly reporting on government and business corruption. This in turn means not only the media but also the public, which has an interest in clean administration and honest commercial dealings, should watch the outcome of any appeal.

The decision by Mr Justice Kriegler in the Neethling case went further than the previous high water mark judgment on the media and libel.

In that earlier case, *Zillie v Johnson*, the judge for the first time acknowledged a new kind of defence available to someone charged with defamation, and that was whether the matter published was in the public interest. Previously an editor faced with a defamation case could plead that the material was true and that its publication was justified because of public benefit.

But in the *Johnson* case the judge held that under certain strictly defined circumstances, publication of defamatory matter could be justified solely on the grounds of public interest. For example if a minister said something about someone which was not true, the fact that it was said by a mini-

ster of state made the comment reportable in the public interest, even if the content was, strictly speaking, defamatory.

In the Neethling case, lawyers for the *Vrye Weekblad* argued that the publication of defamatory comments about the police forensic chief was justified on the grounds of truth: the paper had information which it believed indicated the otherwise defamatory material was true. Additionally, as a kind of legal safety net, they argued publication was justified on the grounds of public benefit.

The Weekly Mail's defence was to argue purely for public interest — as the paper reproduced the *Vrye Weekblad* allegations without having all the information available to the *Vrye Weekblad*, *The Weekly Mail* could not justify publishing on the grounds of truth.

Crucial for the media in the Kriegler decision, the judge found the *Vrye Weekblad* was justified in publishing on the grounds of truth and public benefit. He also ruled *The Weekly Mail* was justified purely on the grounds of public interest, saying the information of former police captain Dirk Coetzee was so important that it had to be published and that the question of the truth of the material was therefore not the issue.

This "opened up" the principle established in the *Johnson* case — following the Kriegler judgment the media may publish "in the public interest" not only when ministerial statements are quoted, but when the material contains important information about alleged corruption.

One media lawyer commented, "The impact of the closely reasoned judgment of Mr Justice Kriegler is to open the door for newspapers to get involved in investigative journalism about corruption."

He said the judgment was "starting to change the face of journalism in South Africa", editors were now in a position to give much greater scope to their journalists, knowing they would have to face the wider test of justification on public interest.

During argument on whether leave to appeal should be granted, Neethling's counsel attacked the judgment on several grounds, including the weight put on Coetzee's evidence.

Crucially for the development of media law, counsel questioned whether a defence on the basis purely of public policy should be allowed and has challenged the validity not only of the Kriegler judgment on this point, but also the *Johnson* decision.

He said new defences to defamation (like pure public interest) could not be framed, and that the only good defences were those based on the traditional categories of defence for defamation — truth for public benefit, privilege and fair comment.

Granting leave to appeal would mean that Neethling will not have to pay the legal costs of the two papers until the AD has given its ruling.

But the Kriegler judgment does not lose its teeth in the meantime. Pending the AD decision, Mr Justice Kriegler's findings are law in the Transvaal and of persuasive influence elsewhere.

At the time of writing Mr Justice Kriegler had not yet given his decision on whether to grant leave to appeal.

●Fanie Cilliers SC with M Witz, instructed by Dyasons, appeared for Neethling and Minister of Justice Kobie Coetzee. Robert Levin SC with Frans Rautenbach, instructed by Bell, Dewar and Hall, appeared for the two newspapers.

Judge's task: Coetzee a liar, or general a bully

By Brendan Templeton

Mr Justice J C Kriegler is to decide on Monday whether former policeman Dirk Coetzee is a liar bent on revenge and self-preservation or if Lieutenant-General Lothar Neethling is a blustering, lying bully.

These are the claims put to the judge by opposing counsel in the general's application in the Rand Supreme Court for leave to appeal against a ruling in January when General Neethling lost a R1,5 million defama-

tion case against the Vrye Weekblad and the Weekly Mail newspapers.

The judge found that reports in the publications that General Neethling supplied Mr Coetzee with poison to eliminate ANC activists had not been refuted.

But the general's counsel, Fanie Celliers, SC, argued this week that Mr Justice Kriegler overlooked vital flaws in Mr Coetzee's evidence when he made his January judgment.

Mr Coetzee was a self-confessed liar who had a grudge against the police and was act-

ing out of self-preservation, he said. Mr Coetzee made his allegations only once a former member of his alleged hit squad had confessed to several killings while on Death Row.

The newspapers' counsel, Bobby Levin, SC, claims the judge was correct in seeing General Neethling as an arrogant bully who deliberately misread an extract from the Harms Commission to mislead the court.

He said Captain Coetzee had no reason to fabricate a story. The story did not implicate his

superiors, against whom he had personal grudges.

The general had constantly avoided answering direct questions when trying to explain how Mr Coetzee knew intimate details about his home and office and how he had his telephone number.

Mr Celliers claims these details do not necessarily implicate the general in a poison plot as Mr Coetzee could have acquired the knowledge in other ways.

The case continues.

It's Neethling versus Coetzee again

By PHILIPPA GARSON

THE fine details of renegade police captain Dirk Coetzee's evidence implicating South African forensics laboratory chief General Lothar Neethling in the killing of political activists were thrashed out yet again in the Rand Supreme Court.

The general's legal team this week brought an application to appeal against the judgment of the R1,5-million defamation case which he lost against *The Weekly Mail* and *Vrye Weekblad* newspapers. Neethling sued the newspapers for publishing Coetzee's allegations regarding his involvement in "hit squads".

The grounds of the application is that Mr Justice J Kriegler erred in some of his findings, including the judgement that the newspapers' bore rebutting onus rather than full onus to prove their defence.

Fanie Celliers SC argued that the court incorrectly found that Neethling had supplied poisons to Coetzee and that this finding was largely based on how closely Coetzee could describe Neethling's house and laboratory and the fact that Neethling's private telephone number appeared in his notebook. Celliers argued that Coetzee had a vendetta against the police force.

He submitted that the ex-police captain had a record of falsifying evidence which the court did not take into

account. He also argued that Coetzee had made several inaccuracies in his description of Neethling's house and domestic situation.

Celliers said the "poison link" was hardly credible because Neethling, with his chemical background, would not have supplied a substance that failed to work. There was no need for the poison as the victims were shot and then burnt to get rid of their traces.

Opposing the application, Bobby Levin SC argued that in a defamation case the right of freedom of speech justified a rebutting, rather than full onus, on the newspapers' defence.

There was no evidence that Coetzee had a motive to falsely implicate the general, in the light of the fact that he had implicated his friends and not those colleagues he most begrudged, Levin argued.

On Coetzee's tendency to fabricate evidence, Levin said that the court found that in each case he had good reason to do so. He said that Coetzee had at no time testified that a decision had been made to burn the bodies in advance.

On Coetzee's inaccuracies regarding Neethling's home and laboratory, Levin said his version would have been highly suspect had he made no mistakes, given that his visits had taken place nine years ago.

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HOUSE OF REPRESENTATIVES

THE MINISTER OF CORRECTIONAL SERVICES

QUESTIONS

*Indicates translated version

For written reply

General Affairs

Judges/magistrates, visits to prisons

5 Mr P R E DA GAMMA asked the Minister of Correctional Services

On how many occasions in 1990 did (a) judges and (b) magistrates inspect or pay visits to prisons in connection with persons awaiting trial?

C39E

The available statistics unfortunately do not distinguish between visits to sentenced and unsentenced prisoners

(a) and (b)

Judges and magistrates visited prisons 87 and 605 times respectively during 1990 and had access to all sections of prisons which include awaiting trial sections. In this regard I also refer the hon member to my written reply to question number 126 on 19 March 1991 in the House of Assembly which dealt with visits by judges and magistrates to prisons in general (see cols 634-651)

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HOUSE OF DELEGATES

THE MINISTER OF EDUCATION AND CULTURE

QUESTIONS

*Indicates translated version

For written reply

General Affairs

Teacher/pupil ratio

12 Mr A SINGH asked the Minister of Education and Culture

(1) What is the teacher/pupil ratio in his Department for (i) primary and (ii) secondary schools and (b) in respect of what date is this information furnished?

(2) whether his Department has statistics on the teacher/pupil ratio in other education departments of the Republic, if so, what are the relevant ratios?

13 The MINISTER OF EDUCATION AND CULTURE

(1) (a) 1 23

(ii) 1 17

(b) 1990-03-31

(2) Yes

For 1989	1 17,6
House of Assembly	1 23,5
House of Representatives	1 36,3
Education and Training	1 41,0
Self-governing territories	

Schools average class size

12 Mr A SINGH asked the Minister of Education and Culture

(1) What is the average class size in (a) primary and (b) secondary schools in each specified region of his Department,

(2) what is the class size required by his Department for supplying a class teacher in (a) primary and (b) secondary schools,

(3) what is his Department's policy in regard to the supply of additional teachers to schools?

D57E

The MINISTER OF EDUCATION AND CULTURE

(1) My Department is not subdivided into regions and according to latest available figures the average class size is as follows

Primary Schools	23
Secondary Schools	20
Primary Schools	30
Junior Secondary Schools	30
Senior Secondary Schools	25

(3) The supply of additional teachers to schools is based on the needs of the school concerned weighed against Departmental norms so as to ensure standardisation and uniformity

Teacher-training institutions admission refused

14 Mr M RAJAB asked the Minister of Education and Culture

(1) How many persons were refused admission to teacher-training institutions under the control of his Department in respect of the current academic year?

(2) (a) what policy is being applied at present in regard to the acceptance of a specific number of prospective students into his Department's teacher-training institutions and (b) on what demographic projection and school admissions is the current acceptance policy into such institutions based,

(3) whether his Department is experiencing a shortage of teachers, if so, (a) what is this shortage and (b) in what categories of skills are these shortages found?

D39E

The MINISTER OF EDUCATION AND CULTURE

(1) 2 384

(2) (a) In the first instance, admission of students for pre-service teacher education is determined by the projected needs of the Department, based on pupil population and subject specialisations

In the second instance, with effect from this year, Black students are being admitted for pre-service teacher education in subject special-

HOUSE OF DELEGATES

Neethling's appeal against judgment fails

By Brendan Templeton

Vrye Weekblad editor Max du Preez called yesterday for the immediate suspension of police forensics laboratory head Lieutenant-General Lothar Neethling.

Mr du Preez made the call after the general was refused leave to appeal against his failed R1 million defamation claim against the paper.

"We are looking forward to the suspension of Lothar Neethling and an investigation into the police forensic laboratory," he said. "The court has found he probably took part in multiple murder."

General Neethling entered a motion for leave to appeal after Rand Supreme Court judge Mr Justice Kriegler ruled against him in his defamation cases against the Vrye Weekblad and the Weekly Mail.

The newspapers repeated claims by former police captain Dirk Coetzee that General Neethling provided him with poison to kill ANC activists.

Mr Justice Kriegler found on a balance of probabilities that Mr Coetzee was speaking the truth and that the general deliberately attempted to mislead him when giving evidence.

He confirmed these findings yesterday and found that a

higher court would not overturn his ruling in the Vrye Weekblad's case.

However, the converse was true in the Weekly Mail's case and the judge granted the general leave to appeal in respect of his R500 000 claim against the Weekly Mail.

In addition to Mr Coetzee's allegation, the Weekly Mail also claimed that the general sent bottles of poisoned spirits to ANC activists in Mozambique.

Contentious

The judge earlier held it was unable to prove the truth of this fact, but found in its favour, saying the case was unique and the public's need to hear the story was justification enough for publication.

But Mr Justice Kriegler said yesterday his conclusion was a contentious one that should be confirmed by a higher court.

He ordered the general to pay 90 percent of the Vrye Weekblad's legal fees of about R1,2 million, said Mr du Preez.

The remaining 10 percent will be decided on appeal.

The judge confirmed all his factual findings on Mr Coetzee's claims and ruled that another court would not disagree with him.

His findings included

- Mr Coetzee had personal con-

tact with the general. This was denied by General Neethling and put his evidence in doubt.

- General Neethling attempted to mislead the court by misreading a record from the Harms Commission and by trying to hully his "scientific" analysis of a video recording of his house (which he claimed Mr Coetzee used to find out what his home looked like) into the court record.

"I cannot, with the best will in the world, find that there was anything less than a deliberate attempt to mislead this court and the Harms Commission," the judge said.

- Claims that Mr Coetzee had a grudge against the police were unfounded, he only had a grudge against particular members of the force, but this did not include the general.

- Mr Coetzee's evidence showed a remarkable degree of consistency from the day he gave his story to the Vrye Weekblad through the Harms Commission to the defamation hearing.

Mr du Preez said afterwards the newspaper was looking forward to recovering the money it put aside for legal costs.

"If it (the ruling) had gone against us, we would have gone under."

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874 9/4/91 (252)

time comes, by the appropriate line function Minister There is the closest liaison between these two investigations in order to make sure that we arrive at the right kind of objectives

The conclusion of this whole question is this The idea was not to put something else in the place of the bread subsidy *Handwritten: 9/14/91*

Mr K M ANDREW Pocket the money [Interjections]

The MINISTER Mr Speaker, if one is busy with a serious discussion such as this, and one gets this kind of childish, facetious remark, then one wonders about the integrity of the question in the first place [Interjections]

The ACTING SPEAKER Order! I must just bring it to the hon the Minister's attention that the time for the answering of questions has already been exceeded

The MINISTER That suits me, Mr Speaker, thank you very much [Interjections]

The ACTING SPEAKER Order! If hon members continue to waste time in this way, we shall never get through the Question Paper

Business interrupted in accordance with Rule 180C(3) of the Standing Rules of Parliament

Reserve Bank foreign exchange losses

*18 Mr L STOFBERG asked the Minister of Finance *Handwritten: Hansard 9/14/91*

- (1) What, as at the latest specified date for which figures are available, was the total amount (a) of foreign exchange losses sustained by the Reserve Bank and (b) made good or voted to the Reserve Bank out of public funds by the State since such losses had first occurred,
- (2) (a) in what way and (b) when is it proposed to make good the exchange losses incurred by the Reserve Bank on behalf of the State? *Handwritten: B543E*

THE MINISTER OF FINANCE

- (1) (a) Audited balance due by the Treasury as at 31 March 1990 — R15 139 995 640 Unaudited balance due by the Treasury as at 28 February 1991 — R10 290 037 174

(b) Losses reimbursed to the Reserve Bank by the Treasury as approved in the respective annual budgets

20 July 1983	R 892 343 749
13 January 1986	R 654 651 064
21 December 1989	R1 000 000 000
27 December 1990	R3 000 000 000
Total	R5 546 994 813

(2) (a) As legal appropriation by Parliament *Handwritten: Hansard 9/14/91*

(b) Policy regarding this matter is continually revised The official viewpoint was elucidated in the 1990/91 Budget Review, which was tabled on 14 March 1990 The latest trends are contained in the 1991/92 Budget Review

New questions

Criminal Procedure Act section 205

*1 Mr P G SOAL asked the Minister of Justice

- (1) whether, in the light of the public concern at the conviction of a certain person (whose name has been furnished to the Minister's Department for the purpose of his reply), he is considering reviewing section 205 of the Criminal Procedure Act, No 51 of 1977, if not, why not,
- (2) what (a) are the circumstances surrounding the conviction of this person and (b) is his name, *Handwritten: Hansard 9/14/91*
- (3) whether he will make a statement on the matter? *Handwritten: 252* *Handwritten: B585E*

THE MINISTER OF JUSTICE

(1) There can be no doubt as to the justification of the procedure set out in section 205 The objective with this section is to compel persons who are in the possession of evidence pertaining to an offence but who do not want to reveal it to the police, to furnish the information under oath This section is applicable to each and everyone in order to ensure that justice is done Society expects that where its interests outweigh personal interests, that there should be a duty on everyone to testify The community has an interest in the disclosure of information which may lead to the bringing to task of a guilty

person It is, however, understandable that certain persons may, for various reasons, choose not to disclose that which they have seen or that which they became aware of It cannot, therefore, be doubted for one moment that this section must be applied with the greatest caution

I have a sound appreciation for the necessary role the media has to play when they have to bring important information to the attention of the public However, one should always strive to maintain a balance between the different interests On the one hand journalists would for understandable reasons wish to protect a reliable and trustworthy source, but, on the other hand, justice should also prevail Wigmore states as follows

"When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private"

The public has a right to the evidence of each and everyone This has indeed been an accepted principle for more than three centuries Where any person, and that includes a journalist, has evidence at his disposal which will serve the cause of justice, there rests a moral duty on him, in the interests of society, to place that information at the disposal of the law That journalists may face certain problem situations is evident from the work of Kelsey Stuarts', The Newspaperman's Guide to the Law, Fourth Edition, Chapter 19

Due to the sensitive nature of this section, I initiated an amendment during the course of 1990, which was discussed with interested parties and which was placed on the Statute Book during the present Parliamentary session by means of the Criminal Procedure Amendment Act, 1991 (Act No 5 of 1991)

In order to prevent any random use of this section and to confine it to those cases where it is actually necessary, the authority to request that a person appear before a magistrate for questioning, is now vested in an attorney-general whose objectivity and judgment have always been above suspicion Furthermore, a savings

provision has been added to the section to the effect that a person instructed to appear on a particular date before a magistrate for questioning and who furnishes the required information prior to the said date to the satisfaction of the attorney-general or authorised State prosecutor, his appearance before the magistrate will no longer be required This creates a mechanism enabling the person concerned or someone else with a material interest in the matter to enter into a discussion with the attorney-general concerned The information required may then be the product of negotiation

An opportunity is also afforded to the person involved to inform the attorney-general of the reasons for his disinclination to make a statement and the attorney-general may in turn inform him as to why the information is regarded as being important

I am of the opinion that the amendment I have referred to addresses this issue satisfactorily This amendment was discussed with, *inter alia*, the Media Council of South Africa and has its approval During consultations during March of this year, the Media Council and individual legal representatives accepted that section 205, in its amended form, should remain on the Statute Book and that this mechanism should be at the disposal of the State in appropriate circumstances Certain proposals pertaining to administrative cooperation in the event of media involvement, which, *inter alia*, contain a closer interaction between the attorney-general and the interests of the media, have been made These proposals are at present receiving our attention

(2) (a) and (b) Mr Patrick Laurence was subpoenaed to appear before a magistrate in terms of section 205 of the Criminal Procedure Act, 1977, for questioning in respect of certain allegations made by him in "The Star" of 12 February 1991 At his appearance before the magistrate on 5 March 1991, Mr Laurence refused to answer a question put to him, namely to identify the source of his allegations, whereupon he was sentenced to ten days'

imprisonment in terms of section 189 of the Criminal Procedure Act, 1977

- (3) A statement is not necessary

Persons sentenced to death

*2 Mr P G SOAL asked the Minister of Justice

- (1) (a) How many persons have been sentenced to death by the courts since 2 February 1990 and (b) what are their names,
 (2) whether they will be executed, if so, when,
 (3) whether he will make a statement on the matter?

B595E

The MINISTER OF JUSTICE

- (1) and (2) 51 persons for the period 2 February 1990 to 27 July 1990 and 49 persons for the period 28 July 1990 to 8 April 1991

It is not clear to me why the hon member requires the information as from 2 February 1990. It is definitely not an appropriate date for the purpose of this question and it is clear to me that the hon member did not keep abreast of developments of the law in this field. I refer the hon member to the oral reply which I furnished in this House on 19 February 1991 (see cols 187-189) in this regard.

Mr Speaker/Chairman with leave of the House I shall lay upon the Table the list of names which the hon member requires (Annexure A)

- (3) A statement is not necessary

Annexure A

Shabangu Jabulani
 Mfanafuthi Ntaka
 Norman Molefe
 Rammy P Donbeni
 Mhahidiakonk Siyondo
 Donovan Diedericks
 Vusi Nkosi
 Fihlikhanda Khumalo
 Mahlangaume D Kgotoko
 Richard Pikoli
 Thembisile M Skaap
 David Cloete
 Deon L Plank

HOUSE OF ASSEMBLY

Bonginkosi Zitha
 David Sesing
 Philly Ncube
 Peter Smith
 Richard M Nduna
 Lucky Ndumane
 Willem T Myngat
 Mandla R Shabalala
 Sibusiso E Shabalala
 Philani T Mjyako
 Gqibile P Maxam
 Nceba A Mbengu
 Mocketisi Marapela
 Hoseah M Khoza
 Absolom M Lubambo
 David Mokoena
 Sipho S Mbonane
 Mjenzeni Z Nkosi
 Daniel M Motaung
 Isaac T Setai
 Joseph S Lephalo
 Neo D Kheo
 Freddie A Potwana
 Ezskiel Mandlazi
 Gideon Kgasoane
 Ronnie Fakude
 Oupa P B Nkosi
 Judas Mkhonto
 Elliot G Ngwegwe
 Lindemna L Dada
 E Rabodunyone
 E Marais

House of Assembly
 9/4/91
 (252)

basis in respect of the number of taxpayers in the various population groups and the amount of tax paid by them

- (3) As already explained on 5 March 1991 in answer to the hon member's question No 3 of 15 February 1991, all taxpayers, irrespective of race, receive impartial treatment from the Department of Finance and active steps are taken against any taxpayer who is in arrears with the payment of tax

Certain person: military service

*4 Miss M SMUTS asked the Minister of Defence

- (1) Whether a certain person, whose name has been furnished to the South African Defence Force for the purpose of the Minister's reply, has been called up for military service, if so, (a) when and (b) what is his name,
 (2) whether this person has refused to perform military service, if so,
 (3) whether any steps will be taken against this person, if so, (a) what steps, (b) in terms of what statutory provisions and/or regulations and (c) when?

B603E

The MINISTER OF DEFENCE

- (1) Yes
 (a) He was called up for the January 1991 intake
 (b) The name supplied by the hon member

- (2) Yes
 (3) The matter is at present being investigated and a decision regarding possible steps will be taken on completion thereof

Cape Town: unguarded arms depot

*5 Mr J H MOMBBERG asked the Minister of Defence

- (1) Whether an arms depot in Cape Town was unguarded on or about 10 March 1991, if so, why, if not, what are the relevant details,
 (2) whether he will make a statement on the matter?

B607E

HOUSE OF ASSEMBLY

ay, April 9 1991

Neethling's bid to overturn 'poison judgment' fails

SUSAN RUSSELL

Day 9/4/91

POLICE forensics chief Lt-Gen Lothar Neethling was yesterday refused leave to appeal against the dismissal of his R1m defamation claim against Vrye Weekblad newspaper.

Mr Justice J Kriegler dismissed Neethling's application with costs after finding there was no reasonable prospect of another court coming to different legal and factual findings to those he made in rejecting the general's claim in January.

The judge then found that claims by former security policeman Capt Dirk Coetzee that Neethling supplied him with poison to murder ANC activists were true.

Neethling sued Vrye Weekblad and the Weekly Mail for a total of R1,5m after the newspapers published articles in November-December 1989 linking him to covert police hit squad activities.

However, Mr Justice Kriegler yesterday granted Neethling leave to appeal in respect of his R500 000 claim against Weekly Mail, which had also been dismissed with costs.

Justified

The Weekly Mail article claimed Neethling was involved in poisoning bottles of liquor which were destined for ANC members in Maputo.

The judge earlier held that while the allegations had not been proved to be true, publication was justified because the matter was of such importance that the public had a right to be informed.

Granting leave to appeal on this aspect yesterday, Mr Justice Kriegler said the legal point raised was not only important to the parties involved, but was also of much wider importance.

It would be short-sighted not to see that a finding that justification without proof could stand as a defence would be contentious. Mr Justice Kriegler said this aspect was unexplored territory and deserved a decision from the highest court.

Dismissing the application for leave to appeal in the Vrye Weekblad matter, the judge rejected submissions that another court could come to a different finding on

the credibility of the two key witnesses — Neethling and Coetzee.

In his judgment in January Mr Justice Kriegler accepted Coetzee's evidence as true on an overwhelming probability.

He also found that Neethling, who denied he had ever met Coetzee, had misled the Harms Commission and attempted to mislead the court at the defamation hearing in explaining how Coetzee could have given descriptions of his home and office.

The judge yesterday rejected the submission that Coetzee had had a motive for falsely implicating Neethling. Coetzee could in no way have benefited from falsely implicating Neethling.

Mr Justice Kriegler said he had in no way ignored Coetzee's shortcomings and realised he was dealing with an accomplished gangster with a long record of fabricating evidence. He said Neethling had not seen fit to stick to his full denial that he had never met Coetzee, but had started postulating about the former captain's knowledge of his house.

Neethling had also tried to say that Coetzee's police notebook with his telephone number in it was manufactured evidence.

Mr Justice Kriegler said Neethling had not merely theorised about how Coetzee had obtained his knowledge, but had tried to establish a factual basis for his postulations, facts which were not true.

With the best will, the judge said, he could not agree that there had not been a deliberate attempt to mislead the court about the facts and about what Neethling had said at the Harms Commission.

Afterwards Vrye Weekblad editor Max du Preez said he expected Neethling's immediate suspension and an investigation into the police forensics laboratory.

"The court has found that the man probably took part in multiple murder," Du Preez said.

He said the newspaper now looked forward to recouping some of the more than R1m it had spent on fighting the case.

HOUSE OF DELEGATES

QUESTIONS

Indicates translated version

For oral reply

General Affairs

Alleged political murders investigation

*1 Mr D K PADIACHEY asked the Minister of Law and Order

- (1) Whether he intends appointing a committee consisting of *inter alia* ex-Capt Dirk Coetzee to investigate alleged political murders in South Africa, if not, why not, if so, what are the relevant details,
- (2) whether he will make a statement on the matter?

The MINISTER OF LAW AND ORDER

(1) and (2)

The Government wishes to state in the strongest terms that each murder is an abhorrent act. This also applies to each so-called political murder, or attempt thereto. Such acts or attempts thereto, are exposed by means of thorough and vigorous investigation so that the guilty parties may be brought to justice.

I have no intention of appointing a committee, consisting of *inter alia* ex-Capt Dirk Coetzee, to investigate alleged political murders. A Commission of Inquiry under the chairmanship of Mr Justice Harms has already investigated allegations of death squads and other murders arising from the evidence before that Commission, the Chairman referred several of these cases to the various Attorneys-General. These cases are being investigated further under the guidance of the Attorneys-General and a special investigation team of the South African Police. To appoint another committee for the same purpose would therefore serve no purpose.

I refer the hon member to the oral reply to Question 2 by the hon Minister of Justice in the House of Assembly on 26 February 1991 during which the Government's viewpoint of

HOUSE OF DELEGATES

the handling of matters of this nature is expounded

Lenasia South/Bezuidenhoutsvallei satellite police stations

*2 Mr D K PADIACHEY asked the Minister of Law and Order

Whether he intends establishing satellite police stations in (a) Lenasia South and (b) Bezuidenhoutsvallei, if not, why not, if so, what are the relevant details?

The MINISTER OF LAW AND ORDER

- (a) A feasibility study into the establishment of an emergency police station in Lenasia South, which will operate from the Ennerdale police station, is being carried out by Efficiency Services of the South African Police
- (b) The establishment of a permanent police station in Bezuidenhoutsvallei has been approved, but its erection has been delayed due to a shortage of funds

As the South African Police are aware of the public's desire for a police station in the area, a feasibility study is being carried out by the Efficiency Services of the South African Police into the establishment of an emergency police station in Bezuidenhoutsvallei.

Efforts are being made to find suitable accommodation for use as an emergency police station. Offers in this regard have already been received and will be considered.

Mr Y M MAKIDA Mr Chairman, arising from the hon the Minister's reply, when does he expect the feasibility study for the Lenasia South police station to be completed?

The MINISTER OF LAW AND ORDER Mr Chairman, unfortunately I do not have a date, but I shall ask the Efficiency Services to give the matter priority. I shall inform the hon member of the date on which this study will be completed.

Mr D K PADIACHEY Mr Chairman, further arising from the hon the Minister's answer, last year the hon the Minister said in the House that a feasibility study would be carried out in Lenasia South. Was that done?

The MINISTER Mr Chairman, I am unable to furnish this information off the cuff, but I shall investigate the matter and inform the hon member as soon as possible.

Bench appointment of non-Whites

*3 Mr M F CASSIM asked the Minister of Justice

- (1) Whether consideration is being given to the appointment to the Bench of senior members of the Bar who are not White, if not, why not, if so, when are such appointments expected to be made,
- (2) whether he will make a statement on the matter?

The DEPUTY MINISTER OF JUSTICE

(1) and (2)

As already stated by me on various occasions it is our policy and we are committed to appoint members of all communities irrespective of race, colour or creed to the Bench to serve justice everywhere in the Republic.

The State President may in terms of section 10(1)(a) of the Supreme Court Act, 1959 (Act 59 of 1959) appoint fit and proper persons as judges of the Supreme Court of South Africa.

I do not deem it in the interest of the administration of justice to discuss publicly the steps we have already taken to secure appointments to the Bench in the spirit of the question. This may very well defeat the good intentions of the hon member. However, I am prepared to discuss the issue privately with the hon member. Suffice it to say that I am optimistic that progress is being made.

Mr S PACHAI Mr Chairman, arising out of the hon the Deputy Minister's reply, and in view of the fact that he says it is the policy of the Government to appoint such members to the Bench, can he say why it has not been possible to implement this policy for all these years?

The DEPUTY MINISTER OF JUSTICE Mr Chairman, judges are appointed from the ranks of senior counsel. There are not that many senior counsel of colour available, and it also depends on them to accept the appointments.

This is a sensitive matter. Normally, by convention and in terms of the Constitution, the appointment of judges is discussed only upon a motion. That is why the hon the Minister of Justice did not deem it in the public interest to discuss specific cases.

Driving schools drivers' licences

*4 Mr N SINGH asked the Minister of Transport

- (1) Whether he intends granting licences to driving schools to test learner drivers and issue drivers' licences, if not, why not, if so,
- (2) whether this matter has been investigated, if so, (a) by whom and (b) on whose request,
- (3) whether he intends taking any action in regard to the large number of unlicensed drivers on South African roads, if not, why not, if so, (a) what action and (b) when?

The MINISTER OF TRANSPORT

D79E

(1) No, not at this stage. The reason for this is that it would not be appropriate to introduce numerous new testing and issuing authorities to the drivers' licensing system before the present upgrading of standards, the rationalisation of procedures and the prevention of fraud have been completed.

(2) and (3) Fall away

The LEADER OF THE OFFICIAL OPPOSITION Firstly, Mr Chairman, arising out of the reply of the hon the Minister, is he aware of the fact that the failure rate in respect of those who apply and write the learners' examination is quite high? Secondly, does he know that the waiting period before a date is obtained for a test is quite unreasonably long, which affects the futures of job-seekers? Thirdly, is there a quota system as far as passing people is concerned? Fourthly, will the hon the Minister consider regionalising this and allowing schools, for example, to be used after hours as facilities for those who want to study for learners' licences?

The MINISTER OF TRANSPORT Mr Chairman, the hon the Leader of the Official Opposition,

HOUSE OF DELEGATES

legislation has not been tabled in Parliament as yet and we are still engaged in negotiations

†Mr J DOUW Mr Chairman, may I also put a supplementary question to the hon the Minister?

†The CHAIRMAN OF THE HOUSE Will the hon the Minister take another question?

†The MINISTER Yes, Mr Chairman

†The CHAIRMAN OF THE HOUSE Order! The hon member may put his supplementary question *Howard 10/4/91*

†Mr J DOUW Mr Chairman, in his reply the hon the Minister said that similar meetings under the leadership of the hon MECs had taken place in all the provinces. Is the hon the Minister aware that Coloured and Indian management committees were not consulted about such a meeting in the Transvaal?

†The MINISTER No, Mr Chairman, this is a new question on which I have no information and which does not arise out of the relevant Natal episode [Interjections] I would be glad if the hon member could place it on the Question Paper

Internal Security Act: MPs charged

*9 Mr S K LOUW asked the Minister of Justice †

- (1) How many members of Parliament were charged in the 1990 calendar year in terms of the provisions of the Internal Security Act, No 74 of 1982,
- (2) whether he will furnish details of these charges, if not, why not, if so, what are the relevant details,

(3) whether he will make a statement on the matter? *C70E*

The DEPUTY MINISTER OF LAW AND ORDER (for the Minister of Justice)

- (1) and (2)

The required information is not readily available in the Department. To obtain the information all court records will have to be examined, which is not economically feasible

- (3) A statement is not necessary

†Mr P A CHENDRICKSE Mr Chairman, are you aware of it that the hon member who put the question is not in the Chamber?

†The CHAIRMAN OF THE HOUSE Order! I said yesterday that although it is not a rule, it is etiquette for an hon member who has put a question to be here

MPs: indemnity

*10 Mr S K LOUW asked the Minister of Justice † *252*

- (1) Whether indemnity was granted during the 1990 calendar year to members of Parliament charged in terms of the provisions of the Internal Security Act, No 74 of 1982, if not, why not,
- (2) whether he will make a statement on the matter? *Howard 10/4/91*

The DEPUTY MINISTER OF LAW AND ORDER (for the Minister of Justice)

- (1) No As far as could be established no such requests for indemnity were received during 1990
- (2) A statement is not necessary

HOUSE OF ASSEMBLY

QUESTIONS
Indicates translated version
General Affairs

Fringe benefit taxation

†Mr G C ENGEL asked the Minister of Finance *Howard 11/4/91*

(a) How much taxation revenue was raised, by category, from fringe benefit taxation on individuals during the latest specified tax year for which information is available and (b) how much taxation revenue is it estimated will be raised, by category, from this source in respect of the year ended 28 February 1991?

The MINISTER OF FINANCE

(a) Travelling allowance	R241 613 898
Subsistence allowance	R5 096 139
Entertainment allowance	R19 528 130
Use of motor vehicles granted by employers	R98 739 861
Subsidies	
(1) Housing Schemes	R319 093 382
(2) Other	R10 086 849
Low or interest free loans	
(1) Housing	R70 193 147
(2) Other	R10 084 286
Free or cheap accommodation	R49 092 582
Acquisition of assets at less than actual value	R1 662 780
Right of use of assets other than accommodation or motor vehicles	R61 560
Meals and refreshments	R825 252 614
Free or cheap services	R112 080
Payment or releasing of employees' debts	R440 959
Scholarships	R184 089
Share options exercised	R210 138
Other fringe benefits	R1 835 472
Total	R17 774 072
	R845 809 424

The above statistics represent 59,3% of all registered taxpayers in respect of which assessments have been raised for the 1990 year of assessment

(b) R1 813 389 029—The revenue from this source is not estimated according to each category of fringe benefits

Statistics in respect of tax payable on fringe benefits received by taxpayers falling under the Standard Income Tax on Employees (SITE) system are not available and therefore not included in the amounts shown in (a) and (b)

Prison warders/prisoners killed/injured by prisoners

237 Mr D J DALLING asked the Minister of Correctional Services *Howard 11/4/91*

- (1) Whether any prison warders were (a) killed and (b) seriously injured by prisoners in 1990, if so, (i) how many and (ii) in which prisons,
- (2) whether any prisoners were (a) killed and (b) seriously injured by fellow prisoners in that year, if so, (i) how many and (ii) in which prisons?

The MINISTER OF CORRECTIONAL SERVICES

- (1) (a) Yes
 - (i) One (1) member of the Department of Correctional Services was killed by prisoners during 1990
 - (ii) Krugersdorp Prison
- (b) Yes
 - (i) and (ii) Fourty one (41) members of the Department of Correctional Services were seriously injured by prisoners during 1990 at the prisons mentioned below and a further two hundred and fifteen (215) members received medical treatment/consultations for minor injuries sustained as a result of assaults by prisoners

Vlok discloses 87 deaths in police custody

CAPE TOWN — Eighty-seven people died in police custody in the 12 months ending February 28 this year, Law and Order Minister Adriaan Vlok said yesterday.

Replying to a question from Patrick da Gama (LP Eerstes) in the House of Representatives, Vlok said three members of the SA Police force had been suspended from office and charged with murder in two cases of alleged assault which had led to the deaths of persons in custody.

In four other instances of alleged assault, five members of the force had been suspended. Dockets were still with attorneys-general.

Four people died from gunshot wounds allegedly inflicted by police. In three of the cases police had acted in accordance with Section 49 of the Criminal Procedure Act.

"The investigation of the inquest dockets has not been completed and will on conclusion be submitted to the attorneys-general," Vlok said.

In the fourth instance, the court which held the inquest found the police had acted lawfully and that no member was criminally liable for the death of the deceased.

Of the 87 people who had died in police custody, 23 had committed suicide, four had died of alcohol poisoning, 27 of natural causes, five were murdered by fellow prisoners, one died from suffocation, nine as a result of gunshot wounds (four of which were allegedly inflicted by police), 12 from alleged assault (six of whom were alleged to have been assaulted by police), and six from head injuries.

Vlok said 253 SAP members had been suspended after being charged with criminal offences from March 1 1990 to February 28 this year —

Sapa

'Charge Neethling, investigate his department'

By PHILIPPA GARSON

HUMAN rights groups are calling for the suspension of South African Police forensic laboratory chief Lieutenant-General Lothar Neethling pending an investigation into his department.

This week Neethling partly lost his appeal against the judgment in the R1,5-million defamation case he brought against the *Vrye Weekblad* and *The Weekly Mail*. He has been given leave to appeal against the judgment concerning *The Weekly Mail*.

While Neethling will press ahead with his appeal against *The Weekly Mail* judgment, he will also petition the chief justice to overturn Mr Justice J Kriegler's ruling on the failed appeal application.

The appeal against *The Weekly Mail* concerns a legal point only and does not challenge the bulk of the judge's findings, namely that allegations made against Neethling were in all likelihood true.

Kriegler found in January that the allegations made against Neethling by ex-police captain Dirk Coetzee — that Neethling supplied poison for the elimination of political activists — were true.

He also found that the allegations were of such a serious nature that the public had a right to be informed of them. It is this second finding, an important precedent in defamation law, which Neethling's legal team is to take up in the Appeal Court.

This finding affects *The Weekly Mail* only. The article in question cites hearsay allegations that Neethling spiked bottles of whisky with poison destined for African National Congress activists.

While these allegations were not proved in court, the judge said they were serious enough to warrant publication.

"If he doesn't get leave to appeal with regard to the *Vrye Weekblad*, there is no point appealing in *The Weekly Mail* case, since he is simply challenging a legal point," says one media lawyer.

Head of the Human Rights Commission Max Coleman says there is a strong case for the prosecution of Neethling and an investigation into his department in the light of the court's findings. "We are pressing for his suspension and an independent investigation."

"Evidence suggests that there are groups within the police which have been in-

involved in the planning of assassinations. (The findings) have led to the door of the top man in the forensic laboratories. Just what is going on in that department of his needs investigating," says Coleman.

Director of the Centre for Applied Legal Studies Professor Dennis Davis says Neethling should be suspended since the partially successful appeal application has no effect on the essence of Mr Justice Kriegler's judgment.

"The court found that Neethling had lied, and what Coetzee said could well be true. Bearing in mind that he is a public servant, he should be suspended."

He adds that the state, which may pay Neethling's costs if his appeal is successful, has no right to do so for "what has turned out to be a technical defence".

"The ANC ultimatum must be seen in the context of profound public disquiet with regard to police action. Now the court has made a damaging judgment against a senior police officer ... if De Klerk is committed to a clean police service he should be investigating what the police are doing."

Vrye Weekblad editor Max Du Preez also called for Neethling's suspension.

How to break the advocates' monopoly

THE extraordinarily high cost of litigation in South Africa has become a matter of public concern

As part of a postgraduate study programme at the University of the Witwatersrand Business School, I helped conduct a nationwide survey on the issue among a sample of practising attorneys

The findings reveal a pervasive disquiet among attorneys with the structure of the profession in general and advocates' fees in particular.

Sixty-eight percent of the attorneys surveyed felt that the fees charged by junior advocates were excessive and an extraordinary 88 percent thought the fees charged by senior advocates were too high

The perception was that

S/Times 14/4/91
ERROL PRICE reports that attorneys want a radical reform of the legal profession

monopolistic conditions in the market for legal services — created by an artificial restriction on who may perform specific types of work — allow prices to be pushed to abnormal levels

This proposition is confirmed by the fact that 67 percent of the attorneys in the survey said they could charge lower fees than those at present charged by advocates if granted the right to appear in the Supreme Court

Only 22 percent thought attorneys would not charge lower fees and 11 percent were uncertain

It is not only fees for court appearances which appear to be

abnormally high

Attorneys charge an average hourly consultation fee of R194, junior counsel (advocates) R297 and senior counsel R576, or nearly three times the fee charged by the average attorney

The cumulative effect of all fees levied in litigation is simply that many potential litigants are unable to make use of legal services — certainly where appearances in the Supreme Court might be required

An overwhelming preponderance of the attorneys surveyed were convinced that many individuals and small companies

could not afford to litigate.

Altogether, 74 percent of the attorneys believed a divided legal profession was more costly to the consumer than a unified profession might be.

There are two strategies for tackling this problem

Tariffs for many more classes of legal work could be introduced, and there could be a radical reorganisation of the profession

Here a number of possibilities may exist, granting attorneys full right of audience in the Supreme Court in competition with advocates (68 percent of attorneys support this), allowing advocates to form partnerships with firms of attorneys (85 percent in favour) and outright elimination of all distinctions within the profession (60 percent support this)

Nofemela in court again

By DERRICK LUTHAYI

CONDAMNED killer Butana Almond Nofemela, who exposed the existence of police hit squads, was brought from Death Row this week to confirm allegations he made in an affidavit handed in at the inquest of four ANC members killed in an ambush in 1988.

The affidavit was handed to the court this week by advocates Marumo Moerane and Zak Yacoob, who represent the families of the dead.

In the document Nofemela said the policeman in charge of the ambush was Major Eugene de Kock, successor to

Captain Dirk Coetzee as leader of Section C1 at Vlakplaas - which Coetzee and Nofemela alleged was a police hit squad.

The affidavit said De Kock had sent a car driven by a policeman posing as an ANC cadre to transport Surenda "Lenny" Naidoo, 23, Notsikelelo June-Rose Cotoza, 25, Makhosi Nyoka, 25, and Lindiwe Mthembu, 21, from the Swaziland border on June 8, 1988.

He said the car was driven into an ambush. The driver escaped, but the four passengers were shot dead.

This evidence has already been given in hearings at the Piet Retief Magistrate's Court. Inquest magistrate H Wilkens decided to call the condemned killer, who gave evidence at the Harms Commission, to confirm his allegations in the affidavit.

It was also to give Gideon Lotz, SC, for the Minister of Law and Order and the police, an opportunity to cross-examine Nofemela.

Nofemela told the court he had served under De Kock until September 1986.

"During my time at Vlakplaas, Major de Kock gave instructions for acts of kidnapping, killing and stealing of cars to be carried out by members of his squad. My impression of him is that he is a man who specialised in destruction."

In cross-examination Lotz accused Nofemela of distorting evidence to try to save himself from the gallows and said Nofemela wanted to get back at De Kock. Nofemela denied this.

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Lay magistrates 'could help court credibility'

By JOHN VILJOEN
Supreme Court Reporter

APPOINTING members of the public as lay magistrates could be a solution to the courts' legitimacy crisis, says the official Bar journal, *Consultus*.

A recent Human Sciences Research Council survey showed that black people felt there was a lack of legitimacy of the administration of justice, *Consultus* says in an editorial in its latest edition.

The HSRC suggested the solution lay to some extent in involving black people as magistrates and judges.

The government and the legal profession are eager to involve blacks in this way but the shortage of experienced black lawyers has hampered progress.

Unless new methods are devised the democratisation of the courts will take a comparatively long time, according to *Consultus*.

Although the so-called "people's courts" resulted in many irregularities, the desire among the public for a trial by their peers could be followed up in a quest for legitimacy.

'Huge success'

In England, about 85 percent of all criminal cases are tried by lay magistrates and the system is "a huge success and is still growing", *Consultus* says.

The system has existed in England for eight centuries.

The trials are conducted under the overall supervision of the Supreme Court. The magistrates are carefully selected and undergo basic training. A lawyer is available in the event of a technical question cropping up during a trial.

The magistrates work on a part-time basis, and are paid only subsistence and transport allowances — a saving for the taxpayer.

But the greatest advantage is the involvement of ordinary members of the public in the administration of justice, ruling out the possibility of a credibility crisis, according to *Consultus*.

The State President's announcement that the government intends conferring greater status and meaning on the office of justice of the peace or a similar office to decide on less serious, decriminalised cases is "a step in the right direction", says *Consultus*.

Advocates committed to new SA

Supreme Court Reporter

THE South African Bar has issued a statement of intent, identifying itself fully with "the ideals, aspirations and challenges presented by a new South Africa".

The statement is contained in the latest edition of *Consultus*, the Bar's official journal.

The Bar is committed to providing specialised legal representation, at fair fees, to all people who require such services, the statement reads.

HUMAN RIGHTS

"By providing this representation, as well as facilities for the protection of human rights, access to justice for indigent persons and alternative dispute resolution, the Bar serves all the people of South Africa."

The Bar will support reforms designed to achieve the goal of justice for all according to the Rule of Law, the statement says.

The Bar is committed to ensuring that it is representative of all sections of the community and to the maintenance of an independent judiciary.

It is committed to providing greater access to justice by the expansion of legal services to all who require them "while maintaining the high standards, professional integrity and independence which are established hallmarks of the Bar".

1017

MONDAY, 15 APRIL 1991

1018

HOUSE OF ASSEMBLY

QUESTIONS

White, (ii) Black, (iii) Coloured and (iv) Indian and (c) in which courses did these (i) Black, (ii) Coloured and (iii) Indian persons participate?

Indicates translated version

The MINISTER OF JUSTICE

For written reply

(a) 717

General Affairs

(b) (i) 504

Corporal punishment

(ii) 185

101 Mr D J DALLING asked the Minister of Justice

(iii) 20

(1) How many males (a) under the age of 18 years, (b) aged 18 to 21 years and (c) aged 21 years and over in each race group were sentenced to corporal punishment in 1990,

(iv) 8

(2) how many strokes were inflicted in respect of each category of persons?

The MINISTER OF JUSTICE

B283E

(1) The required information is not readily available. In an effort to be of assistance to the honourable member, the following statistics for the period July 1989 until June 1990 were obtained from the Central Statistical Services. Statistics regarding crimes are no longer separately kept for each race group.

(i) Estate Controller

(ii) Diploma in Registration of Deeds

(iii) Diploma in Registration of Deeds

(iv) State Prosecutors

(v) B Iuris

(vi) Diploma Iuris

(vii) Diploma in Registration of Deeds

(viii) State Prosecutors

(ix) B Iuris

(x) Diploma Iuris

(xi) Estate Controller

(xii) Diploma in Registration of Deeds

(xiii) State Prosecutors

(xiv) B Iuris

(xv) Diploma Iuris

(xvi) Estate Controller

(xvii) Diploma in Registration of Deeds

(xviii) State Prosecutors

(xix) B Iuris

(xx) Diploma Iuris

(xxi) Estate Controller

(xxii) Diploma in Registration of Deeds

(xxiii) State Prosecutors

(xxiv) B Iuris

(xxv) Diploma Iuris

(xxvi) Estate Controller

(xxvii) Diploma in Registration of Deeds

(xxviii) State Prosecutors

(xxix) B Iuris

(xxx) Diploma Iuris

Legal training courses: participants

178 Mr D J DALLING asked the Minister of Justice

(a) How many persons participated in legal training courses organized by his Department in 1990, (b) how many such persons were (i)

The MINISTER OF JUSTICE

(aa) FUNCTIONAL TRAINING

(a) White

(i) 309

(b) Coloured

(i) 15

- (c) Indian (252) (ii) 5
(i) 5
(d) Black (ii) 179
(i) 179

(bb) LEGAL TRAINING

- (a) White (ii) 175
(i) 195
(b) Coloured (ii) 3
(i) 5
(c) Indian (ii) 3
(i) 3
(d) Black (ii) 5
(i) 6

Sterkfontein Psychiatric Hospital patients missing

239 Mr P G SOAL asked the Minister of National Health *Hansard 15/4/91*

- (1) Whether any patients went missing from the Sterkfontein Psychiatric Hospital during the latest specified period of five years for which information is available, if so, (a) how many (i) male and (ii) female patients and (b) how many such patients were classified as (i) dangerous and (ii) aggressive,
(2) whether any steps have been taken to ensure that patients do not go missing from the said hospital, if not, why not, if so, what steps,
(3) whether she will make a statement on the matter?

B624E

The MINISTER OF NATIONAL HEALTH

- (1) (a) Yes,

- (i) 443 male and
(ii) 70 female

The above include patients who have escaped, broken out, absconded and ones that were allowed to go out on leave, but did not return and

- (b) (i) and (ii) the relevant information is not readily available,

HOUSE OF ASSEMBLY

in each race group in respect of each disease,

- (3) whether any steps are being taken to combat the spread of these diseases, if so, what steps in each specified area?

B674E

The MINISTER OF NATIONAL HEALTH

- (1) (a), (b) and (c) No,
(i), (ii) and (iii) fall away,

- (2) yes,

notified deaths of Malaria in the Republic of South Africa by Population Group, 1990 (as on 20 March 1991)

Population group	Number of deaths
Indian	0
Black	27
Coloured	0
White	3
TOTAL	30

Notified Deaths of Typhoid fever in the Republic of South Africa by Population Group, 1990 (as on 20 March 1991)

Population group	Number of deaths
Indian	0
Black	28
Coloured	0
White	0
TOTAL	28

- (3) yes,

- Malaria
- Disease surveillance
 - Case finding
 - Health Education
 - Encouragement to take prophylactic treatment
 - Vector control
 - Treatment of persons suffering from malaria
 - Notifiable disease
- Typhoid
- Disease surveillance
 - Case finding Treatment and isolation of cases to save lives and reduce further excretion of organisms
 - Tracing of carriers and contacts to prevent infections and reduce further excretion of organisms
 - Immunisation is indicated in certain circumstances, examples being expo-

sure to a carrier, outbreaks of typhoid in a community or institution and in the case of groups such as military forces in field conditions

- Health Education
- Advice with regard to environmental factors

- Participation in Interdepartmental Committee, providing advice to the authorities responsible for service
- Notifiable medical condition

Cholera

- Disease surveillance
- Tracing of source
- Case finding
- Health Education
- Treatment of cases
- Notifiable medical condition
- Co-ordinated action with all health services to prevent crossborder spread of cholera

Care of patients by community health workers

259 Miss M SMUTS asked the Minister of National Health *Hansard 15/4/91*

- (1) Whether a senior official of the Department of National Health and Population Development stated in June 1990 that up to 60 per cent of patients treated at hospitals in South Africa could be cared for by community health workers, if so, (a) on what evidence was this statement made and (b) what is the rank of the official concerned,
(2) whether she will make a statement on the matter?

B685E

The MINISTER OF NATIONAL HEALTH

- (1) (a) and (b) Dr H J Steyn, Deputy Director-General of the Department of National Health and Population Development, said, during a seminar in June 1990, that the work load of a clinic nurse, could be alleviated by up to 60% by the use of community health workers and voluntary workers. This statement was based on a study carried out at a clinic where community health workers did the follow-up visits at the homes of tuberculosis and family planning clients so that the nurse could carry out her clinic functions,

- (2) no

HOUSE OF ASSEMBLY

A-G suing paper over 'vendetta'

By Brendan Templeton

Allegations that the Witwatersrand Attorney-General was conducting a "petty vendetta" against it have landed Vrye Weekblad newspaper in court

Attorney-General Klaus Peter Otto von Lieres und Wilkau, SC, is demanding R35 000 from the newspaper, saying he has been unable to function properly in his duties since the allegations made in two articles early last year

Apologised

The newspaper earlier admitted that the allegations were defamatory, apologised, and paid him R15 000 in an out-of-court settlement for damages regarding the first article

At issue now is the quantum arising out of the second article

Mr von Lieres told Mr Justice AP van Collier in the

Rand Supreme Court yesterday that the newspaper had conducted a prolonged campaign against him aimed at discouraging and insulting him

In a series of follow-up articles in the newspaper, editor Max du Preez had called him "Herr Hoesenaam (Wot-sisname)" and "Klaus Otto Dinges (Thingummy)", which were plainly insulting, he said

Counsel for the newspaper, Bobby Levin, SC, said it was necessary for purposes of establishing damages to note that Mr du Preez's column was highly satirical

Mr von Lieres, whose full first names are Klaus Peter Constantine Otto, said he did not find the articles funny and felt highly insulted by them.

His name was repeatedly followed with the addendum "with washing", which showed that the newspaper insinuated that he had something to hide, he said

Mr Levin argued that the "washing" addendum was a colloquialism that people added at the end of a title or name which was particularly long

Mr von Lieres said he had not heard of such a practice. His counsel, L Weinstock, SC, told the judge that Mr von Lieres was a public figure and that the consequences of unlawfully defaming him should be considerably weightier than in an instance in which an ordinary individual was defamed

Cleared

Mr Levin wanted to know why Mr von Lieres insisted on continuing with the case after his name had been cleared by the admission and apology

Mr von Lieres said his name would be cleared properly only once the matter had been decided in court and he had received sufficient compensation

The hearing continues

Stev
16/4/91
252

17 death sentences commuted

'Wit Wolf', ANC bomber reprieved

Stew 17/4/91. (252)
By Peter Fabricius
Political Correspondent

Condemned ANC bomber Robert McBride and "Wit Wolf" Barend Strydom have had their death sentences commuted to life-long imprisonment.

President de Klerk's decision to reprieve the country's two best known Death-Row prisoners was announced by Justice Minister Kobie Coetsee last night.

They were among 17 condemned men whose sentences were commuted to prison terms ranging from 20 years to life.

Thirteen of them were on Death Row for "necklace" murders. Two of their victims were policemen.

The remaining two had been condemned respectively for rape and non-political murder.

Mr Coetsee stressed that the life sentences imposed on McBride and Strydom literally meant that they would remain in prison for the rest of their natural lives — unless special circumstances arose.

McBride was sentenced to death in Maritzburg on April 4 1987 for detonating a car bomb which killed three women in the crowded Magoo's Bar on Durban's beachfront on June 14 1986.

Shooting spree

Strydom was sentenced to death in Pretoria on May 25 1989 for shooting a black squatter on November 11 1988 and then killing seven more blacks in a shooting spree on Pretoria's Strydom Square on November 15 1988.

Mr Coetsee said that McBride, Strydom and another 10 of the 17 had applied for release according to the new procedures for releasing political prisoners.

But President de Klerk had decided not to grant any of them special remission of sentence.

However, those prisoners who felt that they qualified for release or indemnification from political offences could apply to one of the committees set up to advise the State President last year.

Mr Coetsee said the 17 death sentences had been commuted on advice from the Panel for the Reconsideration of Condemned Persons established last year as part of the State's death sentence reform policy.

The panel's task was to reconsider existing death sentences according to new sentencing criteria whereby the death sentence was no longer mandatory and the right of appeal became automatic.

Mr Coetsee said the panel, under acting Appeal Court Judge Mr Justice G Viljoen, had advised him on April 2 that it did not think the 17 would have been condemned under the new criteria.

According to the new procedure, the 17 cases were forwarded to President de Klerk for possible reprieve.

He had decided in consultation with the Cabinet to follow the panel's advice.

Other cases of condemned prisoners who the panel thought would have been given the death sentence even under the new criteria, had been referred to the Appeal Court for consideration.

Strydom's wife, Karen, said last night she was surprised that his death sentence had been commuted to life imprisonment.

However, she said, the family still demanded his release from prison as they considered him a political prisoner.

When visiting him at Pretoria Central Prison yesterday, he had not given any indication that he might have known about the decision.

They spoke "of ordinary

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Weekblad 'cannot be sued twice'

By Brendan Templeton ^{stay 7/14/91}

Vrye Weekblad could not be sued twice for alleging that the Witwatersrand Attorney-General was conducting a petty vendetta against it, the newspaper's counsel Bobby Levin told the Rand Supreme Court yesterday.

Attorney-General Klaus von Lieres und Wilkau, SC, brought two defamation actions against the newspaper after the allegations were made in separate articles last year.

Mr Levin argued that the sting of defamation in the articles was the same, and the stories should not be seen as making different allegations.

An out-of-court settlement of

R15 000 was reached regarding the first article before the hearing began, but the sides are in disagreement over the quantum regarding the second story.

Mr von Lieres is claiming R35 000 damages for the second article.

Argument was wound up yesterday by both sides and Mr Justice A P van Collier said he would make a decision later.

The newspaper's owners and editors have admitted that the allegations were defamatory and have printed an apology and a retraction.

Mr von Lieres's counsel, L S Weinstock, SC, dismissed Mr Levin's claim yesterday, saying the articles were published under different circumstances.

Substantial damages should be awarded to his client because of the considerable harm done to him by the allegations that he prosecuted selectively.

"If the imputation had been true, he (Mr von Lieres) would have had difficulty in maintaining the position and respect that he should have had from his staff, the Bench before whom he regularly appeared, and of his Minister," Mr Weinstock said.

He claimed that the position of the printers was worse than that of the owners and editors of the newspaper because the printers had not apologised.

Mr Levin argued that damages against the printers could not be calculated separately from that of the other parties.

'Wit Wolf' (201) ANC bomber (252) reprieved ^{star} 1/11/91.

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things", she said.

Mrs. Strydom added that this legal decision "was a step in the right direction"

McBride's wife last night welcomed the commuting of her husband's death sentence to life imprisonment.

Paula MacBride, a spokesman for Lawyers for Human Rights, said "Obviously I'm delighted, particularly as it paves the way for his release"

Sentences

Apart from McBride and Strydom, the other 15 men reprieved — and their new prison sentences — are.

S M T Dayimani — 20 years,
R Farland and P Dlabathi — 25 years, G Gxekwa — 30 years,
V P Jacobs — 25 years, M Lucas — 20 years, P Maginda, D Majola and D Madikane — life, O J Mbonane and S S Masuku — 30 years, D Meyers (rape) — life, M Ngqandu — 25 years, A Zeyo — 20 years, M S Mposulu (non-political murder) — 25 years.

Except where otherwise stated, all were condemned for neck-lace murders.

System of appointing judges 'needs revision'

Own Correspondent

CAPE TOWN — A Bill of Rights will be of little value if a future government is able to make political appointments to the judiciary, say influential writers in the official journal of the South African Bar.

They say the system must be changed so that judges will be appointed purely on merit.

Articles in the latest edition of *Consultus* add that the Bench also faces a shortage of suitable appointees.

Gawie Nienaber, a Luxembourg-based legal consultant, suggests an American-type system where potential judges are screened by a "politically legiti-

mate" committee

If a future South African constitution includes a Bill of Rights and empowers judges to strike down legislation they find contrary to the Bill, the selection of judges will have to be subject to much greater scrutiny, he writes.

The American model subjects the potential judge to a degree of public scrutiny.

Milton Selgson, SC, chairman of the General Council of the SA Bar, says an entirely new approach to the appointment of judges is needed.

The elected legislature and the legal profession must be involved in the appointment of judges, giving the process political as well as professional legitimacy and integrity, he writes. "We must continue to seek judges of the highest profession

al calibre and integrity, but the sooner the appointment process is reformed to involve, in a meaningful way, the legal profession and the broader community, the better it will be for our legal system and our country."

The present system of judicial appointments is "not entirely satisfactory", writes Professor Marinus Wiechers of Unisa's constitutional and international law department.

The system has proved uncontrollable and has led to some "questionable appointments", he writes.

A judiciary whose appointment rests solely in the hands of the government risks being viewed as its servant.

This risk is especially great in South Africa, where some opponents of a minority government saw judges as being ap-

pointed to give effect to harsh and often oppressive laws.

To achieve legitimacy, the appointment of judges requires some legislative involvement.

Dr J R Midgeley, senior lecturer at Rhodes University's law faculty, writes that there is a shortage of suitable candidates for the Bench.

Population trends indicate the number of judges will have to increase considerably, but there are not sufficient advocates to meet the demand, and the proportion of advocates who become judges is higher than it should be.

There are not enough black and female advocates to redress the balance of white male judges.

Appointments from outside the ranks of advocates will have to be made, he writes.

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Reprieve for 'Wit Wolf', McBride

CONVICTED killers Robert McBride and Barend Strydom have had their death sentences commuted to life imprisonment.

Justice Minister Kobie Coetsee last night announced the Panel of Review of Certain Death Sentences, established in November last year before changes in the Criminal Procedures Act, had decided to commute the sentences of 17 people.

Mr Coetsee said the panel had concluded the 17 would probably not have been sentenced to death if the new criteria had applied when they were sentenced.

The commuted sentences range from 20 years to life.

ANC guerilla McBride, 28, was sentenced on three counts of murder

following the car bomb blast outside a Durban beachfront restaurant, Magoos Bar, in which 69 people were injured.

Strydom, 25, a self-proclaimed Wit Wolwe member and former policeman was sentenced to death eight times in 1988 after he killed eight black pedestrians in Pretoria's Strijdom Square and for the attempted murder of 16 people in Pretoria and at a squatter camp at De Deur.

MacBride's wife, Paula, said last night "Obviously I'm delighted, particularly as it paves the way for his release. It's great."

Mrs McBride, who is a spokeswoman for Lawyers for Human Rights, said one other member of the ANC's armed wing, Umkhonto we Sizwe, was among the 17.

Mrs Daphne and Mr Nic Strydom, parents of the "Wit Wolf", said from their holiday home in Cape Town last night that they were grateful for the reprieve.

The family had gone through an extremely difficult time for a long time, and Mr Strydom

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From page 1

Reprieve

senior was "very pleased" that his petition in this regard "had gone so far".

Strydom's wife, Karen, was surprised about the commuting of his death sentence to life imprisonment.

However, she said, the family still demanded his release from prison as they considered him a political prisoner.

Of the prisoners, 13 were convicted and sentenced to death for necklacing and killing councillors, municipal police and police informers. Nine are from the eastern Cape and three from Oudtshoorn.

The prisoners and their new sentences are S M T Dayimani, 20 R Farland, 25, P Dlabathi, 25, G Gxekwa, 30, V P Jacobs, 25, O J Mbonane, 30, S S Masuku, 30, M Ngqandu, 25, A Zeyo, 20, M Lucas, 25, P Majinda, D Majola (life), D Madikane (life).

Those who had their sentences commuted to life imprisonment will have to spend the rest of their lives in prison unless certain exceptional circumstances applied, Mr Coetsee's statement said.

Only five of the 17 — M Lucas, Majinda, Majola, Madikane and Meyers had not requested political indemnity, but President F W de Klerk had decided not to give any further special reduction in sentences from that ruled by the nine-member panel.

The reasons for Meyers (life) and Mposulu (25 years) being convicted could not be established.

Mr Coetsee said those who felt they had a case for indemnity should follow the procedures and mechanisms established for this purpose and De Klerk would then review their cases again — Political staff and Sapa

Wife's hug for reprieved killer

The Argus Correspondent and Sappa

PRETORIA — The wives of Wit Wolf Barend Strydom and Magoo's Bar bomber Robert McBride were set to visit their husbands in Pretoria Central Prison today

And Mrs Karen Strydom and Mrs Paula McBride hope to be permanently reunited with their spouses soon

A relieved Mrs Strydom said she would visit her husband today after hearing that he, with McBride and 15 others had been reprieved — "a moment I have been longing for"

Mrs Paula McBride said she "needed" to give her husband a hug — for the first time since their marriage two years ago

While the families of both McBride and Strydom welcomed the reprieve, they viewed it simply as a prelude to their unconditional release

Minister of Justice Mr Kobie Coetsee announced last night that the 17 prisoners' death sentences had been commuted to life imprisonment by the judicial panel formed last year to review death sentences

AP64 7/14/91



Mrs Karen Strydom

Mr Coetsee emphasised that their life sentences literally meant imprisonment for the rest of their natural lives unless "special circumstances" arose.

However, he said, the prisoners could still approach one of the special committees set up for the purpose to consider them for release or indemnity for political offences.

An ecstatic Mrs Doris McBride, Robert's mother, said at her Wentworth home last night that she and Paula had "laughed and laughed with joy" when they heard the news

"I just hope that they don't move Robert to some other jail before I

get there I need to hug him I'm optimistic that he will be released and that we will be able to live a normal life," said Mrs Paula McBride

"We fought for his life and we have won that and now we will continue fighting for his release The fact that 14 of the 16 people whose sentences were commuted were political offenders is hope itself," Paula said

"Robert had confidence he would never ever die," Greta Apelgren said. "Mr De Klerk is a merciful man. I never actually believed he would do this It gives me hope that there will be more change in this country"

She served one year and nine months for her part in freeing ANC activist Mr Gordon Webster from Edendale Hospital She was acquitted on charges relating to the Magoo's Bar bombing

Strydom's parents, Mrs Daphne and Mr Nic Strydom, said from their holiday home in Cape Town they were grateful

The family had gone through an extremely difficult time, and Mr Strydom senior was "very pleased"

that his petition "had gone so far"

He saw the commuting of the death sentence as "merely a first step" towards his son's release

"I can enjoy my holiday even more now," he added

ANC spokesman Mr Saki Macozoma said McBride and Strydom had different motives for their actions McBride was opposed to apartheid and was fighting for a nonracial, democratic South Africa and Strydom was inspired by his hatred for blacks and the desire to retain apartheid.

Mr Macozoma said the ANC was opposed to the death penalty and would therefore not have liked to see Strydom hanged. However, if President De Klerk wanted to commute Strydom's death sentence on humanitarian grounds he could have done so at a later stage

Although the ANC welcomed the commutation of McBride's sentence, it was not satisfied It wanted him released as a political prisoner in terms of agreements reached with the government and would therefore continue to campaign for his release. ● See page 6.

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'Political' selection of judges unwise

By JOHN VILJOEN
Supreme Court Reporter

A BILL of Rights will be of little value if a future government is able to make "political appointments" to the judiciary, say influential lawyers.

Writing in the latest edition of *Consultus*, official journal of the South African Bar, Mr Gawie Nienaber, a Luxembourg-based legal consultant, suggests an American-type system where potential judges are screened by a "politically legitimate" committee

New approach

If a future South African constitution includes a Bill of Rights and empowers judges to strike down legislation they find contrary to the Bill, the selection of judges will have to be subject to much greater scrutiny, he writes

The American model subjects the potential judge to a degree of public scrutiny

According to Mr Milton Seligson, SC, chairman of the General Council of the SA Bar, an entirely new approach to the appointment of judges is needed

If judges are to be empowered to uphold a Bill of Rights their importance becomes of the utmost importance

The elected legislature and the legal profession must be involved in the appointment of judges, giving the process political as well as professional legitimacy and integrity, he writes

"We must continue to seek judges of the highest professional calibre and integrity, but the sooner the appointment process is reformed to involve, in a meaningful way, the legal profession and the broader community, the better it will be for our legal system and our country"

The present system of judicial appointments is "not entirely satisfactory", writes Professor Marinus Wiechers of

Unisa's constitutional and international law department

The system has proved uncontrollable and has led to some "questionable appointments", he writes

A judiciary whose appointment rests solely in the hands of the government risks being viewed as its servant

Oppressive laws

This risk is especially great in South Africa where some opponents of a minority government see judges as being appointed to give effect to harsh and often oppressive laws, Professor Wiechers says

To achieve legitimacy the appointment of judges requires some legislative involvement. The legislature, made up of the elected representatives of the people, must have a measure of say in the appointment of judges

Dr J R Midgley, Senior Lecturer at Rhodes University's Law Faculty, writes that there is a shortage of suitable candidates for the bench.

Reprieves 'may spell end of death penalty'

THE Justice Department yesterday confirmed that the cases of 143 death row prisoners are under consideration by the panel for the review of death sentences.

Although 341 people are still on death row, some commentators say the elaborate appeal and review system may mean the effective end of the death penalty.

A lawyer said self-confessed police assassin Butana Almond Nofemela was one of the cases being re-examined.

The news follows closely on the heels of Tuesday's announcement that the panel had recommended to President FW de Klerk that reprieves be granted in 17 out of 11 cases sent to it.

PATRICK BULGER

Among those reprieved were convicted ANC bomber Robert McBride and Wit Wolf mass murderer Barend Strydom.

The panel recommended a reprieve for 15 other people. Three cases involving four prisoners were referred to the Appellate Division.

The panel, headed by Mr Justice Viljoen, was reviewing 97 cases involving 143 death row prisoners, the Justice spokesman said.

The panel was set up in terms of an amendment to the Criminal Procedure Act.

Legal commentators who believe the

death penalty is on its way out say the last execution took place in November 1989.

Even though the moratorium on executions has expired, the state's attempts to hang killer Paul Bezuidenhout in February failed when Lawyers for Human Rights (LHR) obtained a court ruling that his case should be examined again.

Lawyers said yesterday it would become increasingly difficult to hang people in SA, and that the death penalty had been effectively scrapped.

"If a gratuitous multiple murderer like Strydom can be reprieved, it is difficult to imagine a case in which hanging would be

To Page 2

Reprieves

justified," said Prof Etienne Mureinik who serves on the national council of the Society for the Abolition of the Death Penalty in SA.

"The President's decision to grant clemency is to be applauded because it entails abandoning the argument for retaining capital punishment," he said.

LHR Witwatersrand vice chairman Peter Leon said it was clear there had been a political tradeoff involving McBride and Strydom. The death penalty is discredited by this sort of deal. If you have the death

penalty and you don't hang mass murderers, how can one justify the penalty?"

He called for a judicial commission of inquiry into the future of the death penalty.

LHR spokesman Paula McBride — who is married to McBride — yesterday expressed her relief at the decision not to hang him. "It's a good sign for the future of the death penalty in SA," she said. "I can't see how anybody can be hanged in SA after this."

Comment Page 8

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Judges probe more indemnity claims

GOVERNMENT's committee of judges set up to consider indemnities for sentenced political prisoners is examining the claims to freedom of 15 people — most of them Umkhonto we Sizwe members

A source close to the committee said the cases of the father of recently reprieved ANC bomber Robert McBride, Derek McBride, as well as MK member Gordon Webster were being examined

Derek McBride is serving 12 years on Robben Island for attempting to spring Webster from a Maritzburg hospital. His son was among 17 death row prisoners reprieved this week

The committee comprises Appeal Court judge Mr Justice Steyn as well as former

PATRICK BULGER

judges Mr Justice Leon and Mr Justice Solomon (252) (253)

Another two cases were being examined. They were recently released Umkhonto member Ebrahim Ebrahim's co-accused, Acton Dladla and Mandla Maseko. They were convicted in 1989 for terrorism and treason respectively resulting from landmine blasts in the eastern Transvaal in 1986. Bidan 18/4/91

The committee — set up earlier this year to consider "difficult" cases and make recommendations to President F W de Klerk — has not yet announced the outcome of any of the cases forwarded to it.

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Red Cross resumes SA prison visits

THE International Committee of the Red Cross (ICRC) has resumed visits to prisoners in South African prisons, the Minister of Justice and Correctional Services, Mr Kobie Coetsee, said yesterday.

The ICRC recommenced their visits — which first began in the 1960s — on April 15 at the invitation of the government, he said.

Meanwhile, the SA Council of Churches yesterday expressed joy at the state's decision to commute the death penalty for 17 prisoners — 14 of them political

— to life imprisonment

"We are jubilant that people are being given the chance to continue life during which they may re-evaluate their position and role in society," said the SACC.

The Human Rights Commission also applauded the move and urged President F W de Klerk to commute all death sentences and release all political prisoners unconditionally.

Mrs Paula McBride, wife of Magoo's Bar bomber Robert McBride, was due at Pretoria

Central Prison yesterday to give her husband a hug for the first time since their marriage.

And Church Square mass killer Barend Strydom will also be briefly re-united with his wife and family. "A moment I have been longing for," his wife Karen said on Tuesday night.

McBride's co-accused, Ms Greta Apelgren, said "Robert had confidence he wouldn't die."

"Mr De Klerk is a merciful man. It gives me hope that there will be more great change in this country" — Sapa.

CAPIT TIPS
Thursday, April 18 1991

Lawyers claim SA hangings 'over'

Own Correspondent

JOHANNESBURG. — The Justice Department yesterday confirmed that the cases of 143 death row prisoners were under review

Although 341 people are still on death row, some commentators say the elaborate appeal and review system may mean the effective end of the death penalty

A lawyer said self-confessed police assassin Butana Almond Nofemela was one of the cases being re-examined

The news follows Tuesday's announcement that the panel for the review of death sentences had recommended to President F W de Klerk that reprieves be granted in 17 out of 21 cases sent

Among those reprieved were convicted ANC bomber Robert McBride and Wit Wolf mass murderer Barend Strydom

The panel recommended a reprieve for 15 others. Three cases involving four prisoners were referred to the Appellate Division

'Trade-off'

The panel, headed by Mr Justice Viljoen, was reviewing 97 cases involving 143 death row prisoners

The last execution took place in November 1989. Even though the moratorium on executions has expired, the state's attempts to hang killer Paul Bezuidenhout in February failed when Lawyers

for Human Rights (LHR) obtained a court ruling that his case should be examined again

Lawyers said yesterday it would become increasingly difficult to hang people in SA, and that the death penalty had been effectively scrapped

"If a gratuitous multiple murderer like Strydom can be reprieved, it is difficult to imagine a case in which hanging would be justified," said Professor Etienne Mureinik of the Society for the Abolition of the Death Penalty in SA.

LHR Witwatersrand vice-chairman Mr Peter Leon said it was clear there had been a political trade-off involving McBride and Strydom

More black law men needed, says judge

Own Correspondent

DURBAN: — More black judges, magistrates and prosecutors were needed urgently to establish confidence in the judicial system among the majority of South Africans, said Natal judge Mr Justice John Didcott last night.

Speaking after receiving an honorary doctorate of laws at a graduation ceremony at Natal University, he said this meant more black people should be emerging from the country's law schools.

Blacks had been alienated from the present system, he said "It will go a long way towards solving the problem when blacks gain confidence in our statute law because it is the work of a truly representative parliament which expresses popular will

"But if blacks are to identify themselves fully with the system of justice and come to feel that their people, too, are part of it, their much greater integration into and personal involvement in its actual administration are imperative"

Outcry over 'Wit Wolf' pardon



MAHLOMOLA SKOSANA

BLACK political organisations yesterday strongly criticised the Government's reprieve of Pretoria mass murderer Barand Strydom, saying his offences were racist rather than politically motivated.

Strydom, sentenced to death last year for the murder of seven people at Pretoria's Strydom Square on November 15 1988, was among 17 people - including ANC bomber Robert McBride - whose sentences were commuted by the Government this week.

McBride was sentenced to death for detonating a car bomb which killed three women in the crowded Magoo's Bar on Durban beachfront in 1986.

Some of the 17 had been sentenced to prison terms ranging from 20 years to life. Thirteen of them were on Death Row for 'necklace' murders.

A Lawyers for Human Rights spokesman said the organisation welcomed the move, saying it bode well not only for political prisoners, but also for others whose cases were being reviewed.

BY MOKGADI PELA

The spokesman said the organisation was, however, concerned about cases which the panel had referred to the Appellate Division for review.

The Azanian Peoples Organisation spokesman on legal affairs, Ms Mojanku Gumbi, said, "The (two) cases cannot be treated the same way. McBride's actions were part of a programme to liberate the oppressed."

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The armed struggle against the oppressor remains a principal form of struggle to date. Strydom, on the other hand, went out onto a street in Pretoria to kill black people.

"If Strydom hated blacks so much, he should have directed his anger against the Government of the day for not giving him and his group a white homeland as has been done in the Cape."

"His action was therefore without any political basis or

direction," Gumbi said. ANC spokesman Ms Gill Marcus said, "We do not accept that Strydom and McBride are presented as if they have committed common offences."

"We feel that Strydom was a pure racist while McBride acted in a situation of war as a soldier."

"While we welcome the fact that there would be no executions, we don't accept it being commuted to life or any other period. They are all political prisoners and should be released and granted indemnity," Marcus said.

The National Council of Trade Unions' second assistant general secretary, Mr. Mahlomola Skosana, said, "Nactu is not surprised that the commuting of these sentences had been done so easily."

"We fear that this may encourage other white racists to murder black people at will with no threats of serious repercussions."

"The senseless murders of our people by whites has been our

constant experience since our country was colonised.

"It is a fallacy for black people to expect justice from criminals. Black people must further realise that no white regime, no matter how liberal, can liberate them," he said.

The Human Rights Commission welcomed the move and urged the Government to commute all death sentences and abolish "this uncivilised" practice.

The Dependents Conference of the South African Council of Churches said it was "jubilant" that people were being given a chance to "continue a life during which they would evaluate their position and role in society reflecting on the past."

"We hold firmly to the belief that life is the Lord's and nobody has a right to take it," it said.

Inkatha Freedom Party spokeswoman Ms Suzanne Vos said the reprieve "seems like the most sensible decision to make in the present circumstances".

Harms probe bill more than R4-m

Sowetan 18/4/91
PRIVATE lawyers representing the South African Police and the SA Defence Force at the Harms Commission have billed the State for more than R4,4 million in fees

This emerged in Parliament where it was disclosed that one firm of attorneys who appeared for the SADF had charged R225 000. It also wanted a "closing fee" of R112 500 after the hearings ended.

Both amounts were still subject to confirmation by the Law Society, Deputy Minister of Defence Mr Wynand Breytenbach said

He was responding to questions about

which lawyers were appointed for the Harms Commission and how much they were paid

Breytenbach said the firm Havinga and Kruger appeared for the SADF

Mr Chris de Jager (CP Bethal) asked if Breytenbach was aware that Havinga was the son of a senior SADF officer.

"I am not aware of it. But I find it a pity that the honourable member casts such reflections here in Parliament," he said.

Law and Order Minister Mr Adriaan Vlok said Mr C Kruger of the firm Getz, Behr and Mendel Cohen appeared for the SAP - Political Staff

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**Strydom 'hopes
to be freed'**

Wit Wolf Barend Strydom feels positive about his chances of release, his wife Karen said after emerging yesterday from the gates of Pretoria Central Prison where she had met her husband for the first time since his Death Row reprieve.

But the reprieve did not only bring good news. "It's worse now that he's been transferred out of maximum security — now I can only visit him twice a week," a distraught Mrs Strydom said.

"We'll continue to work at it and we believe he'll be free soon. We regard him as a political prisoner."

Paula McBride has not yet been able to meet her husband Robert, also reprieved from the gallows, but hopes to visit him on Saturday.

On Tuesday night an ecstatic Doris McBride, McBride's mother, said she laughed with joy when they heard the news.

"We fought for his life and we've won that. Now we'll fight for his release." — Own Correspondent

Star 18/4/91
Dual reprieve 'not enough'

By Kaizer Nyatumba
Political Staff

The dual announcement of the commutation of the death sentences of Wit Wolf Barend Strydom and ANC bomber Robert McBride drew an unfair equation between the two men's actions, the ANC said yesterday.

And organisations such as the Afrikaner Weerstandsbeweging and the Boerestaat Party called for Strydom's release, saying the reprieve was not enough.

AWB chief secretary Ernst van der Westhuizen said the reprieve was seen in right-wing circles as "too little, too late" because there were already "hundreds of people on the other side of the political spectrum" who had been released.

He said the Government would ultimately have to release Strydom. If this did not happen, there were those in the white community who would react with fury.

Spokesman Saki Macozoma said the ANC had "a problem

Star 18/4/91
with the equation of McBride with Strydom"

The two men, Mr Macozoma said, had different motivations for their actions. McBride was opposed to apartheid and was fighting for a nonracial, democratic South Africa; Strydom was inspired by his hatred for blacks and the desire to retain apartheid.

Opposed

Mr Macozoma said the ANC was opposed to the death penalty and would, therefore, not have liked to have seen Strydom hanged. However, if President de Klerk had wanted to commute Strydom's death sentence on humanitarian grounds, he could have done so later.

Although the ANC welcomed the commutation of McBride's sentence, it was far from satisfied. It wanted him released as a political prisoner in terms of agreements reached with the Government.

Azanian People's Organisation deputy president Dr Nchaupe Mokoape said it was clear the Government was "using some trade-off between genuine freedom fighters and some fascist killers".

Boerestaat Party (BP) leader Robert van Tonder echoed Mr van der Westhuizen's call for Strydom's release, saying the Wit Wolwe leader was not a common prisoner, but a "freedom fighter" like ANC political prisoners.

Mr van Tonder said his party would hold a braai on his Randburg farm on April 28 to welcome all "Boer freedom fighters" released from jail, and the BP would like Strydom to be released in time to attend.

● The reprieve of Strydom, McBride and 15 other Death Row prisoners should be welcomed, although it might prove "unpopular and controversial in many circles", said the Pretoria chapter of the Society for the Abolition of the Death Penalty in a statement yesterday.

Meeting held on setting up Alexandra community court

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81 day 184/91.

WILSON ZWANE

A JOINT working group made up from the Justice Department and Alexandra Civic Organisation (ACO) met for the first time yesterday to discuss the possible formation of a community court in Alexandra.

After the group met in Johannesburg, ACO president Moses Mayekiso said "Considerable progress was made."

The group would hold a series of meetings within the next two weeks, Mayekiso said. He declined to elaborate.

The working group was established after a February meeting between Justice Minister Kobie Coetsee and delegates from ACO and Resource Group.

The Justice Department said the working group was agreed on after it had become clear to Coetsee that ACO proposals for a community court had much in common with government's "initiatives aimed at making the administration of justice accessible to people of all levels."

Proposals emanating from the group's discussions would be considered by the minister in due course, it said.

Mayekiso recently said the proposed community court would involve trained people who would resolve community disputes through mediation, arbitration and negotiation.

He said there was a need for community courts because people had previously been harshly punished by untrained youths.

The court was not intended to adjudicate serious matters, but would mediate in community and family disputes.

The Resource Group, which consists of representatives from the Wits Centre for Applied Legal Studies and the National Association of Democratic Lawyers (Nadel), has undertaken to train people in dispute-resolution mechanisms.

Human rights bodies must maintain their independence, argues Ahmed Motala

We dare not let our guard down

Spes 19/4/91

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SOUTH Africans can learn a lot from the human rights issues that have been raised in Africa

Serious human rights violations have taken place throughout the continent, and it has been very easy to blame these atrocities on the post-colonial economic and social conditions which prevail

However, the historical explanation has become a permanent excuse to replace Western-type multiparty systems with one-party systems or military dictatorships.

For many decades there have been independent and vigilant human rights movements in South Africa which for obvious reasons have remained independent of the Government. The crucial question now is whether these bodies will remain independent in a post-apartheid South Africa

The political struggle for liberation, democracy and justice has been synonymous with the struggle for human rights. Indeed, today many human rights organisations have close links with political movements.

However, the unbanning of extra-parliamentary political organisations changes all of this, and human rights organisations can no longer afford these close links. Human rights organisations should not participate in power politics but represent the rights and interests of the people in relation to governments.

What would happen to a particular human rights organisation when the political party to which it is linked or with which it has a working relationship participates in government? Can it be trusted uncompromisingly to represent

the rights and interests of the people, or is there a danger of being drawn into the political arena and not being able to fulfil its role impartially?

Non-governmental, independent human rights organisations are absolutely essential for the proper functioning of democracy.

This is not to say that the establishment of a government-based human rights commission in South Africa would have the same results. Its efficiency would depend on the monitoring of human rights violations by independent human rights organisations and its effectiveness would be derived from its autonomy from the government.

Human rights organisations should not be content to sit on the sidelines while political parties hammer out a Bill of Rights, but should become more closely in-

involved with the whole process of negotiation

Because they are independent and not vying for political power, human rights organisations are well-equipped to handle the constituency of human rights values

For this reason they are able to ensure that human rights principles are not sacrificed for political expediency.

There is a tendency to become complacent, but even the most democratic of governments may take advantage of the slumber of human rights organisations. Their role is a critical one for today, tomorrow and for many years in the future

● Ahmed Motala is director of litigation at Lawyers for Human Rights. This is an abbreviated version of a paper he presented at a recent conference of Women for Peace. □

THE NEWSPAPER ... 1974

Changing legislation brings back the lustre to law

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w/m and
19/4-25/4/91

THE legal profession has been one of the many victims of South Africa's racial laws, security measures and successive States of Emergency.

Rather than become involved in the administration of such laws, many of the country's finest brains have left South Africa or sought another profession. But with the scrapping of apartheid legislation, this is changing fast.

This week, one of the country's most outspoken judges, Natal's Mr Justice John Didcott, spelt out the implications for lawyers of the demise of these laws.

Speaking in Durban at the University of Natal graduation ceremony after being awarded an honorary doctorate, Mr Justice Didcott said that a few years ago law was not a career particularly attractive to young men and women who wanted to become involved in "socially useful work".

Oppressive legislation robbed the law of much of its lustre and the profession suffered as a result. "The same reasons for distancing oneself from local legal practice no longer exist," he said.

Once a constitutional Bill of Rights is adopted, "immense opportunities for constructive, socially valuable and highly important work will be presented."

"Take the huge and constantly expanding body of work in the field of labour law and industrial relations, work vital to the country's productivity and economic well-being."

"Think of the growing popularity of mediation, not only in industrial relations but elsewhere too. Think of the growth of public interest law firms dedicated to the forensic championship of the underdog, a development that has proved its worth by the spectacular success of the legal resources centres."

LAW & THE COURTS

Carmel Rickard

As the public defender scheme spreads, more lawyers will be needed, and this expansion will demand more judges, more magistrates and more prosecutors.

He also spoke strongly on the need for more funds to be channelled into legal aid and public defence — an issue on which he has frequently remarked from the bench.

"I know finding the money is troublesome, especially when we need billions of rands for such essentials as housing, education and health services. Yet somehow the money must be found, for no country can pride itself on its system of justice when access to the courts is denied in effect to those too poor to hire lawyers."

"No country can pride itself on its system of justice when its jails overflow with people sent there after hopelessly unequal combats in court which they had neither the knowledge nor the experience to wage, let alone win."

Mr Justice Didcott said another problem which had to be taken seriously was the present estrangement from the law felt by black people.

This alienation was caused primarily by the fact that laws are passed by a parliament which does not represent black people, and administered by judicial officers appointed by a government in which they have no say.

This feeling would be lessened once laws were passed by a truly representative parliament which expressed the popular will.

However, if black people were to identify fully with the system of justice and come

to feel part of it, they would need to be much better integrated into the system of administration.

"We need, and we need immediately, black judges, many more black magistrates and prosecutors, many more black lawyers in private practice. And that means we need many more black graduates emerging from our law schools."

A mechanism often suggested for increasing black participation in the legal system is the revival of the jury system. But the judge strongly opposed the idea.

"The jury system evolved for reasons and in circumstances that bear scant resemblance to our conditions. And there are many grounds for regarding it as by no means an ideal method of adjudication, even in countries where it continues to operate. Not the least is the complicated nature of modern litigation and the specialised skills required in dealing with it."

"My major difficulty with the jury system, however, is this: a jury never gives reasons for its decision. And it is hard to see how that could ever alter. Yet to entrust anyone with the power to make a decision affecting someone else's liberty or livelihood or property, and then to allow him to give no reasons for his decision, is a highly dangerous thing to do."

"It is licence for a decision influenced by bias or prejudice that would never come to light."

He said it was also important that the public understand the results of a case, so that justice was not only done but also seen to have been done.

"But how does one understand that without any reasons having been given? The giving of reasons is both a safeguard against the wrong decision and the condition on which public confidence in the rightness of the decision rests."

96 freed as Govt sprints for deadline

ANOTHER 96 political prisoners are to be freed and 235 political offenders indemnified, as the Government continues to speed towards the April 30 deadline for the release of all political offenders

Minister of Justice and Correctional Services Kobie Coetsee said yesterday the prisoners would go free as soon as possible

This will bring the total of political prisoners released to 535 and the number of indemnifications to 3 927 Mr Coetsee said last week that 850 convicts had so far applied for release as political prisoners while 5 056 people had applied for indemnity

Those indemnified in a Government Gazette yesterday included 220 people who left South Africa without valid travel documents, or through an illegal port, and 15 who were indemnified individual-

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PETER FABRICIUS
Political Correspondent

ly for more serious offences

Among the latter were two right wingers, Deon Rautenbach (26) — arrested for causing explosions at the United States embassy, National Party offices and Melrose House in Pretoria last year — and Gerhardus Petrus Minnaar (47)

Arson

Minnaar was indemnified for involvement in arson at the Roman Catholic Church and other buildings at Boekenhoutfontein between June 22 and 23 last year; importing, supplying or possessing explosives, helping to plan an explosion at the Frans Vos Building in Rustenburg, and helping

right-winger "Piet Skiet" Rudolph when he was on the run

Others who received individual indemnity were

- Jabu Thomas Nhlapo (24) for possessing an automatic pistol and 212 rounds of ammunition in Soghanguve on April 18 last year
- Stanford Chipu Moagi (34) for his part in the 1976 uprisings
- Tony Klaasen (17) for public violence and contravening the Explosives Act in Kimberley
- Ernest Jabulane Kambule (16) Piet Moloken (18), David Jabulani Rocoio (18), John Mafabatho (19) and Mbutona Christian Makoatle (16), convicted in Vredefort Free State, of arson or malicious damage to property
- Three youths of the Banyane family and Bethuel Kabi and Petrus Shomolekae, charged with public violence on March 19 last year in Bloemfontein

Govt 'must re-open death squads probe'

Apr 20/4/91

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THE Democratic Party has asked the Government to re-open the Harms Commission into death squads if the Defence Force recovers the operational files of the Civil Co-operation Bureau's internal operations

This follows the announcement last week that the Defence Force would sue CCB managing director Colonel Joe Verster to recover the missing operational files of the CCB's Region Six, which conducted illicit operations inside the country

Obstruction

DP law and order spokesman Tian van der Merwe said this week that a fresh inquiry was necessary because the Harms Commission had not succeeded in uncovering the full truth about the death squads

This was because of the missing files and obstruction by witnesses of the CCB, other arms of the SADF and, to a lesser extent, the police

And Free State Attorney-general Mr Tim McNally, who led evidence in the Harms inquiry, has indicated that the files would be very useful

He said the commission had gone to extraordinary lengths to find the files last year during the inquiry, including breaking into an army safe

The files would have been extremely useful at the time of the inquiry. He would not comment on whether they would be useful now or pass judgment on whether the inquiry should be re-opened as this decision was President de Klerk's prerogative.

Asked why Colonel Verster had not been sued for the files when the Harms Commission was sitting, he said Colonel Verster had sworn under oath before the commission that he did not

PETER FABRICIUS
Political Correspondent

have the files and was unable to recover them

Mr McNally said the usefulness of the files would, of course, depend upon what was in them

"Obviously they would throw light on their operations. They could be of great value or none at all"

Mr van der Merwe said the Government would not be able to get away with the contention that the CCB had not committed murder or other offences unless it was prepared to order a fresh inquiry, at which these files could be made available

"It is frankly duplicitous and insincere of the Government to hold an inquiry into death squads while some members of the Government establishment are deliberately denying the commission access to information that has a crucial bearing on its work

"We will watch the action against Joe Verster very closely and will pile on the pressure for further inquiries, especially if the files are recovered"

Crucial

The CCB's Region Six was suspected of political murders such as that of Johannesburg academic Dr David Webster (although nothing was proved) and implicated in dirty tricks projects

The missing files would be useful not only to the Harms Commission but to Auditor-General Peter Wronsley. He reported this year in his audit of the CCB that he was unable to pass final judgment on whether about R500 000 of Region Six's expenses were authorised because the operational files had been removed

NEWS

'Odd couple' eludes shadow of the gallows

By DENNIS CRUYWAGEN, Political Staff

THE long wait in the shadow of the gallows on Death Row is over for two young men whose crimes outraged opposite poles of society, but whose lives show remarkable parallels

Barend Strydom and Robert McBride are among the 17 people whose death sentences were commuted by Minister of Justice Mr Kobie Coetsee this week

Strydom is white and McBride is coloured, both were 23 when they went to in Pretoria Central Prison to await execution.

"Wit Wolf" Strydom gunned down 21 black people in Church Square, Pretoria, on November 15 1988. Eight of his victims died. A week previously he went on a "practice run", killing an 18-year-old woman and wounding her friend at a squatter camp near De Deur.

Strydom told the Pretoria Supreme Court during his trial he believed blacks were animals, not people.

Sentencing Barend Hendrik Strydom to death eight times on May 25 1989, Mr Justice Harms said "You must be removed from society forever."

Robert McBride was sent to Death Row on April 13 1987 for planting a car bomb outside Magoo's Bar in Durban in 1986. Three women died and 89 people were injured.

McBride told the Maritzburg Supreme Court he despised whites because he was the butt of insults when he "tried for white" and joined a white rugby club.

Strydom was taught the doctrine of white supremacy by his father, Mr Nic Strydom, formerly regional AWB leader at Heidelberg in the Transvaal.

He saw himself in a war situation in which blacks were the "enemy". He had been taught there would be no room for blacks in a Boerestaat.

He decided to take things into his own hands. He claimed it was either himself or the "enemy".

McBride said his father was anti-white and had told him never to trust a white man.

McBride came to believe that there was a sickness in the country. He wanted to destroy this sickness and became a radical.

He had explosives training in Botswana and became a member of the ANC's special operations division.

Violent protest

He was so enraged by the declaration of the state of emergency that he decided to make a form of violent protest, he told the court.

Now Strydom and McBride have renounced violence, according to their wives.

Both men were married on Death Row.

McBride wed Miss Paula Leyden, a British businessman's daughter, in Pretoria Central Prison in May 1989, making history by becoming the first Death Row prisoner to do so.

McBride and his wife, a former schoolteacher, were allowed a 40-minute "honeymoon". It was the first time they had been in physical contact for two years.

Student teacher Miss Karin Rautenbach had known Hendri, as Strydom is known to an inner circle of friends and family, before the Pretoria shootings.

"We saw each other at AWB and Boerestaat Party meetings. So I wrote to him in jail and he invited me to visit him. We've loved each other since then."

Now in a bizarre twist, determination to stop the executions of Strydom and McBride, has brought Strydom's parents and Paula McBride closer together.

Mrs Daphne Strydom said the family initially experienced antagonism from prisoners on Death Row.

But Mrs McBride, who works on Lawyers for Human Rights' death penalty desk, helped.

Said Mrs Strydom: "Paula is the person who helped change the other families' attitudes towards us. I have a lot of respect for Paula. I told her the other day that I will help the LHR with any campaign against the death penalty. It does not matter what race or colour a person is, I will fight the death penalty."

'Torture' woman accepts pay-off by cops

A DOMESTIC worker allegedly tortured by Potchefstroom police more than two years ago, this week accepted R2 500 plus costs in an out-of-court settlement

Norah Ntsele, 28, originally sued Law and Order Minister Adriaan Vlok for R10 000, following her alleged torture by Detective Constable Harnes Peter Jordt

She had earlier told the civil court magistrate, E Schutte, that she was a suspect in a housebreaking and theft charge committed at her employer's house on September 12, 1988 (252) (200)

Ntsele had told the court that Jordt had put a canvas hood over her head, forced her to lie face-down on the floor and bound her hands to her legs

She said he then subjected her to electrical shocks. In the process she injured her tongue and sustained bruises and contusions on her body. Her wrists were also swollen.

She was treated by a doctor who reported that her injuries were consistent with her allegations of torture.

She was released without being charged in the housebreaking and theft case *CP/ren 21/4/91*

Throughout the hearing Jordt denied the allegations against him and insisted that he interrogated Ntsele on August 25, 1988, and not on September 12, as alleged

The settlement was recorded and endorsed by the magistrate as a court order after legal representatives of both parties had agreed on the settlement

Commenting after the case, lawyer Iqbal Motala said Ntsele had sued for R7 000 in respect of assault and R3 000 for the lowering of her dignity and false accusations.

Motala said his client accepted the settlement because it was not the money she was after

She wanted to prove that she took exception to what was done to her by a man who was supposed to protect and not to hurt people, he said

HOUSE OF REPRESENTATIVES

(2) Yes

QUESTIONS

†Indicates translated version

For written reply

General Affairs

Certain primary school teacher travelling allowance

13 Mr P T C NAPLIER asked the Minister of Education and Culture *Haswell 23/4/91*

- (1) Whether a certain primary school teacher, particulars of whom have been furnished to the Minister's Department for the purpose of his reply, is receiving a travelling allowance, if so, (a) why and (b) since when, if not,

- (2) whether this teacher received such an allowance in the past, if so, (a) why and (b) when did this allowance (i) commence and (ii) cease,
- (3) what are the particulars of the teacher in question,
- (4) whether he will make a statement on the matter?

C73E

The MINISTER OF EDUCATION AND CULTURE

(1) No

- (a) She met all the requirements to qualify for the payment of the allowance
- (b) (i) 1 May 1985
- (ii) 31 March 1990

- (3) The teacher was attached to Maraskop Primary School until 31 December 1988. She was transferred to Kokstad Primary with effect from 1 January 1989. The teacher commuted daily from Franklin during 1989 but has moved to Kokstad as from the second term of 1990. The possibility of an overpayment in transport allowance for the period 1 January 1989 to 31 March 1990 is being investigated because of the Kokstad school being situated in a declared residential area.

(4) No

Own Affairs

People's courts: prosecutions/convictions

14 Mr L T LANDERS asked the Minister of Justice *Haswell 23/4/91*

Whether any (a) prosecutions were instituted and (b) convictions were obtained in 1989 and 1990 in respect of incidents involving people's courts, if so, how many in each case in each such year?

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C72E

The MINISTER OF JUSTICE

The required information is not readily available in the Department. To obtain the information all court records will have to be examined, which is not economically feasible.

INTERPELLATIONS UNDER NAME OF MEMBER

Burrows, Mr R M—

Own Affairs

Education and Culture, 603, 1064

Hoon, Mr J H—

General Affairs

Planning, Provincial Affairs and National Housing, 567

Carlisle, Mr R V—

General Affairs

Home Affairs, 10

Jacobs, Adv S C—

General Affairs

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Cassim, Mr M F—

Own Affairs

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Landers, Mr L T—

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Eglin, Mr C W—

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Leon, Mr A J—

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Gerber, Mr A—

Own Affairs

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Haswell, Mr R F—

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Law and Order, 286

Momborg, Mr J H—

General Affairs

Law and Order, 1042
National Education, 574

Herandien, Mr C B—

Own Affairs

Housing, 125

Mopp, Mr P A S—

Own Affairs

Health Services and Welfare, 495

CAPITAL punishment has become another relic of the old SA. That was the instant response of most commentators to the reprieve of Barend Strydom and Robert McBride if atrocities such as theirs do not merit the death penalty, what can be the case for hanging the common or garden variety of murderer?

In this queer roundabout way, by the cold-blooded trade-off between pressures from the right and left, we have arrived at what has long been a cherished item on the liberal agenda — the abolition — for all practical purposes — of the death penalty.

Opponents of capital punishment will, of course, applaud whatever the political expedience which led to the reprieve of murderers who would not have stood a chance in the bad old days, the fact is that now we are there hanging in SA is a thing of the past.

The case against capital punishment has rested on several arguments. One is that the death penalty is in itself a moral enormity, a barbarous survival from more backward times which has no place in a civilised society.

There is also the possibility of a miscarriage of justice. Innocent men have died for others' crimes, like Timothy Evans in Britain in 1949.

In any event, the supposedly clinching argument goes, the death penalty is no deterrent. Abolitionists have typically argued over the years that evidence shows that in countries where the death penalty has been abolished there has been no noticeable increase in the murder rate.

The possibility of error can be quickly dismissed, not because it cannot happen, for it has, but because it is not an argument against the death penalty. It simply means that the penalty should not be im-

The future victims will rue demise of the death penalty

By Day 23/4/91. HENRY KENNEY 252

posed where there is any doubt about the guilt of the accused.

There is, however, no disputing about tastes, the philosophical adage goes. Those who oppose the death penalty because they find it morally repugnant are in an unassailable position. For them any proof of its deterrent effect would be irrelevant.

It remains true, however, that much of the debate about the desirability of the death penalty has centred on its role as a deterrent. This at least is a factual issue about which there can be dispute. It is a subject which has received some illumination from the recent work of economists who have investigated the economics of crime.

Economists have always assumed that individuals are rational in that they respond to opportunities for gain. If something becomes more expensive they will buy less of it.

Criminals are no less rational than other individuals, they respond to incentives. If the cost of crime increases it can be expected that the amount of crime will go down. Punishment and law enforcement will

act as deterrents to the commission of specific crimes.

In a seminal paper, Crime and Punishment, published in 1968, Gary Becker of Chicago University formulated these basic hypotheses of the economic approach to the study of criminal behaviour.

He also pointed out that some of the most important factors bearing on illegal activity, such as the probability of apprehension and conviction, likely punishment and the possibility of earnings opportunities in legitimate occupations, were empirically observable.

In principle it was possible to test their effect on the behaviour of criminals.

There have been attempts to test Becker's hypotheses. Plenty of evidence has accumulated that criminals do respond, like the rest of us, to changes in price, that they think in terms of costs and benefits.

By far the most controversial findings have been those bearing on the

death penalty.

A student of Becker, Isaac Ehrlich, was the first person to subject the relationship between murder and capital punishment to sophisticated econometric analysis.

On the basis of American data, he found little evidence for the conventional wisdom which had till then been current — that capital punishment did not affect murder rates and that, in any event, long prison terms were a perfectly adequate substitute.

Ehrlich found that when states executed murderers, there was a substantial reduction in the number of murders for every person executed. His conclusions were predictably received with outrage by many of his colleagues, both economists and, inevitably, sociologists. Some of the later empirical work has cast doubt on his findings, while some has corroborated it.

However, there are facts which seem indisputable.

The evidence suggests that when the death penalty does not apply the murder rate goes up. The Nobel Prize-winning economist George

Stigler has written "We know that during a period when capital punishment in America was virtually abolished (1960-1970), the annual number of murder victims rose from 8 464 to 16 848, or almost seven times as fast as the population grew."

In brief, when murder becomes more expensive, there is less of it.

It does not follow that the death penalty should be retained. Even if one accepts that it is a deterrent and that a long prison term is no close substitute, it is still possible to reject capital punishment on moral grounds.

However, to quote Stigler again, those who do will have to "face the distressing implication that a policy of non-executions leads to sentencing a considerable number of anonymous individuals to death."

In SA, of course, we have executed people with gusto for many years. They have also come overwhelming-ly from the black population.

It is only too plausible that the greater political power of the whites has led to legislation and law enforcement which have unduly favoured themselves.

We can all think of cases where whites have come off with light sentences for barbarous crimes against black people.

None of this is in itself an argument against the death penalty.

What we can reasonably expect in the new SA is a pattern of enforcement which will be more even-handed. Less enthusiasm for capital punishment is long overdue.

But if we go where the evidence leads us, we must accept that its abolition is likely to result in the deaths of many individuals who would otherwise have lived.

Kenney is a lecturer in Wits University's business economics department.

Simon Barber's column this week has been delayed.

- (a) 25 March 1991
 (b) Dennis Vincent Frederic Brutus

(3) Yes The applicant forfeited his South African citizenship when he left South Africa permanently in 1966. Since then he has been a prohibited person in the RSA. He thus did not apply for a visa at the time of his enquiry in June last year and press reports that so alleged were incorrect.

He subsequently enquired in June 1990 about his legal status and was advised accordingly. *Answered 23/4/91*

In view however of delicately balanced negotiations and meetings between various representative national and international sporting executives inside and outside South Africa, at the time, and in view of the applicant's intensive campaign over some 25 years against international sport participation by South Africa, he was advised last year, despite the fact that he had not applied for a visa, that his position could be reviewed after the expiration of a period of twelve months.

An application for a visa to visit South Africa during May and June 1991 was received on 25 March 1991 and subsequently approved by me.

HSRC: investigation into history writing

*5 Mr H D K VAN DER MERWE asked the Minister of National Education +

- (1) Whether the Human Sciences Research Council recently investigated the change in history writing in the Republic, if so, (a) when and (b) what were the findings, (2) whether he will disclose the names of the researchers concerned, if not, why not, if so, what are their names?

Answered 23/4/91 B778E

†The MINISTER OF NATIONAL EDUCATION

- (1) No The Human Sciences Research Council has not investigated the change in history writing in the Republic recently. The HSRC is however, involved with two history related investigations, namely The position of the philosophy and meth-

odology of history in South Africa

This project which is being undertaken by the South African Historical Association

(a) is currently in progress and a final report is expected towards the end of 1992. *Answered 23/4/91*

(b) the findings will be made known to the HSRC by means of a report, and

(c) is led by Prof D J van Zyl of the History Department of the University of Stellenbosch

An HSRC investigation into aspects of the teaching of history at secondary school level.

(a) This investigation has been in progress for some time. The aim thereof is to examine the teaching of history in a broad sense, but specifically with regard to recommendations in respect of the history curriculum. *Answered 23/4/91*

(b) The findings of the investigation will be made known to all interested bodies by means of a report—especially education departments

(c) This investigation is being conducted by a work committee under the chairmanship of Dr S W H Engelbrecht of the HSRC. The members of the committee come from various education sectors

(2) Falls away

†Mr J H MOMBBERG Mr Chairman, arising out of the hon the Minister's reply, given the feeling among many people that the writing of history in South Africa is very one-sided, does the hon the Minister know whether academics at the so-called other side of the spectrum will also be asked to rewrite history books?

†The MINISTER Mr Chairman, the investigations which are being conducted at present, have nothing to do with the content of history books or syllabi at schools. They have to do with teaching methods and the philosophy and methodology of history. What the hon member is asking, will most probably come up for discussion when we deal with the education renewal strategy in this House.

†Mr J H MOMBBERG Mr Chairman, further arising out of the hon the Minister's reply. In other words, I take it that the Zulus are still learning about Piet Retief?

†The CHAIRMAN OF THE HOUSE Order! Is that a question or a statement? Does the hon the Minister want to react to it?

†The MINISTER Mr Chairman, I am sorry, I do not think it was a question.

†Adv S C JACOBS Mr Chairman, further arising out of the hon the Minister's reply, is it his standpoint that the methodology of history has changed in the interim and that it has to be investigated as such? *Answered 23/4/91*

†The MINISTER Mr Chairman, at present the investigation deals with the position of the philosophy and methodology of history in South Africa. The investigation is being conducted by the South African Historical Society and has no bearing on any instructions of the Department of National Education.

†Mr H D K VAN DER MERWE Mr Chairman, further arising out of the hon the Minister's reply, is he unaware that newspapers have reported that the HSRC did in fact investigate whether there should be a change in South Africa regarding the whole history syllabus?

†The MINISTER Mr Chairman, I am not aware of such newspaper reports. If the hon member Mr H D K van der Merwe brings them to my attention, I will react to them.

†Mr J H VAN DER MERWE You must start reading the newspapers!

Official residence Groote Schuur: restoration

*6 Mr P H DE LA REY asked the Minister of Public Works and Land Affairs +

Whether restoration work was recently done to the official residence Groote Schuur, if so, (a) what was the nature of the work and (b) what total amount was involved?

B781E

†The MINISTER OF PUBLIC WORKS AND LAND AFFAIRS

- Yes
 (a) Restoration work consisting mainly of water jet cleaning of the roof, waterproofing of balconies, gutters, flashing and the

flat roof of the servant's quarters, as well as minor painting and plumbing improvements

(b) R25 280,00

Certain counsel: fee

*7 Mr R V CARLISLE asked the Minister of Law and Order *Answered 25/2*

(1) Whether a certain counsel, whose name has been furnished to the South African Police for the purpose of the Minister's reply and who has represented both the Minister of Law and Order and the South African Police, has in this capacity (a) had his fee drastically reduced by the taxing master on three occasions, (b) been instructed to reduce his fee by the Pretoria Bar Council and (c) been rebuked by the Appellate Division in the matter of *The Minister of Law and Order vs Parker* on the grounds that all but 15 pages of his 100-page "Heads of Argument" were irrelevant, if so,

(2) whether the Minister and the Police have continued to retain the said counsel, if so, why,

(3) whether the Minister and the Police will continue to retain the said counsel in the future, if so, why,

(4) what is the name of the counsel concerned? *Answered 23/4/91* B815E

The DEPUTY MINISTER OF LAW AND ORDER

(1) (a) The fees of the advocate in question, where he appeared in two appeals on behalf of the Minister of Law and Order and/or the South African Police, were reduced by the taxation master of the Appeal Court, Bloemfontein. The taxation master's function for the purpose of party and party costs, is to determine a reasonable amount as a successful party's legal expenses, which must then be paid by the unsuccessful party.

In numerous cases there is a vast difference between the legal costs of advocates who have been taxed on a party and party basis by a taxation

lasted from September 1987 until February 1990

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(4) Yes

(a) A list of the cases is set out in (4)(b)(ii), (below)

(b) (i) A fee structure for the advocate in question was agreed on, on two occasions during the period 1 January 1986 until 1 March 1990. Each time the agreements were concluded by the State Attorneys' office, on behalf of the client, with the advocate. The agreement was that the advocate would be bound by the fee structure agreed on at the calculation of his fees in all matters in which he would appear on behalf of the State Attorney, until such time as the agreement was amended or adapted or unless, due to exceptional circumstances in a particular instance, another fee structure was agreed on.

(aa) The fee structure agreed on and which applied from approximately the middle of 1986 until approximately November/December 1987, was as follows
 Consultation and the draughting of court documents R200,00 per hour,
 Preparation R140,00 per hour,
 Appearance in court R4 500,00 for the first trial day, and R3 000,00 per day for every subsequent day on which the case continued
 In addition, the advocate's reasonable expenses would also be compensated for
 (bb) The fee structure, which the Law Council of Pretoria approved as reasonable, and agreed on and

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which applied from approximately November/December 1987 until 1 March 1990 is as follows
 Consultations and the draughting of court documents R360,00 per hour,
 Preparation R240,00 per hour,
 Appearance in court R6 000,00 for the first trial day,
 and R4 000,00 per day for every subsequent day on which the case continued
 In addition, the advocate's reasonable expenses would also be compensated for
 (cc) Special adjustments to the above fee structure were made in

Handwritten: MZAMKA en ander vs DIE MINISTER VAN WET EN ORDE,

(b) (ii) A total remuneration was never agreed on beforehand and the advocate was only paid for professional services rendered
 Although the fees paid to the counsel might seem relatively high, I wish to point out that they are in fact completely market related
 His success rate indicates that he excelled in the handling of cases on behalf of the South African Police, some of which were very complicated. In various cases landmark decisions were made by the courts
 The total remuneration paid to the advocate for professional services rendered, was as follows
 1 ARGUS PRINTING & PUBLISHING CO/COMMISSIONER OF THE SAP
 For professional fees R20 750,00,
 (Successful in the favour of the Minister)
 2 COSATU/MINISTER VAN WET EN ORDE
 For professional fees R7 950,00,
 (Successful in the favour of the Minister)

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3 SUNDAY TIMES/KOMMISSARIS VAN DIE SAP

For professional fees R990,00,
 (For consultation and advice)

4 RELEASE MANDELA CAMPAIGN/STAATSPRESIDENT EN ANDER

For professional fees R10 580,00,
 (For expenses R630,00),
 (Successful in the favour of the Minister)

5 DIE PROGRESSIEWE FEDERALE PARTY/STAATSPRESIDENT EN ANDER

For professional fees R10 240,00,
 (For expenses R830,00),
 (Postponed *sine die* at the request of the other party)

6 UDF/STAATSPRESIDENT EN ANDER

For professional fees R13 160,00,
 (For expenses R1 006,00),
 (Successful in the favour of the Minister)

7 MANNING/MINISTER VAN WET EN ORDE EN ANDER

For professional fees R11 870,00,
 (For expenses R910,00),
 (Successful in the favour of the Minister)

8 ARGUS PRINTING AND PUBLISHING CO/MINISTER VAN WET EN ORDE

For professional fees R1 510,00,
 (Successful in the favour of the Minister)

9 1 RASHIDA PARKER/MINISTER VAN WET EN ORDE EN ANDER

(Successful in the favour of the Minister)

9 2 MHLOM/MINISTER VAN WET EN ORDE EN ANDER (TWO APPLICATIONS)

For professional fees R5 760,00,
 †Adv S C JACOBS That is why the country's economy is in the state it is!

†The CHAIRMAN OF THE HOUSE Order!

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†The DEPUTY MINISTER

(For expenses R860,00),
 (Successful in the favour of the Minister)

†Adv S C JACOBS And then you are still sitting there, doing nothing about it!

†The DEPUTY MINISTER

10 1 SHAMASE/STAATSPRESIDENT EN ANDER

For professional fees R5 000,00,
 (For expenses R1 178,00),
 (Successful in the favour of the Minister)

[Interjections]

†The CHAIRMAN OF THE HOUSE Order!

†The DEPUTY MINISTER

11 1 SHAMASE/STAATSPRESIDENT EN ANDER

For professional fees R5 180,00,
 11 2 RELEASE MANDELA CAMPAIGN/STAATSPRESIDENT EN ANDER

For professional fees R4 970,00,
 [Interjections]

(Successful in the favour of the Minister)

[Interjections]

†The CHAIRMAN OF THE HOUSE Order! I cannot allow this dialogue between the hon member for Losberg and another hon member The hon the Deputy Minister may continue

†The DEPUTY MINISTER

12 MOKWENA/STAATSPRESIDENT EN ANDER

For professional fees R9 920,00,
 (Successful in the favour of the Minister)

13 MANUEL EN ANDER/MINISTER VAN WET EN ORDE EN ANDER

For professional fees R9 020,00,
 (Verdict is still being awaited)

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master and the actual costs of the advocate as between attorney and client. The taxing-off by a taxation master does not necessarily mean that the advocate's fees were unreasonable.

- (b) An investigation into the reasonableness of the advocate's fees was held by the Pretoria Bar Council. The majority decision (4 members) held that there should be a reduction in the advocate's fees. The minority (3 members) however, found the fees of the advocate in the appeals, mentioned in 1(a), to be reasonable. An appeal against the majority decision was noted to the General Bar Council of South Africa. This appeal has not yet been heard and consequently the matter is *sub-judice*. It is therefore inappropriate to speculate on the merits or otherwise of these decisions.

- (c) The manner in which this question has been posed, necessitates a negative reply.

The correct facts are that, in *Van der Westhuizen NO vs Die United Democratic Front*, 1989(2) SA 242 (A) at page 252, remarks were made concerning heads of argument of advocates, including the heads of argument of the advocate and his junior.

The advocate was criticised because, in the opinion of the Court, quotations of authority given in his heads of argument lengthened them unnecessarily. The Court spoke in general on heads of argument and the cost implications thereof. Compare the words "There is a growing tendency in this Court for counsel to incorporate quotations in their heads of argument. I have no doubt that these quotations are intended for the convenience of the Court but they seldom serve that purpose."

The Court was of the opinion that had certain quotations of authority been excluded from the Court record and had the typesetting been better utilised, the heads of argument

would not have exceeded 20 pages. The Court did not find that any portion of the heads of argument was irrelevant. Furthermore, the heads of argument were not 100 pages long, but only 85 pages, of which 20 pages were relevant.

- (2) and (3) Yes

The advocate in question, as well as various of his colleagues throughout the country, rendered work of the highest standard at all times and under extremely difficult circumstances. A wave of urgent court applications were brought against the Minister of Law and Order and/or the South African Police during the State of emergency which prevailed in South Africa.

The advocate in question successfully handled a great number of cases in the period during which the state of emergency was in force, of which the majority were decided in favour of the Minister and the South African Police. His success rate indicates that he excelled in the handling of cases on behalf of the South African Police, some of which were very complicated. In various cases landmark decisions were made by the courts.

I also wish to refer the hon member to my reply to question No 8 which will follow.

- (4) Advocate L J L Visser SC

Mr A J LEON Mr Chairman, arising from the hon the Minister's reply, would he concede that there is a great degree of disquiet in legal circles today over the very few advocates who receive briefs from his Ministry, the Ministry of Law and Order, and that the advocate in question has received over R2 million in fees from the Ministry of Law and Order for work which he has done? Does he have any comment on rectifying this matter and spreading out the work among a number of other advocates?

THE DEPUTY MINISTER OF LAW AND ORDER Mr Chairman, I am not prepared to reply to that specific question. I have already said that I will give more particulars in my reply to question 8, which will follow this one.

†Adv S C JACOBS Mr Chairman, further arising out of the hon the Deputy Minister's reply, is he prepared to issue a press statement in

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which he indicates to us (a) how many briefs the advocate in question has received the past two years, (b) what all the fees are which the advocate has been paid and (c) if there were any discussions whatsoever between the attorney who gave the brief and the department in question as principal to the attorney in respect of the fees of the advocate concerned for the dispute in this case?

THE DEPUTY MINISTER Mr Chairman, the hon member can ask all the questions he has asked just now, in the normal way. They can then be answered here and published in the press [Interjections].

Certain counsel: remuneration

*8 Mr R V CARLISLE asked the Minister of Law and Order

- (1) Whether he will furnish information with regard to a certain counsel, whose name has been furnished to the South African Police for the purpose of the Minister's reply, if not, why not, if so, what is the name of this counsel,

- (2) with reference to his reply to Question No 5 on 5 June 1990, what was the fee structure agreed to in respect of above-mentioned person in his capacity as counsel for the Minister of Law and Order in the matters of *The Methodist Church in Africa vs The Minister of Law and Order* and *P N Mzanga and 20 others vs The Minister of Law and Order*,

- (3) (a) what total remuneration was agreed upon initially and (b)(i) what has he received so far and (ii) in respect of what date is this information furnished,
- (4) whether, during the period 1 January 1986 to 1 February 1991, the counsel concerned acted for or represented in any way the Minister or Ministry of Law and Order or the South African Police in any matter other than those referred to in paragraph (2) above, if so, (a) in what matter, and (b)(i) what was the fee structure agreed upon, and (ii) what total remuneration was agreed to or paid or to be paid in this regard, in each case?

Minister I want to say that the reply contains a long list of names and figures and with the leave of the House, I shall lay it upon the Table.

Mr D J DALLING Mr Chairman, I object to that, I do not want it laid on the Table.

THE CHAIRMAN OF THE HOUSE Does the hon member wish to raise a point of order?

Mr D J DALLING No, Mr Chairman, the hon the Deputy Minister said he would lay it on the Table if there were no objection, and I object to it.

THE CHAIRMAN OF THE HOUSE Order! Is the hon the Deputy Minister prepared to read the list?

THE DEPUTY MINISTER Mr Chairman, I will just have to answer the question in full [Interjections].

- (1) Advocate L J L Visser, SC

- (2) The advocate in question, as a member of a team of four, was given instructions at trial to appear on behalf of the Minister of Law and Order, under the supervision of Advocate G D Gressel SC. The fee structure agreed on was R3 000,00 per day for each of the two senior advocates and R1 600,00 per day for each of the junior advocates. In addition, the advocates' reasonable travel and accommodation expenses would also be compensated for. The fees were only paid for professional services rendered, and on days when no work was done on the case, no fees were paid for that day. Similarly no fees were paid to any of the advocates for services rendered over weekends. After a year, the fees were increased by 15%.
- (3) (a) At no stage was a total remuneration agreed on — the advocates were only paid for actual professional services rendered.
- (b) (i) and (ii)

The total compensation paid to Advocate L J L Visser, SC, was as follows

For professional fees R914 500,00
Expenses R91 702,00

The fee thus averaged R33 000,00 per month for the period. The case

†THE DEPUTY MINISTER OF LAW AND ORDER Mr Chairman, on behalf of the hon the

B816E

- 14 MOKWENA/STAATSPRESIDENT EN ANDER
For professional fees R6 980,00,
(Successful in the favour of the Minister)
- 15 GROOTBOOM/MINISTER VAN WET EN ORDE
For professional fees R6 000,00,
(Settled)
- 16 NCUBE/MINISTER VAN WET EN ORDE
For professional fees R2 000,00,
(Successful in the favour of the Minister)
- 17 BONGULETU CIVIL ASSOCIATION/MINISTER VAN WET EN ORDE
For professional fees R600,00,
(Consultation and advice)
- 18 STAATSPRESIDENT EN ANDER/UDF EN ANDER
For professional fees R3 000,00,
(Argument)
- 19 STAATSPRESIDENT EN ANDER/RMC EN ANDER
For professional fees R3 000,00,
(Argument)
- 20 COMMITTEE FOR DEFENCE OF DEMOCRACY/STAATSPRESIDENT EN ANDER
For professional fees R12 200,00,
(Postponed *sine die* at the request of the other party)
- 21 STAATSPRESIDENT EN ANDER/RMC EN ANDER
For professional fees R15 200,00,
(For expenses R800,00),
(Lost in court *A Quo* — succeeded on appeal)
- 22 UDF/STAATSPRESIDENT EN ANDER/RMC/STAATSPRESIDENT EN ANDER/DPSC/STAATSPRESIDENT EN ANDER/COSATU/STAATSPRESIDENT EN ANDER
(FOUR APPLICATIONS—14 APRIL 1988 TO 11 MAY 1988)
For professional fees R72 000,00
(For expenses R1 773,00),
(Postponed at the request of the other party)
- 23 MBEKI/STAATSPRESIDENT EN ANDER
For professional fees R17 100,00,
(Successful in the favour of the Minister)
- 24 IDAMASA/MINISTER VAN WET EN ORDE
For professional fees R3 000,00,
(For expenses R406,00),
(Successful in the favour of the Minister)
- 25 NATAL INDIAN CONGRESS/STAATSPRESIDENT EN ANDER
For professional fees R24 200,00,
(For expenses R1 750,00),
(Successful in the favour of the Minister)
- 26 MBEKI/STAATSPRESIDENT EN ANDER
For professional fees R4 200,00,
(Successful in the favour of the Minister)

- 27 END CONSCRIPTION CAMPAIGN/STAATSPRESIDENT EN ANDER
For professional fees R900,00,
(Consultation and advice)
- 28 STAATSPRESIDENT EN ANDER/UDF EN ANDER
For professional fees R16 400,00,
(For expenses R750,00),
- 29 MBEKI/STAATSPRESIDENT EN ANDER
For professional fees R6 000,00,
(Successful in the favour of the Minister)
- 30 UDF/STAATSPRESIDENT EN ANDER/RMC/STAATSPRESIDENT EN ANDER/DPSC/STAATSPRESIDENT EN ANDER/COSATU/STAATSPRESIDENT EN ANDER
(FOUR APPLICATIONS—4 APRIL 1988 TO 1 MAY 1988)
For professional fees R25 800,00,
(For expenses R500,00),
- 31 GAYCO/MINISTER VAN WET EN ORDE
For professional fees R6 000,00,
(Successful in the favour of the Minister)
- 32 MINISTER VAN WET EN ORDE/PARKER
For professional fees R16 800,00,
(For expenses R500,00),
(Successful in the favour of the Minister)
- 33 GUMEDE/STAATSPRESIDENT EN ANDER
For professional fees R2 700,00,
(Successful in the favour of the Minister)
- 34 IDAMASA/MINISTER VAN WET EN ORDE
For professional fees R4 000,00,
(For expenses R372,00),
(Application for leave to appeal)
- 35 VAN DER WESTHUIZEN/UDF
For professional fees R17 700,00,
- 36 GUMEDE/STAATSPRESIDENT EN ANDER
For professional fees R3 600,00,
(Successful in the favour of the Minister)
- 37 DE JONG/DIVISIONAL COMMISSIONER OF POLICE
For professional fees R3 000,00,
(Petition to the Chief Justice has succeeded. The Appeal Court date is being awaited)
- 38 GAYCO/MINISTER VAN WET EN ORDE
For professional fees R3 000,00,
(Successful in the favour of the Minister)
- 39 ISSEL/MINISTER VAN WET EN ORDE
For professional fees R8 700,00,
(Settled)
- 40 LEPOKA EN ANDER/MINISTER VAN WET EN ORDE.
(164 CASES—20 TO 31 MARCH 1989)
For professional fees R42 000,00,
(Subject to settlement proposals in favour of the Minister)
- I want to give honourable members the assurance that the counsel involved only submitted accounts and was paid for actual services rendered and that there was no duplication of cases for which were claimed
- He, accordingly, did not receive double remuneration
- Adv M J MENTZ Mr Chairman, arising out of the hon the Deputy Minister's reply
- †The CHAIRMAN OF THE HOUSE Order! I am sorry, but the time for the answering of questions on general affairs has expired
- Mr P G SOAL Mr Chairman
- The CHAIRMAN OF THE HOUSE Order! The time for questions on general affairs has expired

(3) whether consideration has been given to having the parent community vote for the management board members by mail, if not, why not, if so, (a) what has been decided in this regard and (b) why?

~~Mr M A TARR~~ B783E
 THE MINISTER OF EDUCATION AND CULTURE ~~Answered~~ 23/4/91

(1) Yes, because it is considered that in terms of section 2(4) of the Regulations relating to Management Councils of Public Schools, excluding Industrial and Reform Schools, promulgated under the Education Affairs Act (House of Assembly), 1988 (Act 70 of 1988), it is not feasible to hold an election according to the ordinary procedures,

(2) yes, in accordance with section 2(4) of the aforesaid regulations promulgated under the Education Affairs Act (House of Assembly), 1988 (Act 70 of 1988),

(3) no, please refer to my answer to (1) and (2)

Agricultural colleges open to all races

*4 Mr M A TARR asked the Minister of Agricultural Development ~~Answered~~

(1) Whether it is the intention to open agricultural colleges to members of all races, if not, why not, if so, what are the relevant details, ~~Answered~~ 22/4/91

(2) whether he will make a statement on the matter? B812E

THE MINISTER OF AGRICULTURAL DEVELOPMENT

(1) Yes, selection for full-time admission to the six agricultural colleges under the control of the Department of Agricultural Development was made on a non-discriminatory basis since the beginning of this year. In future this policy of selection on merit and on a non-discriminatory basis for full-time admission, will be continued

(2) A Press statement was issued on 29 January 1991

Section of farm Panorama rezoning

*5 Mr J VAN ECK asked the Minister of Local Government ~~Answered~~ 23/4/91.

According to the aforesaid Department's records the property was indeed zoned to make development for housing purposes possible ~~Answered~~ 23/4/91

Development takes place according to Plan 1 069 and no erven up to the high water mark are proposed according to the plan. Any marketing which therefore refers to erven below the high water mark shall therefore be incorrect.

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Pre-primary education policy

*6 Mr R M BURROWS asked the Minister of Education and Culture ~~Answered~~

(1) Whether his Department has a policy in respect of the provision of pre-primary education to children of the pre-school year, if not, why not, if so, what is this policy, ~~Answered~~ 23/4/91

(2) whether this policy is uniformly applied throughout South Africa, if not, why not,

(3) whether his Department has made this policy public, if not, why not, if so, (a) when and (b) in what manner? B823E

THE MINISTER OF FINANCE

(a) Jewellers 112 268,939 ounces

(b) Other concerns 372,205 ounces

Persons with legal qualifications

236 Mr D J DALLING asked the Minister of Justice

(a) How many persons with legal qualifications were employed by his Department in professional capacities in the Republic, excluding the self-governing territories, (b) how many such persons were (i) White, (ii) Black, (iii) Coloured and (iv) Indian, and (c) (i) in which positions and (ii) where were these (aa) Black, (bb) Coloured and (cc) Indian persons

THE MINISTER OF EDUCATION AND CULTURE

(1) Yes, although pre-primary education is non-compulsory education it is still provided within the bounds of affordability. In departmentally controlled and/or departmental pre-primary schools and/or classes, preference is given to applicants who in the ensuing year will be of compulsory school-going age,

(2) yes, in respect of departmentally controlled and departmental pre-primary schools, ~~Answered~~ 23/4/91

(3) (a) and (b) yes, on different occasions in speeches and by means of directions to the principals of departmentally controlled and departmental pre-primary schools

QUESTIONS

†Indicates translated version

For written reply

General Affairs

Gold made available

211 Mr R R HULLEY asked the Minister of Finance ~~Answered~~ 23/4/91

What quantity of gold was made available in the Republic in 1989 and 1990, respectively, to (a) jewellers and (b) other concerns, for manufacturing purposes? B559E

1989

112 268,939 ounces

372,205 ounces

1990

122 852,446 ounces

678,224 ounces

employed, as at 31 December 1990? ~~Answered~~ 23/4/91

THE MINISTER OF JUSTICE

(a) (i) 2 631

(b) (i) 2 475

(ii) 43

(iii) 70

(iv) 43

~~Answered~~ 25/2

B602E

Answered

252

(c) (i) and (ii)(aa)

Prosecutor	
Regional Court	
Pietermaritzburg	1
Pretoria	1
Empangeni	1
Johannesburg	1
District Court	
Pretoria	3
Pretoria North	1
Pietermaritzburg	1
Johannesburg	10
Verulam	4
Springs	2
Wynberg	2
Stanger	1
Alberton	1
Durban	1
Benoni	3
Mutuzini	1
Krugersdorp	1
Greytown	1
Mouse	1
Kimberley	1
Vanderbijlpark	1
Empangeni	1
Witbank	1
Potgietersrus	1

State Advocate

Krugersdorp	1
Malmesbury	1
Johannesburg	1
Attorney-General, Cape Town	1

(c) (i) and (ii)(cc)

Prosecutor

Regional Court	
Durban	4
Port Shepstone	1
District Court	
Verulam	4
Chatsworth	4
Durban	4
Scottsburgh	3
Pietermaritzburg	1
Pinetown	2
Johannesburg	2
Wynberg	2
Queenstown	1
Kimberley	1

Magistrate (District Court)

King William's Town	1
Stanger	1

(c) (i) and (ii)(bb)

Prosecutor

Regional Court	
Cape Town	1
Wynberg	4
Worcester	1
Port Elizabeth	1
Vanderbijlpark	4
District Court	
Cape Town	2
Bellville	2
Wynberg	19
Paarl	1
Worcester	2
Port Elizabeth	1
Witbank	5
Johannesburg	1
Springsbok	6
Evander	1
King William's Town	2
East London	1
Goodwood	1
Grahamstown	4
Malmesbury	1
Kuilsriver	1
Relief Staff	2
Randburg	1

Magistrate (District Court)

Wynberg	1
Queenstown	1

The MINISTER OF MANPOWER

- (a) Yes — 2 *Answered 23/4/91*
- (b) Yes — 7 728

Education authorities: amounts allocated

284 Mr R M BURROWS asked the Minister of National Education *Answered 23/4/91*

- (1) Whether he or his Department has been granted powers or additional powers in order to oversee or control the amounts of money allocated by his Department to the various education authorities, if not, by what mechanism will spending be limited to the allocation, if so, what is the nature of the powers granted,
- (2) whether any of the existing education authorities exceeded the allocation made to it by his Department in any of the past three financial years, if so, (a) which authorities exceeded their allocation and (b) by what sum did they exceed it,
- (3) whether he will make a statement on the matter? *B750E*

The MINISTER OF NATIONAL EDUCATION

- (1) No Control over the amount of money allocated to the various education authorities is carried out in terms of the Exchequer and Audit Act, 1975 (Act 66 of 1975) The accounting officers of the various Education departments and Administrations are in the first place responsible that the amounts budgeted are not exceeded Appropriation accounts of departments must be audited by the Auditor-General each year
- (2) The heads of the Education departments and Administrations concerned are accountable for their department's allocation

Information requested in (a) and (b) should therefore be obtained from their respective Ministers. *B811E*

Nurses: new salary scales

310 Miss M SMUTS asked the Minister of State Expenditure and for Regional Development

- Whether new salary scales for nurses were introduced with effect from 1 July 1990 or a later date, if so, (a) what are these scales and (b) when were they introduced?

The MINISTER OF STATE EXPENDITURE AND FOR REGIONAL DEVELOPMENT *Answered 23/4/91*

- (a) see attached Annexure
- (b) new salary scales were introduced for nurses with effect from 1 July 1990

The salary scales are as follows

Student Nurse	R7 011-9 999/7 410-12 429 + 10% non-pensionable allowance
Professional Nurse	R17 403-25 584 + 10% non-pensionable allowance
Senior Professional Nurse	R23 766-30 561 + 10% non-pensionable allowance
Chief Professional Nurse	R31 917-37 341 + 10% non-pensionable allowance
Nursing Service Manager	R37 341-43 335 + 10% non-pensionable allowance
Senior Nursing Service Manager	R41 694-48 258 + 10% non-pensionable allowance
Chief Nursing Service Manager	R48 258-56 217 + 10% non-pensionable allowance
Deputy Director Nursing Services	R58 323-68 763 + 10% non-pensionable allowance

Unemployment insurance cards

277 Mr P H P GASTROW asked the Minister of Manpower *Answered 23/4/91*

- Whether any employers were (a) prosecuted and (b) warned in 1990 for failing to keep their employees' unemployment insurance cards up to date, if so, how many in each category?

B736E

APARTHEID BAROMETER

INDEMNITY

LESS than three percent of about 40 000 exiles have been repatriated to South Africa, members of the National Co-ordinating Committee for Repatriation (NCCR) said at the weekend.

Since March, 7 310 African National Congress exiles have been flown back, with more than 19 000 still waiting to return and an estimated 20 000 other exiles still abroad.

The NCCR said it had advised exiles not to return until a general amnesty was granted.

Meanwhile, the government granted indemnity to another 220 people who had left South Africa without authorisation or being in possession of valid passports or permits.

A debate raged between State President FW de Klerk — who said in London the number of political prisoners still to be released in terms of the Pretoria Minute with the ANC was "well below" 200 — and human rights organisations who estimated the number still to be freed before the April 30 deadline to be at least 1 146.

The Human Rights Commission said in a special report that, on April 2, 1 361 political prisoners were still being held. Since then a further 119 have been released, and last week the government announced the imminent release of a further 96. *W/Mand 26/4 - 2/5/91*

This week Justice and Correctional Services Minister Kobie Coetsee announced that all political offenders not responsible for death or injury would be indemnified.

This would include those who had committed high treason, Internal Security Act offences such as holding illegal gatherings and unlawful possession of arms, ammunition or explosives; trespassing, arson, malicious damage to property and public violence.

Coetsee's acknowledgement that public violence offences were political could overcome discrepancies in estimates of the numbers of people held.

Coetsee also announced the pending release of another 124 political prisoners — 44 from Robben Island — bringing to 669 the total number of political prisoners released under government-ANC agreements.

HOW TO TACKLE IT

When rough justice is a way of life

26/4 - 2/5/91

What's the township view of the causes of the violence sweeping South Africa? 252

EDDIE KOCH and

TSHOKOLO wa MOLAKENG

investigate
w/m 26/4 - 2/5/91
CONSENSUS is hard to come by in South Africa's black townships these days. But when *The Weekly Mail* conducted an impromptu survey of people's feelings about the violence that envelops their lives, and the implications this has for the new nation in the making, it found a remarkable unity of opinion.

The wellspring of sectarian strife is an absence of credible institutions of law. The existing institutions are seen as extensions of apartheid with no moral authority. People resort to private justice, vengeance and the law of the jungle to survive. These are the common themes that came out of our interviews.

In other countries, during times of political upheaval and social stress, ordinary people turn to a party of law and order or a strong authoritarian leader to redress the problem. But this pattern is absent in South Africa. There is no social movement capable of meeting this need. Instead people have a fatalistic sense that they are left with only one mechanism with which to regulate their lives: violence.

"People turn to kangaroo courts, armed gangs, vigilantes and private hitmen to exact their own brand of justice," says an insurance broker from Mamelodi, who asked not to be named.

"They use rough methods. There are many who have died or have been injured by the punishment meted out by peoples' courts for instance. These are grieving parents, ordinary working class people, and they often want to exact vengeance for what has happened to their child or their relative. So they turn to some other groups who can retaliate. We get a spiral of resentment, vengeance and counter vengeance."

"This is one of the legacies of apartheid," says Graeme Simpson, researcher at Wits University's Project for the Study of Violence.

"Policing and the system of law and order has been seen to be serving a political function. This has led to a breakdown in faith that the police can operate as a normal crime prevention and law enforcement agency. So in every situation, criminal, political and personal, people tend to use private justice and vengeance to achieve their objectives."

The dominant view from the townships is that the police are to blame for this state of affairs.

"Everyone knows the police have failed to do their job and this is why our lives have become so cheap," says Alexandra resident Sam Makaepa.

"The government has failed to combat lawlessness. People have to protect themselves against crime and they have to organise themselves to do this."

Even though many of the activists who operate peoples' courts are seen to be operating under the banner of the ANC, there are only sporadic indications that this is leading to a backlash against the movement in favour of more conservative groups.

"Inkatha is not yet popular here in Mamelodi," says the insurance broker. "But when the youth are wild and uncontrollable the issue of protection comes in. What if one finds one's child has been savagely beaten. What if one is frustrated because you cannot go to the police to report this. Then you can call on the people who have the means to come and take vengeance for you. Inkatha has sent some people here and they may get some support."

"Each group beat us for 30 seconds before the next began. When they each had a turn, they all came in and beat us until three minutes was up."

— People's Court
Victims Collie Makhale
and Dennis Khale (right)
Photo: KEVIN CARTER



THEY ALWAYS WALK AWAY WITH JUSTICE

Savagely beaten by young thugs — the name of Peoples Justice

By PAUL ALEXANDER and PHILLIP VAN NIEKERK

In the intensive care unit of Ga-Rankuwa Hospital, 24-year-old Alfred Makgopela is fighting for his life, his body a mass of deep cuts, welts and scabs from a savage beating sustained at the hands of a people's court in Mamelodi.

Makgopela is but one of a series of abuses by people's courts in the Pretoria township. But his is all the more bizarre because of claims by sources in the township that the "sentence" for his alleged crimes was a form of crucifixion.

A curtain of secrecy has gone up around the case — despite condemnation of the abuses by political leaders in the township. Makgopela's mother, in fear for her son's life, refused to speak to reporters after

being visited by "comrades".

Citing "medical ethics", the hospital authorities refuse to comment on his condition. However, *The Weekly Mail* visited the still-unconscious Makgopela in the ward this week and established that he was beaten to within an inch of his life and is suffering from kidney failure.

We were unable to establish or disprove the claim, by a well-placed source close to the family, that Makgopela had been crucified by being nailed down while he was beaten as punishment for allegedly burning down a house in the community.

The leadership of the local African National Congress-aligned civic organisation, in whose name Makgopela and others were punished, were unaware until this week of the case. They

Savage beatings in the name of justice

From PAGE 1

have condemned it and promised to investigate. But some lower-level members of the civic who do know about the case have refused to share their information with the press.

Evidence is mounting that people's courts run by young toughs, increasingly out of control of any parental or higher political authority, are moving into the vacuum left by the disintegration of law and order in South Africa's townships.

The Weekly Mail has established that a disciplinary action administered by a people's court was a major cause of the conflict between the squatter camps of Dolomisa Park and Mandela Park in Kaitshong two weeks ago which re-

sulted in the death of 15 people.

Ronnie Mamoepa, media officer for the ANC in the Transvaal region, said that after the violence in September last year, both communities imposed a 9pm curfew. Disciplinary measures were imposed against curfew-breakers.

This week four youths from Mamelodi described how they were viciously whipped by "comrades" after being convicted of trivial crimes by a people's court.

The four youths, covered in thick

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wounds from head to lower back, were all victims of a savage method of flogging called *shwashe*, the Zulu word for "cleansing medicine". Sentences are doled out on the basis of a certain number of minutes of flogging rather than the number of lashes, depending on the severity of the offence.

Colin Mahloele, at 15 the youngest of the four, said he had fainted from the beatings administered with sjamboks from 15 "comrades".

"They took me into a classroom and began beating me two at a time. Each group of two beat me for at least 30 seconds before the next entered. When they each had a turn before the three minutes sentence was over, they all

came in and beat me for the remainder of the time."

Another victim, Dennis Khalo (17), tried to revive Mahloele — who fainted during the beatings — with water, but was threatened. On Mahloele's revival they continued to beat him until the sentence was complete.

Like Mahloele, the other three youths, Khalo (17), George Thobejane (17), and Joseph Kolotsi were given over 100 lashes each, meted out in similar fashion.

Thobejane's uncle, Johannes Kgomo, attempted to plead on the boys' behalf at the trial and received 15 lashes for his efforts.

What struck Kgomo most about this people's court was the disorderly manner in which the meeting was conducted. "Firstly, no introductions were made so we never knew who they were representing," he said. "They went straight into the case. Even when punishing us it was everyone for himself."

At the trial a young girl alleged she had been raped by the boys. The boys claim they were each called to give evidence, but their evidence was dismissed as lies. They deny that they knew their accuser personally.

According to Mahloele's sister, Molly, on their arrival home from the beatings "we had to rush them to Mamelodi Day Centre (a clinic) because they were weak".

The incident began two weeks ago when the girl, who was allegedly beaten by a friend of the four youths, reported the matter to her father, who took it to the "comrades".

According to Thobejane, they first knew of their alleged crime when "comrades" came to their homes on April 5 to fetch them for the trial. The youths were not at home, so messages were left for them to attend the trial.

When they received the messages, the four youths went to the girl's home to inquire about their "summons". They were ordered to appear before the people's court the following week.

Interviewed this week, Mamelodi civic leader Pasty Malefo blamed the problem of people's courts on the disintegration of the community and the resulting abdication of parental authority.

He said youths were convening people's courts in the name of the civic and prosecuting people twice their age over issues such as marital problems.

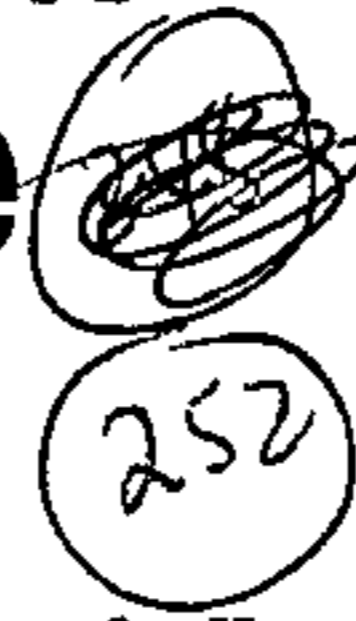
"People resort to desperate measures to deal with desperate problems," he said. "When people go to the police, for instance, they come after a long time, if at all. The police, the administration, everything to do with authority, are part of the problem."

"This community is bombarded by so many problems that are not being dealt with. The trouble is that the youngsters, who are unemployed and have time on their hands to deal with people's day to day problems, are very ill-disciplined."

Insurance broker Willie Segabulle, who has personally taken up the case of the four youths, said this week that he is aware of two other serious cases, where one Mamelodi person was flogged "to death" and another "is in a wheelchair after being flogged".

Lawyers plan human rights programme for public

Sowetan 26/4/97.



THE National Directorate of the Lawyers for Human Rights is to establish a public-oriented Human Rights Education Programme, to be formally launched later this year.

A spokesman said their experience in servicing the public on human rights matters showed that there was a general need for human rights awareness. The absence of a human rights consciousness is evident both in the private and public sectors of the population.

He said a draft Human Rights Education curriculum has been sent to various organisations and individuals for critique and comment

The LHR Education campaign, he said, is intended among others, to make a contribution in addressing three important areas in the transition towards a non-racial democratic South Africa. These are.

* To facilitate grassroots or mass participation in the transition to a democratic South Africa. Concepts such as Bill of Rights, Constitution, Socio-Economic Rights and others, must be clearly understood. This awareness campaign will create an informed constituency from which leadership will draw mandates, in the course of negotiations for a future South Africa

Transformation

* South Africa needs a transformation from culture of violence to a "rights conscious culture". The Human Rights Education Programme is intended to facilitate this transformation by promoting alternative conflict-resolution mechanisms such as arbitration and mediation

* Human rights have to be enjoyed and respected by all, including those empowered by law to enforce their protection. The public has an interest in ensuring that a human rights ethic is contained in the curricula of the training of law enforcement agents. These Human rights education materials will be helpful in this regard

The spokesman said the draft curriculum is based on local and international human rights instruments. He said an attempt has been made to prepare the materials in a simplified form.

"The assistance of Nicel, a street law centre at the Georgetown University, and the Centre for Socio Legal Studies at the University of Natal has been helpful in this regard

"In developing the content of the materials, we deemed it necessary to involve all sectors of the community, mainly the grassroots. We are convinced that the subject of human rights education is not the exclusive domain of experts," he said.

A new attitude is needed to revive respect for the law

W/Mant 26/4-2/5/91. (252)

THE public gallery was packed to hear evidence from Afrikaner Weerstandsbeweging member Eugene Marais, accused of killing seven people, and injuring another 27. The victims were black workers on their way home by bus late at night.

Some of those in the gallery were survivors, others relatives of the deceased. They took time off work to hear for themselves what caused Marais to shoot at the bus and what the court would say about his actions.

But after a day in court they were none the wiser. Marais and most of the witnesses spoke Afrikaans, the black people in the gallery did not.

Going home in the afternoon some speculated that Marais and the court were speaking Afrikaans deliberately to screen the fact that they were "doing a deal" which they did not want the survivors to know about. Mystified by the proceedings, they concluded the court intended to keep them in the dark.

It was left to reporters to point out the problem to officers of the court, and through them to the judge. He responded at once, agreeing that an interpreter from Afrikaans to Zulu should be provided for the public. Immediately the atmosphere in the gallery changed as people heard for themselves that justice was being done.

Public impressions are created through personal experiences such as these, and over the years the cumulative effect on many in the community has been a powerful sense of alienation from the legal system. This alienation must be dealt with and undone if the legal system is to be credible in the new South Africa.

Much has been said about the police needing a new attitude and new role as a foundation for reviving respect for the law. But there is much that the legal profession and

LAW & THE COURTS

Carmel Rickard

the courts need to do as well.

Simplification of many legal and court procedures is urgently needed. This will help reduce costs and delays, as well as enable the public to understand the system.

Affordable or free legal representation is a key issue, equally important is the need for the bench to be more representative. Some sections of the profession are still opposed to black people becoming judges. They claim the time is not yet right for such a move, as judges even now are required to administer discriminatory laws passed by an unrepresentative parliament.

This is an argument rapidly losing force, but while it continues to hold sway there is no reason why members of the judiciary should not begin sitting with male and female assessors of all races.

Most people's views of the legal system are shaped by experiences at the magistrate's courts. Here too it is vital for black appointments to be made.

Subjects offered by law schools will have to be revised so more people enter the profession with qualifications relevant to the needs of the society they will be serving.

The growing number of alternatives to the court system must be encouraged. Mediation and alternative dispute resolution processes are essential to re-establishing order in society and preventing people from taking matters into their own hands. Possibilities for alternative dispute resolution are growing, but there needs to be a far better developed network of such structures countrywide.

A restructuring of the profession must also be on the cards.

Hotly contested is whether para-legals, who ensure the public knows it has the right of access, should be incorporated into the profession, employed in rural and township advice offices and in law firms.

In the minds of some, the issue of restructuring is limited to the current debate between members of the advocates' and attorneys' profession over whether to maintain exclusive rights to the niches in which each profession has traditionally operated. In particular the debate concerns whether attorneys should have right of appearance in the supreme court, and whether advocates should continue their practice of taking work from attorneys rather than accepting briefs from other professionals such as auditors — or directly from members of the public.

Often the argument appears based more on concern about income and power than on what will enable the public to be better served by the legal profession.

It is an emotive issue, both sides have strong arguments, while the public is keen to see that, at the end of the day, costs of litigation are reduced.

Talks between official bodies representing attorneys and advocates on the matter have already begun, and a meeting between the minister of justice and the attorneys' profession is expected soon.

The question is whether the government, the advocates and attorneys want to deal with this issue only, or whether they are committed to a thorough re-assessment of the organisation of the profession. Far-reaching reform to the whole legal system is badly needed, down to details like providing interpreters for the public gallery. Merely solving the debate over who may appear in the supreme court is not enough.

Official court for the people

By PHILLIP VAN NIEKERK

THE country's first "community dispute resolution centre" — or officially-sanctioned people's court — is set to open in Alexandra township next month.

But the court will have trained officials and well-laid out procedures. Officials will not have the right to mete out sentences and punishments. Participation will be voluntary. The court will mediate and arbitrate over disputes within the community.

Lawyer Steven Goldblatt, of the Community Dispute Resolution Resource Committee (CDRRC), said the centre's purpose was to assist communities in empowering themselves to resolve conflicts and disputes. The centre would deal with disputes primarily between neighbours and within families.

The project is being set up by the Alexandra Civic Organisation and the CDRRC, a group composed of the Johannesburg branch of the National Association of Democratic Lawyers and the University of the Witwatersrand's Centre for Applied Legal Studies.

Two meetings have already been held with the Department of Justice, including one with Minister Kobie Coetsee, to "pre-empt any misunderstandings" and a permanent working group has been set up between the Department of Justice, the civic and the centre.

Professor Dennis Davis, of the Centre for Applied Legal Studies, said the concept of people's courts as they were set up in the 1980s was a good idea. "They reflected the movement, fairly widespread throughout the world, for some system of informal justice.

"Unfortunately, there are also reports that the concept of the people's courts has been utterly abused right across the country and used for repression.

"The position that we've been trying to develop here is that there is a massive need for both wider macro community resolution centres through community mediation centres and also an informal form of court structure in communities to deal with neighbourhood and tenant disputes which can be resolved at the community level.

"In order for that to be done one has to put an incredible amount of resources into training registrars and judges. You can't simply start it on an indigenous basis without any training."

PATRICK LAURENCE reflects on the race to meet the April 30 deadline

Suddenly overcoming obstacles

SAW 29/4/91.

RS22

With the April 30 deadline for the "unconditional" release of political prisoners and return of exiles only hours away, problems which appeared intractable last week now seem to be soluble.

Less than a week ago President de Klerk and the African National Congress were at odds over the number of political prisoners who still had to be freed.

Mr de Klerk put the number at less than 200, while the ANC, working from a detailed report compiled by the Human Rights Commission (HRC), insisted that at least 1 300 were in jail.

The Pretoria Minute, signed by the Government and the ANC after their August 6 meeting last year, stated the release of political prisoners had to be completed by April 30 1991, at the latest.

For the Government to meet the deadline — on which the future course of negotiations depends — seemed an all but insurmountable

task, while the Government could have met the deadline if Mr de Klerk's total was accepted, it seemed impossible for it to unshackle 1 300 captives before April 30 unless it abandoned the administrative procedures it had insisted on so far.

The HRC asserted the deadline could only be met by "throwing open the prison gates to all those with a clear claim to being in prison because of their resistance to apartheid".

The discrepancy between the Government and the ANC on the number of political prisoners still in jail stemmed in large measure from their different conceptions of what constitutes a political prisoner.

The ANC, with the HRC, identified three categories of political prisoners: those who were involved in the ANC's now-suspended armed struggle, those who worked for outlawed organisations before they were unbanned, and those who took

part "mass action and community resistance" against the apartheid system.

The Government, while recognising the first two categories, seemed to regard prisoners in the third as criminals who had been convicted of common law offences, including public violence and arson.

The April 30 deadline was — and is — of critical importance, given the resolution at the ANC's consultative conference last December calling on the ANC national executive committee "to consider suspension of the whole negotiation process" if all political prisoners were not "unconditionally" released by the end of April.

The Government, clearly conscious of the importance of April 30, moved swiftly last week. While stopping short of throwing "open the prison gates", it took a number of bold steps. These included:

● Immediate release of nearly 200 more political prisoners

● Broadening of the definition of political prisoner to include people convicted of public violence, arson and malicious damage to property, whose motivation was political and whose actions did not result in loss of life or serious injury

● Appointment of four ANC nominees — Arthur Chaskalson, Thembe Skweyiza, Dullah Omar and Max Coleman — to advise the judges considering applications for indemnity and release

But these moves left another problem: the return of exiles who fled South Africa either to escape prosecution under the apartheid system or to take up arms against the "apartheid regime".

The unconditional repatriation of exiles by April 30 was another demand set by the ANC at its December conference. But since then the return of emigres has proceeded slowly. The process only started on

March 7, when 98 expatriates arrived from Zambia. Another 116 arrived from the same country on March 28. On April 18 a further 110 arrived from Tanzania. Another 180 from Tanzania and Kenya arrived on Friday.

But the combined total of less than 450 constituted only a minuscule proportion of the estimated 40 000 South Africans in exile. It is another potential point of dispute in relations between President de Klerk's administration and the ANC.

Before the Government's latest moves to accelerate the release of prisoners, the ANC publicly accused it of holding the prisoners "hostage" in a bid to impose its will on another disputed point in the Pretoria Minute.

The Government slowed down the process, the ANC asserted and the HRC re-emphasised, to force the ANC to comply with its view that ANC's the suspension of the "armed struggle and related activities" — as stipulated in para-

graph three of the Pretoria Minute — embraced more than the cessation of gun and bomb attacks.

The dispute was partially resolved on February 15 when the two sides agreed paragraph three prohibited infiltration of men and material, creation of underground structures and military training of guerrillas inside South Africa.

The whole issue was compounded by the ANC's April 5 open letter to Mr de Klerk; the ANC accused the security forces, or elements in them, of complicity in the violence sweeping the townships and threatened to withdraw from negotiations if he did not meet its seven-point ultimatum by May 9.

These demands, which included the dismissal of the Ministers of Defence and Law and Order, constituted another obstacle to negotiations. First, however, the April 30 deadline has to be overcome.

After last week's moves the Government, fortunately, seems to be in the process of doing that. □

1209

MONDAY, 29 APRIL 1991

Hewson

1210

HOUSE OF ASSEMBLY

QUESTIONS

†Indicates translated version

For written reply

General Affairs

Legal Aid Board: unpaid obligations

228 Mr D J DALLING asked the Minister of Justice *Hewson* 29/4/91

(a) What were the unpaid (i) financial and (ii) contingent financial obligations of the Legal Aid Board as at 31 January 1991 and (b) what cash funds did the Board have at its disposal as at that date?

(252)

B600E

The MINISTER OF JUSTICE

- (a) (i) Approximately R3 million was outstanding on 31 January 1991 in respect of taxed legal costs. It was due to a backlog of approximately 8 weeks regarding the payment of accounts. Since then the backlog was worked off and the said amount paid.
- (ii) A comprehensive examination done by Prisma Aktuariele Konsultante indicates that the Board may receive accounts for about R25,5 million in respect of pending cases over the next six or more years.

(b) R10 711 576,30

I may add that due to the nature of the Legal Aid Board's activities it occurs that cases, especially civil cases, are only disposed of years after legal representatives were instructed and that legal costs become payable only then. It is also not possible to predict in which financial year a case will be disposed of and the legal costs become payable. It is therefore difficult to budget accurately. The effect of the suspension of services and the restriction of legal costs are likewise unpredictable. However, in the case of a shortfall in any given year the Government has in the past always been prepared to arrange for additional funds.

Certain bodies financial assistance

299 Mr J H MOMBORG asked the Minister of National Education † *Hewson* 29/4/91

(1) Whether his Department has rendered any financial assistance to four bodies, the names of which have been furnished to the Minister's Department for the purpose of his reply, if so, (a) what amount did his Department allocate to each of these bodies during the latest specified period of 12 months for which figures are available and (b) for what purpose, in each case,

(2) whether it is the intention to grant such assistance to a certain newly formed body, the name of which has also been furnished to his Department, if not, why not, if so, (a) what amount, (b) for what purpose and (c) what is the name of this body? *Hewson* 29/4/91

B77E

The MINISTER OF NATIONAL EDUCATION

- (1) Departmental assistance was rendered to SANOC and COSAS.
- (a) During the 1990/91 financial year SANOC received R360 000 and during the same period COSAS received R830 280.
- (b) The purpose of the funds allocated to these bodies is to enable them to execute certain functions as agreed upon in advance with the Department.

(2) The Department supports only those sport and recreation bodies which are democratically constituted by its members in accordance with its constitution. The body referred to is the recently formed Interim National Olympic Committee of South Africa (INOCSA), which is, as the name indicates, an interim committee representative of four South African macro sport structures. As soon as INOCSA is legally constituted, its functions clearly defined and an application for financial assistance is submitted by it to my Department, I will consider the application as in the case of the

Court rejects application

THE Pretoria Supreme Court has dismissed with costs the application by 829 Sapekoe Tea Estate workers who were evicted from their compound three weeks ago.

In a judgment handed down by Mr Justice EL Goldstein, the court found that the workers were not covered by provisions of the Labour Relations Act and had to resort to common law for relief.

Goldstein said common law did not, however, give workers the right to withhold their labour.

The right to collective

By MATHATHA TSEDU

bargaining, which formed the central theme of the workers' application against their dismissal and eviction, was not "recognised anywhere at common law" and was not part of the contract of employment.

Refusal

The refusal by management to talk to workers about their grievances, which led to the strike, "was of a short duration and it could not be said it justified the

drastic action of the applicants in embarking on the strike", the judge said.

The strike by the Tzaneen-based farm-workers was therefore unreasonable and unlawful.

It followed allegations that management was harassing members of the National Union of Farm Workers. Workers downed tools and were dismissed and evicted from the compound.

Union officials said yesterday they intended to appeal against the court finding

London 20/4/79

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- (1) (a) For donations in instances of good-will where the promotion value cannot be quantified in monetary terms
- (b) The full budgeted amount for 1991/92, ie R60 000,00
- (2) (a) No A table was financed for senior officials and business associates of Transnet at a banquet which was presented by the Johannesburg region of the National Party
- (b) To gain the advantage, during the banquet, of an information speech, concerning the climate and attitudes of foreign bankers, by the Minister of Finance, who had just returned from the annual meeting of the IMF/World Bank
- (c) The costs of the formal banquet in the Carlton Hotel on 3 October 1990 amounted to R3 750,00

†Mr J CHIOLE Mr Speaker, arising out of the hon the Minister's reply, in view of the fact that the managing director of Transnet did indeed donate money to the NP, I want to know whether they would be prepared to donate money to the CP as well. Furthermore, I should like to know whether he is aware that the management contract of Transnet does not make any provision whatsoever for executive directors to engage in any political activities

†The MINISTER Mr Speaker, the managing director of any enterprise constantly has to decide whether the spending of a specific amount is cost-effective, that is to say whether that expenditure is of any value to his enterprise. In this case the managing director of Transnet had to judge whether the information which would have been divulged at that information function, would have been of value to the management of Transnet and whether it would also have been to Transnet's benefit to invite guests from the business sector to the function. The managing director judged that it would in fact be cost-effective and that it would be of value to Transnet's management, as well as to their business acquaintances

†Adv S C JACOBS Do you agree with him?

†The MINISTER If the hon member said the CP were going to hold a function at which information would be divulged which would be of such value to the management of Transnet and

HOUSE OF ASSEMBLY

their business acquaintances that the managing director would take a table at the function, it could certainly be done. It would therefore have nothing to do with politics, it would only concern a decision which would be to the benefit of Transnet's management [Interjections]

†Adv S C JACOBS Mr Speaker, arising out of the hon the Minister's reply and in view of the fact that Transnet has not been privatised as yet and that we are consequently dealing with public funds here, I want to ask the hon the Minister whether he approves of public funds being made available to a political party

†The MINISTER Mr Speaker, Transnet is managed according to business principles. The money was not placed at the NP's disposal, as the hon member wants to allege. This money was used to finance a luncheon for the top management of Transnet and their business acquaintances because the hon the Minister, who had just returned from the meeting of the IMF, was going to give a speech at this function in which he was going to inform the guests about the international financial climate. For that reason the managing director judged that this amount could be justified over and over again in terms of the benefit Transnet would derive from it [Interjections]

†Mr J CHIOLE Mr Speaker, further arising out of the hon the Minister's reply, I should like to quote from the document in which the following is clearly stated

Skenking of donasie uit die welwillendheids-fonds van die Besturende Direkteur aan die Nasionale Party van Transvaal

I should now like to know from the hon the Minister whether such donations would have been made in full parliamentary debates on the budget of Transnet were still allowed in Parliament

†The MINISTER Mr Speaker, I want to draw the hon member's attention to the fact that the invitation clearly stated

Minister Du Plessis sal stellig uiters interessante inligting oor die klimaat en houding by Amerikaanse bankiers, nyweraars en politieke opsigte van Suid-Afrika aan u oordra

For that reason the managing director judged on the basis of business principles that this information would be to Transnet's benefit if its executive members and business acquaintances were

exposed to it [Interjections] It had nothing to do with party-political matters

†Mr J HHOON Mr Speaker, further arising out of the hon the Minister's reply, if it was such important information, could the hon the Minister of Finance not have informed Spoorwet free of charge? *Hanssens 30/4/91*

†The MINISTER Mr Speaker, the hon the Minister of Finance conveyed his impressions of his recently completed visit to the IMF and the World Bank to businessmen. There was a great gathering of business leaders. As it happened the NP took the initiative to use this opportunity [Interjections] Yes, Sir, it is impossible for the hon the Minister to visit each of these businessmen individually and to convey these impressions to them, but the NP are on the ball, they saw an opportunity here, and when the hon the Minister returned, they presented a forum and invited the people to attend it

†Mr J CHIOLE Mr Speaker, further arising out of the hon the Minister's reply, I should now like him to inform me pertinently about two matters. Firstly, whether the reference to any political activities is going to be deleted from the management contract of top managers of Transnet and secondly, is this the reason why the financial statements of Transnet were not tabled during the recent debate on the hon the Minister's Vote?

†The MINISTER Mr Speaker, the reference to political activities will not be deleted because Transnet did not in any way involve itself in political activities [Interjections] Secondly, Transnet's financial statements will be tabled annually at the beginning of and early in the session. Last week during the discussion of the Vote I apologised for the fact that this year's statements had not yet been tabled because this is the first year that Transnet is being managed as an independent economic unit and because specific problems arose with the switch-over in the bookkeeping

It was arranged with Transnet that each year's financial statements will be made available to the Government at the end of November and that they will therefore be tabled in Parliament early in the new year

†Mr SPEAKER Order! When I listen to the enthusiasm surrounding this question, it seems to me it was a very nice luncheon indeed!

Indemnified person: contravention of security legislation *(252)*

*4 Adv J J S PRINSLOO asked the Minister of Law and Order † *Hanssens 30/4/91*

- (1) Whether a person who has been indemnified from prosecution by the State president, was arrested by the South African Police earlier this year for contravening the security legislation of the Republic, if so, (a) what is the name of this person and (b) (i) for what contraventions and (ii) when did the Police arrest him or her,
- (2) whether this person was released in terms of an order by a judge of the Supreme Court, if so, what are the relevant particulars?

B844E

THE MINISTER OF LAW AND ORDER

(1) Yes

(a) Gerja Singh

(b) (i) The person received indemnity in accordance with section 1 of the Indemnity Act, 1990 (Act 35 of 1990) under a false name, and did not disclose his true particulars in his application for indemnity. He used the same false name in a passport to enter the RSA. He was arrested when he applied under his real name for a RSA passport. He was detained under section 29 of the Internal Security Act, 1982 (Act 74 of 1982) because he had received military training overseas

(ii) 16 January 1991

(2) Yes, the person was released after the court found that, regardless of the fact that he had furnished a false name and particulars in his application for indemnity, the indemnity was applicable to him. An appeal has been lodged against the court's verdict and is still pending

Mr D J DALLING Mr Speaker, I did not wish to interrupt the questions, but I would like to return to my point of order, if I may address you on it? The following words "klipgoot-instrukteur" were used. In the context of a debate on unrest, this is alleging that an hon member is guilty of being an instructor in stone-throwing,

HOUSE OF ASSEMBLY

Bill will save minor offenders from dock

By Peter Fabricius
Political Correspondent

Legislation has been introduced which will make it unnecessary for people to appear in court for minor offences such as illegal parking.

The Decriminalisation Bill, tabled in Parliament yesterday, will give Justice Minister Kobie Coetsee powers to "decriminalise" any statutory offence.

Instead of going to court, offenders will face an "administrative sanction".

Justice officials explained that this would mean, for instance, that parking offenders would no longer have to appear in court if they did not pay their fines.

Instead they would be dealt with by some sort of administrative procedure such as not getting a licence until they had paid their fines — or having

Star 115791
their car wheels clamped and having to pay to have them unclamped.

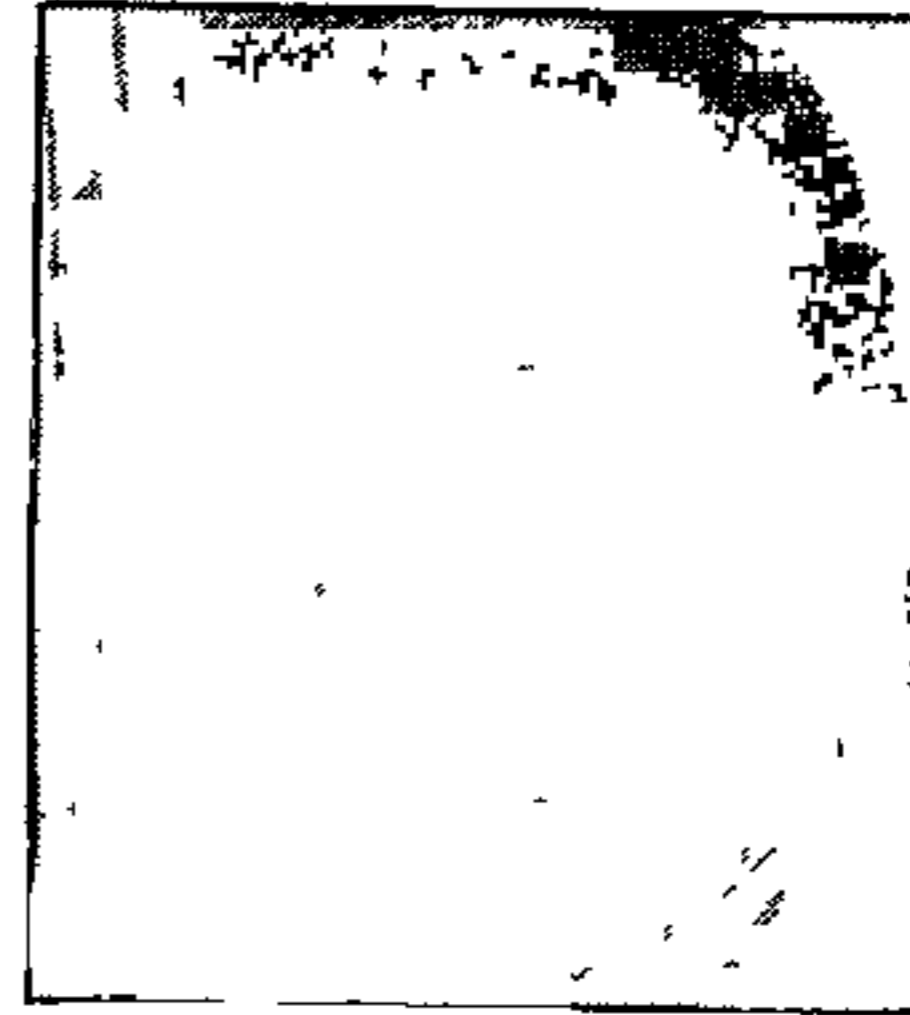
The overall idea was to ease the burden of minor offences on the courts.

A memorandum accompanying the Bill said its aim was "to make a start in clearing our criminal-law system of statutory offences which should not really be offences, but nevertheless warrant regulating".

It added that conviction for many minor offences no longer necessarily implied any stigma.

The Bill requires the Minister of Justice to decriminalise an offence and replace it with an administrative sanction, only after consultation with expert advisory committees and the agreement of the relevant Minister or Administrator.

The Bill also provides that a person affected by an administrative sanction can make rep-



Justice Minister Kobie Coetsee powers to decriminalise any statutory offence.

resentations to the responsible authority and, if he receives no satisfaction, to a justice of the peace.

The number of justices of the peace would have to be increased to cope with the new duties.

Township justice under fire

CONCERNED residents of Mamelodi have called for the immediate disbandment of the "people's courts" following a spate of brutal assaults on local youths by members of kangaroo courts and "comrades" since the beginning of the year.

They also blamed the local civic body for having lost control over the comrades and the people's courts in the township.

Youths aged between 13 and 18 have been brutally assaulted by members of these courts for a variety of crimes, including offences they claimed they had not committed.

Three such victims are in different Pretoria hospitals, where they were described as being in either "critical", "serious" or "slightly improving" condition.

Alfred Makgopela of Mamelodi East was assaulted at the beginning of April and had been unconscious for more than a week at the Ga-Rankuwa Hospi-

tal. His parents did not want to discuss his case.

Medupe Phella, admitted in critical condition to the HF Verwoerd Hospital, was reported to have died as a result of the assaults. He was later said to be alive but in a serious condition.

The latest case is that of a 14-year-old youth who was allegedly assaulted "all night long" last Friday by Mamelodi East comrades. He is in a serious condition at the Mamelodi Day Hospital.

Some parents and relatives of victims said they had been intimidated into not reporting to the police. Others had either reported the assaults or were in a process of laying charges.

They accused the members of the people's courts and the comrades of applying "barbaric

methods of digging out the truth and punishing innocent people."

The liaison officer for the northern Transvaal police, Colonel Frank Alton, confirmed a number of assault cases but said he could not say if they were linked to people's courts.

Colonel Alton said similar cases were also reported from Soshanguve. One involved three youths who were brought to the police on April 24 by a man who claimed they had stolen goods, including a television set.

The youths had been severely assaulted and one had died as a result of the beating.

The superintendent of the Mamelodi Hospital said the hospital had previously received few assault cases linked to the people's courts, but the numbers of such assaults had increased recently.

Victims' relatives blamed the local civic association for failing to control the courts, which they had allegedly created.

They called for the immediate disbandment of the structures as they stood, and said only those with knowledge of the law and legal procedures should lead them.

The Star was referred to the publicity secretary of the Mamelodi Civic Association, Pasty Malefo, but he was unavailable.

The majority of the victims interviewed said they had been given a chance to give their side of the case, but the complainant was always regarded as right and defendants' statements were rejected as lies.

One victim, a secondary school pupil who received more than 50 lashes on his back, said he was assaulted for allegedly having told a relative of the complainant that he was not afraid of the comrades. □

2/5/79

252

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~~104~~
Community
challenges (252)
incorporation
star 2/5/91
Staff Reporter

The Appeal Court today hears argument on whether it was lawful that the people of the western Transvaal village of Braklaagte were placed under Bophuthatswana rule two years ago and that their property was incorporated into the homeland

Counsel for the community will argue that the incorporation was unlawful because it was decided in 1984 and reaffirmed in 1985, at a time when there was no legislation to give effect to the decision

The relevant amending legislation was passed only in 1988

As a result of this misconstruction of the powers of the State, it will be submitted, officials could not apply their minds to the issue in a manner that the law requires

Conflict

It will also be argued that the community was not properly consulted before the decision

Braklaagte, a community of some 9 000 people, has been subject to recurring conflict and violence since the incorporation took place, with resistant villages pitted against Bophuthatswana police and soldiers, and a minority of the community favouring incorporation

According to community estimates, at least 23 people died in the conflict at Braklaagte and the adjoining farm of Leeufontein

Leeufontein residents are also challenging their incorporation in court. Their case is due to be heard later this year

Detention without trial stays

Big changes in security law promised

B10ay 315/91

~~252~~ 252

CAPE TOWN — The notorious Internal Security Act is to be softened and "drastically amended", but its detention without trial provision stays, President F W de Klerk announced yesterday

The banning of people, preventative detention, and the consolidated list of names will all be scrapped from the Act

De Klerk said that, in addition, provisions for detaining people for interrogation (Section 29) and declaring organisations illegal "will be amended drastically"

Justice and Correctional Services Minister Kobie Coetsee would submit legislation and provide details of the amendments "in the course of the next few days", De Klerk said



● DE KLERK

He said the suppression of the right of any party to state its case democratically in an orderly manner was not acceptable to government. "That phase is irrevocably a thing of the past"

In terms of its undertaking in the Pretoria Minute to revise security legislation and "bring it in line with the dynamic situation

BILLY PADDOCK

developing in SA", government had decided to scrap provisions of the Internal Security Act which provide for

- Banning or preventative detention of persons;
- The maintenance of a consolidated list of names, including those of office-bearers, officials, members or active supporters of banned organisations and those convicted in terms of the legislation,
- The banning of publications,
- Restrictions on the registration of newspapers,
- Disqualification from membership of parliament and certain legal professions,
- Restrictions on the publication of the statements and writings of certain people, and
- The "misdemeanour" of furthering the aims of communism.

The ANC has argued that the Act makes it impossible for the organisation to carry out normal activities and mobilise its support base.

In calling for the maintenance of sanctions, it has claimed that while the legislation is on the statute book free political expression is not possible.

European parliamentarians have increasingly spoken of the Act as an inhibiting factor to lifting the pressure on SA. The Scandinavian and Nordic countries in particular have cited it as a reason for withholding outright support for De Klerk's reforms

In recent US congressional hearings, ar-

To Page 2

Security 315/91

~~252~~ 252

From Page 1

guments have been raised against the lifting of sanctions, especially the Gramm Amendment allowing SA access to IMF loans, because of the existence of the Act

Diplomats in Cape Town yesterday said De Klerk's announcement was an important step in further removing obstacles to negotiations, but cautioned that it remained to be seen what the "drastic

amendments" to the rest of the Internal Security Act represented

The preventative detention section has not been used to any great extent in SA, with security police relying far more on Section 29 to keep certain people out of circulation and also for interrogation. After the declaration of the state of emergency in 1986 the Public Safety Act was used to detain people.

356,65	356,50	993,13	990	2,7888	0,3589	3,3600	Fin	DM/S
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BUSINESS DAY, Friday, May 3 1991

74% rise in gun licences issued

^{610 am} ³¹⁵¹⁹¹ JONATHON REES
THE number of firearm licences granted last year increased 74% compared with 1989, police said

The SAP Public Relations Directorate said yesterday 95% of last year's applications succeeded. This meant 215 044 licences were issued, compared with 123 415 (also a 95% success rate) the previous year

Sapa reports a police spokesman ascribed the rise in the number of applications to the increase in crime and the unrest situation

A Bill tightening control of firearms was introduced in Parliament in March. The Bill widens demands that pistols and revolvers be kept in "holders" to include all arms

It also expands the definition of negligence for people who carry arms in their official capacity

Bulk of cases in lower courts lack legal representation

^{610 am} ³¹⁵¹⁹¹ CAPE TOWN — Only 20% of more than 2-million people tried by SA's lower courts were represented by lawyers, and more than 100 000 unrepresented accused were sentenced to imprisonment each year, a working group appointed to investigate the matter has found.

Access to legal representation was limited by shortages of funds and legal practitioners, the Legal Aid Board stated in its annual report for the 1989/90 financial year

In an effort to extend access to legal services and the judicial system, the board motivated larger grants from the state and launched a fund-raising campaign in the private sector last year, it stated in the report tabled in Parliament yesterday. It also considered a public defend-

LESLEY LAMBERT

er system to alleviate the heavy burden on SA courts. The system would engage legally qualified people — not necessarily attorneys or advocates — to defend the poor

The board emphasised that while the state had a duty to fund legal aid for the poor, it could not be expected to shoulder the full financial load

The private sector, which had made no previous contributions to the board's funds, also benefited from the peace and order which resulted from confidence in the administration of justice

"It is a matter of urgent national importance that access to legal services and the judicial system should be extended optimally as soon as possible," the board said

Eviction bid



37 death row release bids

Cape Times Political Staff
252
THE government had received 37 applications for release from people on death row, the Department of Correctional Services disclosed last night.

It also said the ANC had been given free access to all prisoners to enable it to persuade those who qualified to apply for release.

Lawyers for Human Rights (LHR) had also placed notices about releases in every prison.

Life after death row for the Upington 14?

By GAYE DAVIS Cape Town

TWO years on death row is a long time. But for the Upington 14, sentenced to hang for the 1985 mob killing of a municipal policeman, it could mean the difference between life and death.

When defence counsel open argument in the Appeal Court in Bloemfontein on Monday, on behalf of the 14 and nine of their fellow trialists, the changed political and legal climate may swing the decision in their favour.

Upington judge Jan Basson made legal history when, on the basis of the doctrine of common purpose, he condemned the 14 for the murder of Lucas Sethwala.

At the time of the judgment, the death penalty was mandatory in cases of murder with no extenuating circumstances. Recent amendments to the Criminal Procedure Act

now allow judges to apply an independent discretion.

This change and Basson's use of the common-purpose doctrine, which sparked unprecedented international and local protest, are the chief pegs on which defence argument in the appeal will hang.

Representatives of Amnesty International and the International Commission of Jurists will attend the hearing, scheduled to run over five days.

"The case comes at an interesting time," said instructing attorney Andrea Durbach. "It is seen as an indicator of the future of the common-purpose doctrine and reform of the death penalty."

Leave to appeal was initially denied by Basson, but was later granted on petition to the chief justice.

"The past two years have been difficult

for the accused, particularly for those languishing on death row, but it has meant that their appeal will be heard against a political backdrop that is much more favourable than when they were first sentenced," said Durbach.

During the original trial the prosecution argued that the killing was political and was orchestrated by activists. Applications for indemnity were submitted by the trialists last December, but they have received no response, Durbach said.

●One of the 14, Evalina de Bruin, was transferred from Pretoria Central's death row to Upington Prison at the end of last year.

A mother of 10, concern for her physical and mental well-being resulted in international pressure and various submissions to government on her behalf.



Unsolved . . Dr David Webster's murder.

Star 315791
Anger at Webster probe failure

The Human Rights Commission (HRC) said yesterday it was disgusted that investigating authorities had not yet solved the murder of University of the Witwatersrand lecturer David Webster

"The HRC expresses disgust that the authorities are no nearer to solving this barbaric crime, and in fact seem to have given up," the commission said in a statement

Dr Webster was shot and killed by gunmen outside his house in Troyeville, Johannesburg, on May 1 1989

The apparent lack of

ability to make any progress, the HRC said, despite abundant evidence of the existence of State-based hit squads that had emerged over the last two years, "compels us to question again whether the lack was in the will to solve the crime" (252)

There was a clear case for suspecting that the trail, if pursued diligently, would lead to the door of a State institution

"Is it a political impossibility to open that door? And can one doubt that the perpetrators of that cold-blooded act are still pursuing their objec-

tives, perhaps in township violence, of 'maximally disrupting enemies of the State', to use the words of the CCB?"

Reacting to the HRC statement last night, a police spokesman said Dr Webster's death was still the subject of an intensive investigation

"We appeal to anyone with any information whatsoever in connection with his death to contact us immediately

"In investigations of this kind, evidence cannot simply be grabbed from thin air," the spokesman said — Sapa

State to cut back on security curbs

Political Correspondent

THE government is stripping tough, controversial security measures from the Internal Security Act — but is to stiffen provisions to curb intimidation.

President De Klerk announced in parliament yesterday that a number of Internal Security Act measures were to go to bring security legislation "into line with the dynamic situation developing in South Africa".

Section 29, which provides for detention without trial, is to be "amended drastically", while Section 28, which covers preventive detention without trial, is to be scrapped.

He said the government had decided to "divest" the Act of stipulations which provided for:

- Restriction or preventive detention;
- The maintenance of a consolidated list of names, including office-bearers, officials, members or active supporters of prohibited organisations and people convicted of certain misdemeanours under this legislation;
- Restrictions on newspaper registrations;
- Disqualification for membership of parliament or for accession to certain legal professions;
- Restrictions on the publication of statements and writings of certain persons;
- The "misdemeanour" of furthering communism; and
- Provisions to ban organisations and detain people for questioning without trial — Section 29 of the Act — "will be amended".

However, he said provisions to combat intimidation "appear to be inadequate and steps will be taken to strengthen them".

nature of the Appeal Court and much of the judiciary. The unions want judges to be "drawn from all sectors of society including black males and women, to ensure that broad rights are not undermined"

But will this be possible in the near future? Only in recent years have appreciable numbers of blacks qualified as lawyers, few have reached the senior levels of the profession. The process could be eased by a "fused bar," with the distinction between attorneys and advocates removed. Apart from increasing the number of potential bench appointees (now only advocates become judges), this would almost certainly make litigation cheaper.

Prof Denis Davis, director of the Centre for Applied Legal Studies at Wits University, believes there will be far fewer changes to the bench than many expect. He points out that a new oath may include a pledge to uphold the principles of nonracialism, which could prompt resignations of some conservative judges. But he reckons "it would be surprising if there are less than 50% or 75% of the current bench" in a future SA.

Davis believes that if traditional practice is continued, then there will always be very few potential judges — particularly among blacks. So he favours a break with tradition, arguing for the creation of a constitutional court. He suggests this court could be made up of nine members: a judge and two deputies, three lawyers and three non-legal people, such as political scientists. Davis says this court would deal with policy as well as points of law. "It will be a new and critical court, adjudicating the Bill of Rights"

The constitutional court, Davis believes, would have a greater proportion of black judges than other higher courts. He envisages a parallel jurisdiction in a future SA, where "disputes will go finally to the Appeal Court — but if they involve constitutional rights they will go to that court, which will make the constitutional court the highest in the land"

Contenders for appointment as judges under a restructured judiciary could include the following, according to lawyers and legal academics polled by the FM

- Ismael Mohammed SC, a widely respected advocate and an example of how apartheid has ignored talented black or anti-apartheid advocates when appointing judges. He is a judge in Botswana and Lesotho, and an acting judge in Namibia. It was he who last year released Donald Acheson, the suspected murderer of Swapo lawyer Anton Lubowski; he ruled Acheson had been arrested and held on insufficient evidence.
- Zola Skweyiya, an advocate and the ANC's constitutional head.
- Bridgette Mabandla, a senior ANC lawyer with experience in the US and Britain, is the only likely woman. She is on the ANC's constitutional committee and is active in formulating a Bill of Children's Rights.
- Pius Langa, an advocate and the respected head of the National Association of Democratic Lawyers,



Mohammed in from the cold?

- Dullah Omar, the Cape-based attorney of Nelson Mandela and a prominent human rights lawyer,

CURRENT AFFAIRS

FM 3/5/91

- Kadar Asmal, ANC constitutional expert and a senior lecturer in law at Dublin University, presently lecturing at the University of the Western Cape.
- Arthur Chaskalson, pioneer in community-based human rights law in SA and a guiding light of the Legal Resources Centre, which under his administration has been involved in cases that led to the erosion of apartheid laws.
- Prof Laurie Ackermann, a former judge who resigned from the bench for human rights reasons. A respected academic at Stellenbosch, he is also a member of the Independent Board of Inquiry into Informal Representation.
- George Bizos SC, now defending Winnie Mandela, has had an active career as a

human rights lawyer, and

- Dikgang Mosenke, also defending Mandela, is a deputy president of the Pan-Africanist Congress and is due to take silk.

Access to courts is expected to be broader. Government is already working with civic associations on a community court structure — a cheap dispute-resolving mechanism where appointed lawyers would be involved in mediation. Those courts set up in terms of apartheid law — such as pass courts or black divorce courts — have been or are being dissolved.

Magistrates' courts will also change, but this is so far an area that has received scant attention while legislators, academics and political organisations focus on the highest and lowest rungs of a future legal system ■

THE LAW FM 3/5/91

WHO'S TO JUDGE? 252

Government, the ANC and Cosatu are applying themselves to devising a new judicial system that could include a Bill of Rights and provide a number of new courts that would make justice more accessible.

Encouragingly, the ANC has already said it will not make political appointments to the bench, arguing that such appointments by the Nats tended to discredit the judiciary and affected its credibility.

Who will be the judges in a new SA?

Cosatu — which wants a separate labour court on which union and employer nominees will sit — has criticised the "all white male"

in line as first black judges

judges

S1T1mes

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By TERRY VAN DER WALT
WHEN Justice Minister Koble Coetsee appoints South Africa's first black judge, three names will top the list of candidates.

Amid growing calls for an integrated judiciary, Mr Coetsee said in Parliament that advocates Ismail Mahomed, Hassan Mall and Lewis Skweyiyana were the only blacks who at present qualify in terms of departmental policy that judges be chosen from the ranks of senior counsel.

Mr Coetsee said his department was "committed to appoint members of all communities, irrespective of race, colour or creed".

First

Natal's Mr Justice Diddcott said at the Natal University graduation ceremony this week that the judicial system would have to include black judges if it was to win the confidence of the black majority.

Durban advocate Hassan Mall SC was embroiled in controversy in 1987 when he accepted an appointment as an acting judge — the first black in the history of the country to sit on the Bench.

His old friends in the Natal Indian Congress castigated him for taking a position to "administer the very laws which oppress the majority".

He was banned under the Suppression of Communism Act in 1962, when he was secretary of the South African Indian Congress.

HASSAN MALL



LEWIS SKWEYIYA



Johannesburg-based Ismail Mahomed SC has never made it to the Bench in South Africa, but serves as a judge in Botswana and Lesotho and is an acting judge in Namibia.

Prominent Durban trial lawyer Lewis Skweyiyana SC was the first black advocate to take silk at the Bar in January last year.

He said at the time that many leading black lawyers became involved in politics and served their communities because of the "quagmire of apartheid laws" when they could have furthered their careers as senior counsel like John Myburgh SC, chairman of the Johannesburg Bar Council — which represents almost half of the some 1 000 advocates in SA — said that since the changes in the country after February 2 last year there is no real "ideological" reason for people to decline appointments to the Bench.

"For those people opposed to the apartheid system who in the past never accepted appointments to the Bench, today they should not feel there is anything in their way to take an appointment," he said.

Malcolm Wallis, chairman of the Society of Natal Advocates, said the political implications of meeting out punishment for apartheid crimes on behalf of the government had made

it "impossible" in the past for blacks to accept appointments as judges.

But Mr Wallis believes that the problems of the past are fast disappearing and that even white advocates who refused appointments in the past for political reasons might now reconsider their options.

Some 1 000 advocates in the country are represented by the General Council of the Bar of South Africa. "It is necessary for the Bench to be more reflective of the population of South Africa — it must be a body they can trust and that can solve their problems."

He felt there were "a few" black senior counsels and a number of rising black advocates who would make excellent judges, provided they could overcome the "stranglehold" large white-owned law firms had on the profession.

Limited

"It is regrettable, but the degree to which these firms brief black advocates is so limited as to be virtually negligible."

"This makes it difficult for them to get ahead because they are not gaining the experience across the field of law which is needed to be a judge."

"This pure prejudice arises from the fraternity-like situation, where attorneys feel comfortable calling in their old university friends," he said.

Three

NEWS

Legal aid scheme to defend indigent

252
Stay 6/5/91

Political Staff

CAPE TOWN — A mere 20 percent of the more than two million people tried in South Africa's lower courts every year have legal representation, and more than 100 000 unrepresented accused are jailed annually, according to the Legal Aid Board.

The board's 1989/1990 report, tabled in Parliament last week, sounds an urgent warning about the "dire shortage" of legal representation in the lower courts, which it describes as a "matter of urgent importance".

The lack of funds to meet the demand for legal representation from people who cannot afford lawyers' fees is compounded by a relative shortage of legal practitioners.

The board is pursuing two strategies to meet both challenges.

- Launching a campaign to raise funds from the private sector (As an incentive, the Government has offered to contribute R1 for each R1 unconditionally donated by the private sector.)

- Developing a public defender system in which people with criminal law qualifications, but not necessarily the full qualifications of attorneys and advocates, can serve as defence counsel.

The board's report says the public defender system could be as much as three times cheaper than the "judicare" system it now offers, in terms of which private practitioners are instructed and paid by the board to represent indigent accused.

A pilot project of the public defender system is to be launched soon.

C.A. Times

252

Anti-apartheid group sent R500m into SA

Own Correspondent

LONDON — With the transfer to South Africa of the activities of the International Defence and Aid Fund for Southern Africa (Idaf) following its unbanning last year, details of how it secretly moved an estimated R500 million into the country have been disclosed.

Idaf, which provided legal defence funding for thousands of anti-apartheid activists, also provided the bulk of defence costs for ANC deputy president Mr Nelson Mandela and his fellow Rivonia trialists in 1963.

Last year, when Mr Mandela was released after 27 years in prison, Idaf helped him out with a contribution of R2 800.

The money was granted under Idaf's second scheme, which assisted dependants of detainees as well as released detainees and political prisoners. All political prisoners, famous or unknown, were given R100 for each year's incarceration.

Details of the complex mechanisms whereby this huge capital injection was made, were disclosed in an article by Mr Dennis Herbstein in yesterday's Observer.

The extent of Idaf's involvement in the funding of defence lawyers and attorneys is astonishing.

According to Mr Herbstein, "Idaf was probably the South African legal profession's most reliable employer, with more

Canon Collins helped mastermind funding

Own Correspondent

LONDON. — Canon John Collins of St Paul's Cathedral, who helped mastermind the complex conduit whereby millions of rands were sent to assist in the defence of political trialists in South Africa, died on January 1, 1983.

Although he never achieved the cherished appointment of dean, his achievements for the International Defence and Aid Fund of Southern Africa (Idaf) more than compensated for that, according to a report published in yesterday's Observer.

According to Mr Herbstein, Canon Collins initiated the project in 1956, when 156 people appeared in the country's first major treason trial. He raised R1,25 million for their defence. All were acquitted.

than 150 attorneys and 80 advocates on its books"

However, said Mr Herbstein, "few realised where the money was coming from"

"In 1990 alone," he noted, "lawyers received R28,25 million in fees" He said it was "hard to believe that from the mid-1980s, South Africa (the government) was unaware of the enormous transfer of funds (Idaf's) Phyllis Altman believes they did know it was Idaf, but couldn't fathom how

A cynic might suggest that a hard-pressed minister of finance swallowed twice and turned a blind eye to a huge inflow of foreign currency"

Mr Herbstein concluded that in the absence of any real state aid, "without Idaf's (aid) the mass of men and women in political trials over the last three decades would have entered the dock naked"

For instance, he said, in 1990, Idaf transferred R35m for political defences, compared with the government's R17m in legal aid for all criminal trials.

In 1990, he said, Idaf-funded legal work affected 28 000 South Africans. This year, it was put at 20 000.

In 1985, at the start of the "unrest", Idaf funded a staggering 16 551 legal matters. These covered State of Emergency detentions, public violence cases, stays of execution, criminal appeals, inquests, appeals against Group Areas and Land Act evictions, restraining orders against police harassment and commissions of inquiry.

Apart from Mr Nelson Mandela's trial, Idaf also financed the team appearing for the family at Mr Steve Biko's inquest, and is currently funding Mrs Winnie Mandela's defence, which Mr Herbstein describes as "a source of deep controversy"

Mr Horst Kleinschmidt, current Idaf director, is quoted as estimating that R500m had been sent into South Africa over the years — largely from Scandinavia and the United Nations.

ibi is gues

paid for an article he wrote for a British newspaper

However, this did not mean his evidence should be rejected. It should be accepted where it was corroborated either by other credible evidence or by probabilities.

He said Mandela had also not advanced any acceptable reason why Kgase and Mono would have fabricated evidence implicating her. Mandela was a leading figure in the community and the ANC and it was extremely unlikely that the pair would falsely implicate a person like her.

It was clear that Kgase had not implicated Mandela and her co-accused as far as possible although he could have done so.

Swanepoel submitted Mandela was party to the common purpose to kidnap and assault, played a leading role in the assaults and had detained the four on her premises until Sepet was taken away, Kgase escaped and Mono and Mekgwe released on her husband's orders.

Death sentences of four ex-Sats men commuted

BLOEMFONTEIN — The appeals of four SA Transport Services strikers against their death sentences for the murders of four non-strikers were allowed by the Appeal Court in Bloemfontein yesterday.

Long terms of imprisonment were substituted for the death sentences. *Bloemfontein*

The appeal of a fifth man, Phineas Netshtungulwane, against his imprisonment for 12 years on the four murder counts was dismissed. *(252)*

Mr Justice Nestadt, with the concurrence of Mr Justice Kumbleben and Mr Justice F H Grosskopf, treated the four counts of murder as one for the purpose of sentence.

Patrick Molefe, of Alberton, Takalamini David Mamthaga, of Johannesburg, and George Magedza, of Soweto, were imprisoned for 21 years, and Wilson Matshili, of Krugersdorp, for 18 years.

It was ordered that the jail sentences imposed on them by the trial judge on certain other counts should run concurrently with the sentences now imposed.

The non-strikers were kidnapped on April 28 1987, assaulted at Cosatu House in Johannesburg and then taken to Prolecon where they were murdered.

Strong mitigating factors emerged from the appellants' evidence, read with lengthy testimony from three psychologists and a professor of anthropology.

The pith of what they said was that appellants were subject to certain powerful, situational forces or influences which caused them to behave in an uncharacteristically violent manner.

Of fundamental importance when the appellants' moral blameworthiness was assessed was the mood that prevailed at Cosatu House on the afternoon of April 28 1987 and its influence on the appellants.

The judge concluded that the cumulative effect of the mitigatory factors was such that the death sentence was not imperatively called for. There was also no reason to think that the appellants could not be rehabilitated — Sapa

Drought aid body 'misaid millions'

THE Bophuthatswana government has liquidated an official organisation formed to help drought victims after a commission of inquiry found it could not account for millions in public money.

The government said in a statement yesterday a commission of inquiry into the Thusano Foundation had also found that an earlier board of inquiry into the foundation had misled the government.

The foundation's drought relief secretariat had spent more than R120m on behalf of the Bophuthatswana and SA governments between 1983 and the beginning of 1990.

"The commission found that, through gross management negligence, Thusano's

WILSON ZWANE

financial affairs deteriorated to such an extent that a large portion of public money cannot be accounted for," the statement said. "The trust that was placed in (MD Colin) Campion was misused."

It added that the commission had found "the most shocking disregard for truthful reporting" in the transcriptions of the proceedings of the Riekert Board of Inquiry.

"It is quite clear that Campion and (inquiry chairman) Brig Riekert went out of their way to influence the outcome of the inquiry and to ensure that the truth was not revealed," the statement said.

revamp of penal system

Star 7/5/91.

(252) (10/3)

Political Staff

Far-reaching changes in South Africa's penal system are on the way with two new Bills due before Parliament soon providing for far wider use of community sentences instead of imprisonment.

The new legislation is intended to cut the chronic overcrowding in South Africa's prisons — which are among the most populated in the world — and to boost rehabilitation of offenders.

Introduced

The system, called "correctional supervision", based on research overseas last year by Minister of Justice Kobie Coetsee and senior officials, is likely to be introduced in pilot projects in the larger centres, if the legislation is approved.

It is expected to be dealt with during the justice budget debate tomorrow and on Friday.

Details are contained in a White Paper tabled in Parliament yesterday

The document also spells out plans by the Department of Correctional Services to limit the time spent in jail by unsentenced prisoners, to reduce the overall prison population, to restructure prison operations along business lines so that products produced at prisons can be used more effectively, or sold, and for prisoners to receive better training and greater incentives to acquire skills

The White Paper notes that while community-service sentences — widely applied overseas — have increased in South Africa, there is, among other factors, insufficient supervision to extend it.

It says one of the prime objectives of correctional supervision is to ensure that the offender maintains daily contact with the community of law-abiding citizens and does not become contaminated by hardened criminals

It says it is imperative that correctional supervision be established as soon as possible in South Africa

The White Paper notes

"When probation is eventually established countrywide, offenders will be dealt with in a more balanced manner and only those who constitute a threat to the community will be imprisoned, while a significant number of offenders will be effectively dealt with within the community

"The growth of the prison population will be limited and a more affordable penal system will be brought about which will be to the benefit of all South Africans"

Two draft Bills have been prepared and will be introduced this session

The first is the Correctional Services and Supervision Matters Amendment Bill, which effectively amends the Prisons Act and the Criminal Procedure Act

Among its provisions are

- An attorney-general or prosecutor has the power before judgment in a criminal case to reconsider the case and suspend proceedings so that the accused, on certain conditions, can be referred for correctional supervision
- A court may impose correctional supervision and imprisonment as penalties, which can be converted by the Commissioner of Correctional Services into correctional supervision under certain conditions
- On application by the commissioner, a court can convert imprisonment into correctional supervision or other punishment, and vice versa

Supervision

- A juvenile offender in custody, instead of being released on bail or being kept in custody, may be placed under the supervision of a probation officer or correctional officer
- A convicted person under 18 may be placed under the supervision of a correctional officer
- The Minister of Justice may institute pilot projects to launch correctional supervision

The second Bill, the Probation Services Bill, is intended to adjust the Probation Services Act to extend probation officers' functions relating to correctional supervision as a sentencing option

Upington 14 win appeal over death sentences

BLOEMFONTEIN — The Appeal Court here yesterday set aside the death sentences imposed on 14 of the 25 people convicted of murdering a municipal policeman at Paballelo, Upington, on November 13, 1985

Prison terms, ranging from one year conditionally suspended for five years to 12 years imprisonment, were substituted

The convictions of 18, including Evelina de Bruin, who is in her mid-fifties and who was the only woman on Death Row, and her husband Gideon Madlongolwane were changed from guilty of murder to guilty of public violence

The convictions and conditionally suspended imprisonment of six years of Xoliswa Dube, Roy Swartbooi and Ivan Kazi were set aside

The court dismissed the appeals of Zona Mokgatle and Zolile Yona against their convictions for murder, but substituted imprisonment of 12 years for Mokgatle and 10 years for Yona instead of death sentences

Justice Bekebeke, who had leave to appeal only against his death sentence, succeeded to the extent that he has been imprisoned for 10 years

Elisha Matshoba unsuccessfully ap-

pealed against his imprisonment for eight years

Twenty-six people were convicted by Mr Justice J J Basson in the Circuit Court at Upington on April 27, 1988 after 25 were found guilty of murder and one of attempted murder

After a long adjournment for argument in mitigation to be prepared, judgment on extenuation was delivered between May 23 and 25, 1989. In the case of 14 no extenuation was found for the murder, and the death sentence — obligatory at the time — was imposed

The remainder received sentences ranging from prison terms suspended on condition that they did community service, to imprisonment of between six and eight years

Yesterday, Mr Justice E M Grosskopf, with the concurrence of Mr Justice Smalberger and Mr Justice Nienaber, gave judgment in the appeals of the 25 who had leave to appeal. Enoch Nompondwana, imprisoned for eight years for attempted murder, did not have leave to appeal

The judgment was 212 pages long. The case concerned the death of Constable Lucas Sethwala, who was killed after he fled from his house when it was stoned by a mob — Sapa

252
7/15/91
Soweto

Donation from Bonn

THE German Embassy will today donate a sum of R48 000 to Lawyers for Human Rights.

The donation would be made by German Ambassador Dr Immo Stabreit.

"By this contribution the Federal Republic of Germany continues its support for South African organisations engaged in the process of building a democratic, non-racial South Africa," a statement explained. - Sapa

New Bill allows 14-day detention without trial

Political Staff

POLICE can hold detainees for 14 days without trial in terms of a Bill to be tabled in parliament today, said the Minister of Justice and of Correctional Services Mr Kobie Coetsee.

In the Pretoria Minute agreement with the African National Congress last August the government undertook to remove the oppressive aspects of the Internal Security Act.

Foreign governments have made the gutting of the Act one of the pre-conditions for the lifting of sanctions.

Mr Coetsee said the Bill would do away with preventive detention without trial, the keeping of a consolidated list of people, the banning of publications, statements and writings, restrictions on the registration of newspapers, the disqualification of

some people from being Members of Parliament or practising some legal professions, and convictions relating to furthering communism.

THROUGH VIOLENCE

Provisions allowing the government to declare organisations illegal would remain but would be used only against groups wanting to achieve political goals through violence. The organisations would have 90 days to appeal against such decisions.

Mr Coetsee said terrorism and subversion were still a threat and necessitated provisions allowing police to hold people for questioning. People could be detained for 14 days under the new system.

Police then had to ask a judge to order the person be held longer and stipulate the length of time.

REC'D 11/1/79

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New Bill cancels seven racist Acts

Political Correspondent

DISCRIMINATORY measures in seven Acts are to be removed by a new Bill tabled in parliament today

The Further Abolition of Racially Based Measures Bill removes a number of clauses which make a distinction between different races or population groups and is in line with the repeal of the Population Registration Act.

However, a transitional measure in the Bill is intended to "temporarily maintain existing classifications in the population register"

The new Bill alters the.

- Workmen's Compensation Act by deleting references to blacks and Asiatics,
- Merchant Shipping Act, by deleting special arrangements for the property, diet and accommodation of "non-whites",
- Marriage Act by abolishing the provision for the appointment of marriage officers for particular population groups,
- Births, Marriages and Deaths Registration Act, by deleting special provisions for black and Indian immigrants and by bringing the Act into line with the repeal of the Population Registration Act,
- Unemployment Insurance Act, by deleting references to blacks and Asiatics,
- National Parks Act, by deleting the reference to "European", and,
- Identification Act, terminating the inclusion of a person's race or population group in the population register, and placing the birth entry number on the certificate — which indicates race — with an identity number.

POLITICS

Govt seeks to keep banning powers

Bl Day 8/5/91

3000 252

Political Staff

GOVERNMENT has proposed that the Minister of Justice retain wide-ranging powers to ban political organisations

Although the detention-without-trial provision for interrogation has been reduced to 14 days and may only be extended by a Supreme Court judge, detainees will still have no right of access to their families, doctors and lawyers

Lawyers will, however, be allowed to consult detainees in connection with applications before judges relating to their continued detention or release

Tough provisions against intimidation with fines of R40 000 and/or 10 years' imprisonment, and an extended definition of intimidation have also been proposed

However, the Internal Security and Intimidation Bill, which was tabled in Parliament yesterday, does scrap many controversial clauses which restricted political activities

Internal Security Act provisions for banning of publications, restriction of newspaper registration, the consolidated list of people who could not be quoted, the banning of statements and writings of certain people, the banning of individuals, preventive detention, disqualification of people from parliament or from practising as lawyers, and promoting communism, are to be scrapped

DP law and order spokesman Tian van der Merwe said "Generally, the Bill does represent some very significant improvements on the existing Internal Security Act, but there are a number of areas where further improvements are necessary"

The DP did not believe it was necessary

for the minister to have the power to ban organisations. It also objected to the Bill's detention provisions. It said the normal procedures should be applied, as followed with suspects in criminal cases

The DP says the 14-day initial period is still too long, it is unacceptable that the Supreme Court should have no authority to rule initial detentions invalid, family members should be told where detainees are being held and detainees should as soon as possible have access to their own doctors, own legal representatives and family

Reasons

A memorandum attached to the Bill said in the present law the Minister's subjective opinion was conclusive and a legal challenge to his decision to ban an organisation was limited, but the new Bill would enable the Supreme Court to determine for itself whether there was, objectively speaking, reason to believe the jurisdictional grounds to outlaw the organisation existed

A clause also gives office bearers of the organisation the right to ask the Minister to give reasons for his banning

Policemen with the rank of lieutenant-colonel or above will be able to order the detention of people if they have reason to believe they had committed or intended to commit sabotage or were withholding information about such an offence

They could be detained for more than 14 days only if this was authorised by a Supreme Court judge after he had received written representations from the police and the detainee's lawyers

on 10 May

Alexandra's community court training begins

WILSON ZWANE

252

TRAINING of people who would be involved in the proposed Alexandra community courts started yesterday when a team of legal experts and the Alexandra Civic Organisation (ACO) held a workshop on dispute resolution mechanisms.

ACO official Ben Dhlomo said yesterday's workshop was the first of its kind to be held in Alexandra and was aimed at familiarising people with mediation and arbitration mechanisms.

"We are going to hold two workshops before the formal training of people who will be involved in the community courts starts, Dhlomo said. Fifteen people would take part, he said.

The workshops and the "formal" training of the township mediators and arbitrators would be conducted by a team of legal experts consisting of members of the Wits Centre for Applied Legal Studies and lawyers in private practice.

The move follows a meeting of the joint working group of the Justice Department and ACO about two weeks ago. ACO president Moses Mayekiso said "considerable progress" had been made at that meeting.

Mayekiso has repeatedly said the proposed Alexandra community courts would be different from the controversial "kangaroo" courts which he said were "often constituted at a whim of individuals".

The Justice Department said recently ACO's proposal for community courts had much in common with its desire to make the administration of justice accessible to people of all levels.

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ORIGINAL



The MINISTER OF CORRECTIONAL SERVICES VICES
 Seventy one (71) This figure includes two (2) prisoners who were admitted to the hospital prisons for psychopaths in terms of section 30 of the Mental Health Act, 1973 (Act No 18 of 1973) as amended

<i>Natal</i>		
Durban/Pinetown	3	
Pietermaritzburg	3	252
Other urban areas	0	
Rural areas	44	
Total	50	
<i>Transvaal</i>		
Johannesburg	2	
East Rand	4	
West Rand	0	
Vereeniging/Vanderbijlpark	10	
Pretoria	0	
Other urban areas	6	
Rural areas	19	
Total	41	
<i>Orange Free State</i>		
Bloemfontein	0	
Onderdaalsrus/Virginia/Welkom	7	
Other urban areas	20	
Rural areas	1	
Total	28	

Public violence: persons charged/convicted
 331 Mr D J DALLING asked the Minister of Justice

- (1) How many persons were charged with public violence in each specified magisterial district in 1990 and (b) what total number of persons so charged were subsequently convicted,
- (2) whether bail was granted to the accused in any of these cases, if not, why not, if so, in how many cases,
- (3) whether any charges of public violence were withdrawn, if so, how many,
- (4) whether any of the persons so charged were under the age of 18 years, if so, how many in each case,
- (5) whether these persons were prosecuted in terms of the provisions of the Children's Act, No 33 of 1960, if not, (a) why not and (b) who took the decision in this regard?

B860E

The MINISTER OF JUSTICE

- (1) (a) and (b) The required information is not readily available in the Department In an effort to be of assistance to the hon member, the following information was obtained from the Central Statistical Service for the period 1 July 1989 to 30 June 1990

<i>Cape Province</i>		
Cape Peninsula	47	
Port Elizabeth/Uitenhage	0	
East London	0	
Kimberley	0	
Other urban areas	42	
Rural areas	5	
Total	94	

Total convictions

HOUSE OF ASSEMBLY

<i>Natal</i>		
Durban/Pinetown	3	
Pietermaritzburg	3	252
Other urban areas	0	
Rural areas	44	
Total	50	
<i>Transvaal</i>		
Johannesburg	2	
East Rand	4	
West Rand	0	
Vereeniging/Vanderbijlpark	10	
Pretoria	0	
Other urban areas	6	
Rural areas	19	
Total	41	
<i>Orange Free State</i>		
Bloemfontein	0	
Onderdaalsrus/Virginia/Welkom	7	
Other urban areas	20	
Rural areas	1	
Total	28	

- (2), (3) and (5) The required information is not readily available To obtain it all court records will have to be examined, which is not economically feasible
- (4) The required information is not readily available in the Department In an effort to be of assistance to the hon member, the following information was obtained from the Central Statistical Service for the period 1 July 1989 to 30 June 1990

<i>Age</i>		
7 to 17 years	55	
18 to 20 years	44	
Total convictions		

Unit cost per prisoner

332 Mr D J DALLING asked the Minister of Correctional Services
 What was the unit cost per prisoner per day in the 1989-90 financial year?

B861E

The MINISTER OF CORRECTIONAL SERVICES VICES
 R18,67

Prisons Service members of certain union suspended
 338 Mr D J DALLING asked the Minister of Correctional Services

- (1) Whether any persons were suspended from the Prisons Service in 1990 as a result of activities that took place in connection with their membership of a certain union, the name of which has been furnished to the Minister's Department for the purpose of his reply, if so, (a) how many and (b) what is the name of the union in question,
- (2) how many such persons (a) resigned, (b) were dismissed from service and (c) (i) have been reinstated in service and (ii) in respect of what date is this information furnished,
- (3) whether any disciplinary proceedings were instituted and/or are pending against such persons, if so, (a) what proceedings and (b) with what results?

B882E

The MINISTER OF CORRECTIONAL SERVICES VICES

- (1) No members were suspended on account of their connection with a certain union After long and positive involvement with personnel who were on strike, several members were suspended and a few probationary warders were dismissed Some of the members had connections with the union referred to by the hon member
- (a) 647
- (b) The same as furnished by the hon member
- (2) (a) One Member resigned voluntarily on 22 March 1990
- (b) In terms of Prisons Regulation 8(6)(d), the services of nine probationary warders were terminated whilst on strike—suspensions were not relevant in this instance I also refer the hon member to my written reply to Question 143 in the House of Assembly on 25 April 1991 in which further dismissals which followed at a later stage as a result of inquiries in terms of Prisons Regulation 77(1), are further elucidated

(c) (i) and (ii) By 30 May 1990 suspension orders against 644 members (one member resigned, one member could not be traced and one member died) had been lifted
 (3) (a) and (b) I refer the hon member to my written reply to Question 143 in the House of Assembly on 25 April 1991

Petitions presented by staff, action

340 Mr D J DALLING asked the Minister of Correctional Services
 Whether, with reference to his reply to Question No 143 on 25 April 1991, he will furnish details of the action taken by the prison authorities to deal with the grievances stated in the petitions presented by members of his Department to the authorities at various prisons between 21 and 23 March 1990, if not, why not, if so, what are the details?

Hansard B910E

The MINISTER OF CORRECTIONAL SERVICES VICES

Yes
 In order to bring the allegations into perspective I wish to direct the hon member's attention to the fact that although certain grievances did have substance, there were others with little or no substance The origin of these grievances can primarily be attributed to incorrect/distorted perceptions which were the result of ignorance of policy matters
 In view of the fact that members who were involved with the striking did not air their grievances by means of the official communication channel as contained in Prisons Regulation 87, the existence and functioning of the communication channel was again brought to the attention of all members and commanding officers were also sensitised in this regard
 In those cases where the existence of grievances could be attributed to incorrect/distorted perceptions all members country-wide were enlightened on the relevant policy matters The other grievances had already been contained in a comprehensive manpower plan and were being addressed

HOUSE OF ASSEMBLY

If the financial allocation to the academic hospital complexes for the 1990/91 financial year is divided by the number of beds in use on 31 December 1990, the following results are obtained

Groote Schuur R231 086
 Tygerberg R161 220
 Baragwanath/Johannesburg R100 729

The information as submitted in the reply to Question 168 is calculated as the cost per patient per day

If the financial allocation to the individual academic hospitals for the 1990/91 financial year is considered, the figures are as follows

Groote Schuur R358 182 827
 Tygerberg R319 700 062
 Johannesburg R189 164 900
 Baragwanath R187 258 400,

(2) no,
 (3) no

Lawsuits against Minister of Justice

312 Mr D J DALLING asked the Minister of Justice

(1) Whether any lawsuits were brought against him in 1990 in his capacity as Minister of Justice by members of the public, if so, (a) how many and (b) what (i) were the circumstances of the lawsuits, and (ii) was the outcome, in each case,

(2) whether he paid out any moneys in 1990 (a) as a result of successful lawsuits brought against him and (b) in out-of-court settlements, if so, what amounts in each case?

252

The MINISTER OF JUSTICE

(1) Yes

(a) 20

(b) (i)

Number	Cause of action
3	Malicious prosecution
15	Unlawful arrest or detention
2	Defamation

(ii)

Successful law-suits against Minister

2

Claims not proceeded with by the plaintiff

2

Claims pending

8

(2) (a)

Yes

P Govender — Unlawful deprivation of liberty
 E Mashumi — Appeal pending

— R 600,63

(b) Yes — R25 850,00

Mashaba M J — Unlawful deprivation of liberty
 Pale F M — Unlawful arrest
 Mkwanazi J — Unlawful arrest
 Magqabi M — Unlawful deprivation of liberty
 Ntubula M — Unlawful deprivation of liberty
 Motha J S — Unlawful deprivation of liberty
 Mashole R A — Unlawful deprivation of liberty

— R 4 250,00
 — R 2 500,00
 — R 6 000,00
 — R 4 400,00
 — R 2 500,00
 — R 1 200,00
 — R 5 000,00

R25 850,00

The amount includes settlements reached pursuant to letters of intention to institute action and actions instituted before 1990 but settled during 1990

HOUSE OF ASSEMBLY

Legal Aid Board: services suspended

313 Mr D J DALLING asked the Minister of Justice

252
 Whether any legal aid services were suspended by the Legal Aid Board in 1990, if so, (a) (i) which services and (ii) for what period and (b) why were these services suspended?

B789E

The MINISTER OF JUSTICE

No legal aid services were suspended by the Legal Aid Board in 1990 in the sense that aid for certain cases and/or specific procedural steps were excluded from the Legal Aid Board's legal aid scheme

Certain prescriptions which the Legal Aid Board included in its legal aid manual in 1988, to ensure that funds are appropriated for worthy cases are, however, still in force. These prescriptions pertain to legal aid for appeals in criminal and civil matters and determine that aid will not be granted unless the Director of the Legal Aid Board is convinced that there is a reasonable prospect for success on appeal

Legal aid for claims justiciable in the Small Claims Court was also not granted in 1990

The policy that authorisation for instructions to advocates for appearances in magistrates' and regional courts and instructions to senior advocates only be given by the Director and that he will do so in exceptional cases, was maintained in 1990

The restrictions that were imposed on money payable to legal practitioners in April and December 1988 were maintained during 1990 in the following matters

- Divorces and related cases
- Petitions and applications after the imposition of the death sentence
- Industrial court cases

The restrictions pertaining to these matters, were as follows

Divorce and related cases

The maximum tariff paid was R750 if one attorney was involved and R1 000 if two attorneys were involved. Provided that if permission was granted for the institution or defence of interlocutory actions, legal costs

therefor could have been allowed in addition to the legal costs for the main action. Provided further that the legal costs for the interlocutory action were restricted on the legal aid tariff to a maximum of R500 if one attorney was involved and R750 if two attorneys were involved. The Director has a discretion to increase the latter fees in appropriate circumstances

A further qualification on this restriction is that an attorney is free to present an attorney-client bill of cost to the Legal Aid Board. If this is done, the bill is taxed by the Legal Aid Board and the taxed bill minus 20% is payable to the attorney

Petitions relating to the death sentence

Legal costs pertaining to petitions and applications after the imposition of the death sentence, were restricted to a maximum of R500 per petition or application on legal aid tariffs

Industrial court matters

For a consultation if section 43 proceedings were not instituted—the moneys as prescribed for a consultation in scale C of the tariff in the Magistrates' Courts Rules, minus 20%, if section 43 proceedings were instituted—the moneys as prescribed in scale C of the tariff in the Magistrates' Courts Rules, minus 20%, to a maximum of R250. The Director of the Legal Aid Board has the authority to grant legal aid in meritorious cases and to increase or remove restrictions

The above restrictions were imposed in an effort by the Legal Aid Board to keep its expenses on legal costs within the bounds of its budget, and to utilise the available funds for the benefit of as many needy people as possible

Sentenced prisoners: mental patients

327 Mr D J DALLING asked the Minister of Correctional Services

How many sentenced prisoners were transferred to mental institutions in 1990?

B859E

HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY

The MINISTER OF JUSTICE

QUESTIONS

Indicates translated version

For written reply

General Affairs

252

Courts: legal representation

39 Mr L FUCHS asked the Minister of Justice how many persons appeared in (a) (i) district and (ii) regional courts and (b) the Supreme Court in each province in 1990 without legal representation?

Statistics regarding legal representation in the regional courts are only available for the period 1 February 1990 to 31 December 1990. The statistics in respect of legal representation in the Supreme Court are not officially kept and are, therefore, not readily available in the Department. To obtain the information, all the case records will have to be examined, which is not economically feasible. The statistics in respect of district courts for the period 1 January 1990 to 31 December 1990 and in respect of regional courts for the period 1 February 1990 to 31 December 1990 are set out hereunder. The statistics are in respect of cases disposed of only and do not include stationary traffic offences.

Transvaal	
(a) (i) District Courts	Criminal Courts 176 090 Civil Courts 11 842
(b) (ii) Regional Courts Supreme Court	8 039 Not readily available
Orange Free State	
(a) (i) District Courts	Criminal Courts 37 629 Civil Courts 552
(b) (ii) Regional Courts Supreme Court	678 Not readily available
Natal	
(a) (i) District Courts	Criminal Courts 84 824 Civil Courts 2 386
(b) (ii) Regional Courts Supreme Court	7 087 Not readily available
Cape Province	
(a) (i) District Courts	Criminal Courts 180 282 Civil Courts 19 070
(b) (ii) Regional Courts Supreme Court	22 613 Not readily available

Notwithstanding the fact that a large number of accused appear in the courts without legal representation, it is notable that only about 18% per cent of them are convicted and committed to prison. Our system of adjudication of criminal matters provides for various intrinsic safeguards to prevent miscarriages of justice and this means that accused appearing in courts are not necessarily prejudiced by a lack of legal representation.

Legal services to many more indigent accused

Harms Commission's costs

252

39 Adv C D DE JAGER asked the Minister of Justice:

(a) What was the total direct and indirect cost involved in the Harms Commission's investigation into certain alleged murders, (b) how is this amount made up, (c) to whom or to what bodies was it paid and (d) what was the daily, monthly or per folio rate in each case and (e) for what period were payments made in each case?

B319E

The MINISTER OF JUSTICE

(a) The total cost (excluding legal costs) at this stage, direct and indirect, involved in the investigation of the Commission of Inquiry into Certain Alleged Murders, is R191 693,31. A final amount can only be ascertained once all outstanding accounts have been received.

(b) The composition of the amount is as follows:
 1989/90 financial year R 23 267,51
 1990/91 financial year R168 425,80
 R191 693,31

(c), (d) and (e)
 1989/90 financial year

The following payments were made in respect of the chairman and officials of the Commission	
Salaries	R19 243,76
Travel	R 2 408,09
Accommodation	R 1 615,66
	<u>R23 267,51</u>

1990/91 financial year

The following payments were made in respect of the chairman and officials of the Commission	
Salaries	R61 564,00
Travel	R 8 065,18
Accommodation	R17 519,80
	<u>R87 148,98</u>

(ii) The costs involved in the overseas visit were as follows:

Accommodation allowance	R 5 544,00
Clothing allowance	R 821,43
Accommodation	R15 984,73
Travel	R 235,95
Airtickets	R18 714,00
Renting of equipment	R13 353,17
	<u>R54 653,28</u>

(iii) Travel costs in respect of a witness

(iv) Administrative expenses	R 1 604,60
Cassettes and equipment	R 2 346,32
Rent of photostat machine	R 471,90
Telephone	R 471,90
Printing of report (Government Printer)	R13 721,44
Vloek recordings	R 7 370,20
Transcription of proceedings	R 395,88
Photo-copies of reports	R25 910,34
Total	<u>R168 425,80</u>

Groote Schuur/Tygerberg hospital complexes.

307 Mr A E DE WET asked the Minister of National Health:

(1) Whether, with reference to a recent newspaper article (a copy of which has been furnished to the Minister's Department for the purpose of her reply), she will explain the figures she quoted in a recent statement in Parliament in regard to the Groote Schuur and Tygerberg hospital complexes being the most expensive teaching hospitals in the country, if not, why not, if so, how were these figures arrived at;

(2) whether she will reconsider the statement referred to above;

(3) whether she will make a statement on the matter?

B797E

The MINISTER OF NATIONAL HEALTH
 (1) Yes, the figures were obtained from the relevant provincial administrations

Law expert slams death sentence

Staff Reporter

THE state should take a step towards removing institutionalised violence by abolishing the death penalty completely, law expert Professor Dennis Davis said last night.

He was speaking at the launch of a booklet by the Society for the Abolition of the Death Penalty, called *Death by Decree: South Africa and the Death Penalty*.

"Although — in a sense — the death penalty is no longer an issue, 300 people are still on death row," he said.

"The death penalty is never an appropriate punishment in a civilised society."

● Yesterday London-based Amnesty International urged African governments to join the growing number of countries who had abolished the death penalty.

Death penalty 'alive and well' in SA

By LINDA GALLOWAY
Staff Reporter

THE death penalty is "alive and well" in spite of perceptions that South Africa is moving away from capital punishment, according to law academic Dr Dennis Davis.

There were still 341 prisoners on death row, of which 298 were sentenced before new legislation.

Professor Davis, head of the Centre for Applied Legal Studies at Witwatersrand University, was speaking at the launch of a book, *Death by Decree*, by the Institute of Criminology at UCT and the Society for the Abolition of the Death Penalty.

WAITING

The 298 prisoners sentenced under the old legislation were having their cases reviewed by a panel which would decide whether the new legislation applied.

This was a "very unscientific way of deciding who lives and who dies" and "there is no criminologically justified way to find the death penalty an appropriate sentence".

The only argument in favour of the death penalty was retribution, but this could no longer be argued in the light of Pretoria mass killer Barend Strydom's death sentence being commuted.

JUST SOCIETY

Professor Davis said Strydom's circumstances were not, as had been suggested, the same as ANC bomber Robert McBride.

The latter's motivation was "fighting for a just society and Strydom's justification was hatred of people of colour" which "anywhere else would be an aggravating and not a mitigating circumstance".

Mr Geoffrey Robertson QC, in South Africa from Britain representing Amnesty International at the appeal proceedings of the Upington 25 in Bloemfontein, said it was ironic that authorities were looking for a formula to legitimate State violence through the death penalty while trying to find a solution to violence.

Sapa-Reuter

Appeal over Upington killing

CH 7121 8/5/87 252
BLOEMFONTEIN — There was no basis for convictions for murder founded on the principles of the common purpose doctrine, the Appeal Court here heard yesterday

This argument was presented in the appeal by 25 of the 26 people convicted in May 1989 on charges that arose from the death of municipal police constable Lucas Tshenolo "Jetta" Sethwala at Paballelo, Upington, on November 13, 1985

Counsel for the appellants submitted that fundamental to the convictions was the trial court's conclusion that the crowd had one purpose in mind, which was to kill the man

Mr Justice E M Grosskopf, Mr Justice Smalberger and Mr Justice Nienaber further heard argument that the trial court had committed a number of misdirections in its application of the doctrine of common purpose to the facts of the case

Free academics, govts urged

Star 91519
NAIROBI — A London-based human rights group yesterday accused African governments of infringing on academic freedom and urged them to free academics and students detained without trial

Africa Watch also appealed to donors "to protest the detention and

abuse of academics and students at institutions" that receive their assistance

The charges and recommendations were contained in a report titled "Academic Freedom and Human Rights Abuses in Africa"

Other recommendations contained in the re-

port urged African governments to

● End the practices of detaining, harassing, and dismissing academic staff.

● Allow student organizations to function independently of government and ruling parties — Sapa-AP

20 lawsuits against ²⁵² Kobie in '90

A total of 20 lawsuits had been brought against Minister of Justice Kobie Coetsee during 1990, he said in a written reply to questions from Dave Dalling (DP Sandton).

Two had been successful, eight were settled out of court, two were not proceeded with by the plaintiff, eight were pending and R25 850 had been paid in out of court settlements.

"This includes settlements reached pursuant to letters of intention to institute action and actions instituted before 1990, but settled during 1990."

The 20 cases included charges of malicious prosecution (three), unlawful arrest or detention (15), and defamation (two).

A total of 213 people had been convicted of charges of public violence between July 1 1989 and June 30 last year, Mr Coetsee said.

Of these, 94 were in the Cape, 50 in Natal, 41 in the Transvaal and 28 in the Free State. Of those convicted, 55 were between the ages of seven and 17, and 44 between the ages of 18 and 20.

A total of 71 prisoners had been transferred to mental institutions in 1990, Mr Coetsee said.

This figure included two people admitted to hospital prisons for psychopaths in terms of the Mental Health Act — Sapa

Divorce courts for blacks to be scrapped

The three remaining divorce courts for blacks are to be scrapped and will be replaced by specialised courts dealing with family matters as part of the Supreme Court, Minister of Justice Kóbe Coetsee said in Parliament yesterday.

Introducing the debate on his department's budget vote, he said the proposed divorce courts would be open to all and legislation on this would be gazetted on May 17.

The existing divorce courts for blacks were hearing an average of 13 000 cases a year while the services of divorce

courts attached to the Supreme Court were limited to dealing with white litigants.

The legal profession had to give attention to the question of whether only advocates should appear in Supreme Court cases.

A number of project committees would be established to eliminate anomalies in all aspects of the law, he said.

The administration of justice had been placed under extreme pressure through witnesses disappearing and being intimidated, particularly in Natal where some regional courts had been

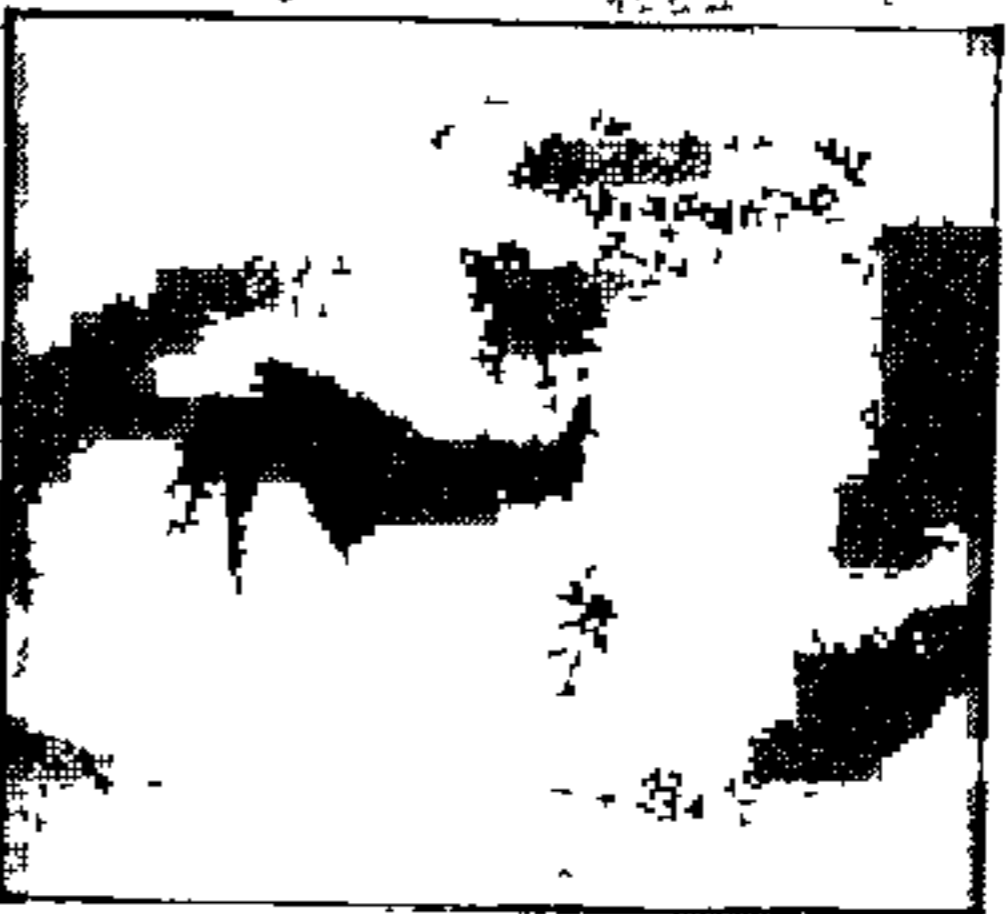
able to sit for only an hour a day, Mr Coetsee said.

A regional co-ordinating steering committee had been appointed in Natal to direct the course of justice.

A Bill which would make provisions for the protection of witnesses would be tabled in Parliament soon.

Much stronger measures had to be introduced against intimidation, and legal steps had to be taken to safeguard the public.

Mr Coetsee called on Parliament and extra-parliamentary groups to "declare war on intimidation" — Sapa.



Kóbe Coetsee called on Parliament to declare war on intimidation.

Court fines set to keep up with inflation

Political Staff

Star 9/15/91 (252)

All fines for contravening laws will soon be automatically boosted to keep pace with inflation

This emerged in the Adjustment of Fines Bill tabled in Parliament yesterday by Minister of Justice Kobie Coetsee

The legislation enables him to adjust the limits that district court magistrates may impose, which will then apply to maximum fines in all legislation

The present limits for a dis-

Parliament

1991



trict magistrate are R4 000 and/or one year

The new system will link maximum fines to imprisonment so that, for instance, a law prescribing six months' jail would, at present, imply a maximum fine of R2 000

A law prescribing two years' would therefore mean a maximum fine of R8 000

This will effectively mean that legislation will in future not contain specific fine amounts. Bills will merely stipulate "one year, and/or a fine". Existing legislation, much of it containing outdated fines, will be treated the same way

This streamlining law will not apply, however, in cases where laws stipulate that a fine is entirely up to a court's discretion, or imprisonment without the option of a fine

SA's first black woman magistrate is sworn in

Staff Reporter

8/15/79

252

South Africa's first black woman magistrate was sworn in yesterday morning by Johannesburg chief magistrate A O de Meyer — but Zola Moletsane does not think her appointment

warrants any fuss

Mrs Moletsane, who starts her duties on Monday, has long dreamt of becoming a magistrate

"I have always wanted to be involved in the administration of justice. I may even still be on the

Bench 10 years from now"

Mrs Moletsane, who has a five-year-old son, was born in Krugersdorp and studied law at the University of the North. She worked as a prosecutor in the Johannesburg Regional Courts from 1988

New steps to protect witnesses

AGT 9/5/91

Political Staff (252)

LEGAL measures to protect witnesses and to ensure children are treated more gently in courts are to be introduced soon, said Minister of Justice Mr Kobie Coetsee in his budget vote in parliament

Pronouncements by prominent Natal judges Mr Justice Diccott and Mr Justice Wilson "have encouraged me to expedite our research into the concept of protection of witnesses", said Mr Coetsee yesterday.

"The product of all this, aimed at the protection of witnesses on a voluntary basis, will be submitted to par-

liament shortly."

The Bill would be coupled with another product of the Law Commission — its research and recommendations on helping child witnesses, said Mr Coetsee

Mr Justice Pierre Olivier, head of the Law Commission, gave details at a Press conference of four Law Commission reports submitted to Mr Coetsee recently

Giving details of the report on helping child witness, Mr Justice Olivier said the atmosphere in a court was foreign and often frightening for a child.

Court procedure was formalistic, cross-examination often aggressive and children were presented as liars or unreliable. The child was required to relive unpleasant events and to talk about them to strangers

Children found this traumatic. Many parents would not let their children testify and there was sometimes a miscarriage of justice

The Law Commission recommended that magistrates and judges have discretion to appoint a mediator, such as a child welfare officer or a child psychologist, for a witness under 18 years.

Bizos attacks key evidence

610am 10/5/91

SUSAN RUSSELL

THERE were serious contradictions and discrepancies between the evidence of the two key state witnesses implicating Winnie Mandela in four counts each of kidnap and assault, her counsel argued in the Rand Supreme Court on Wednesday.

George Bizos, SC, submitted that the evidence of Kenneth Kgase be rejected and that of Bar-end Mono at best be treated as the evidence of a single witness.

He argued that the probabilities on the proven facts favoured the defence version, that Mandela neither ordered nor otherwise associated herself with the removal of Kgase, Mono and two other young men from the Orlando-West Methodist manse, that she was not there when it happened and took no part in assaults upon them.

Mandela, 57, and her co-accused Xoliswa Falati, 37, and John Moragan, 61, have pleaded not guilty to kidnaping and assaulting Kgase,

31, Gabriel Mekewe, 22, Mono, 21, and 14-year-old Stompie Seipei on December 29 1988

Mandela denied any involvement in the alleged kidnappings and assaults.

Bizos submitted that associating herself with the kidnaping and participating in assaults on the four would have been contrary to Mandela's previous conduct.

"Having gone to (SA Council of Churches secretary general) the Rev Frank Chikane with the complaints of sexual abuse of the 13-year-old youth in 1987 and again in September 1988, she had shown concern about the well-being of the youths at the manse."

Bizos said the people in the back rooms of Mandela's house led lives independent of those in the main house.

"Neither of their witnesses (Mono and Kgase) say that Mrs Mandela ever came to the back rooms after December 29 during the period of some 10 and 20 days respectively that they spent there," he said.

"The evidence of Mrs Mandela that she did not go to the back or concern herself with matters of housekeeping is uncontradicted."

In the circumstances, Bizos said, there was nothing inherently improbable in former Mandela United football coach Jerry Richardson and Falati, who lived at the manse at the time, agreeing between themselves without Mandela's knowledge to remove the four.

Nor was it improbable, he said, that Richardson and others, again without Mandela's knowledge, decided to punish the four for their alleged sexual misconduct and what was believed to have been Seipei's role as a police informant.

Bizos referred to a number of discrepancies between the evidence of Kgase and that of Mono.

Bizos will continue with his argument today.

Magistrate sets a precedent

610am 10/5/91

WILSON ZWANE

ZELDA Moletsane this week became SA's first black woman magistrate

In an interview after being sworn in by Johannesburg chief magistrate OA de Meyer on Wednesday, Moletsane said she was excited at being given a chance to prove her worth as an administrator of justice.

"The appointment will enable me to carry out my potential to the best of my ability," said Moletsane, who was previously a public prosecutor.

She said her appointment had nothing to do with her being black or a woman "People are not appointed to senior positions because they are black or women but because of their abilities," she said.

Moletsane was born in Krugersdorp. After matric she enrolled for a B Juris degree at the University of the North in 1979, where she graduated three years later.

New law still has flaws

Three things are clear about the planned overhaul of the Internal Security Act: it's better than it was; it's still quite unacceptable. It will also turn out to be at best, an interim measure, because any new government is likely to adopt a Bill of Rights which outlaws detention.

The proposed changes to the law are embodied in the Internal Security and Intimidation Amendment Bill, introduced in parliament this week by Justice Minister Kobie Coetsee.

The memorandum explaining the intention of the changes notes that it was aimed at "(bringing) security legislation into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities".

Coetsee also said in preparing the changes, "consideration was given to the manner in which security issues are dealt with in other Western countries".

However, the resulting Bill is far from reaching that standard. For example new proposals would allow police to hold detainees for 14 days after which they would have to be brought before a judge, who may order the detainee to be released, or extend the detention order for an unlimited period. Compare this with the ruling of the European Court. It found British provisions in Northern Ireland, allowing for seven day non-extendable detention, at odds with fundamental freedoms and with the European convention on human rights, and that two or three days would be the maximum acceptable period.

Although the new Bill deals with many issues including bannings of organisations, it is the detention provisions which will be the touchstone.

It is proposed that a senior police officer who "has reason to believe" that someone has committed certain crimes or is withholding information about these crimes may detain such a person for interrogation

W/mant 10/5-16/5/91.

LAW & THE COURTS

~~30/4/91~~ Carmel Rickard (252)

for 14 days. The detainee's family must be advised of the detention — but only if the detainee wishes, and, more ominously, only if the police believe telling the family will not jeopardise their investigations.

If the police want to continue holding the detainee beyond the 14 days, they must make an application to a judge at least 48 hours before the 14 days expire, stating in writing why they want to continue holding the detainee. Detainees may oppose being further detained, and for this purpose may be assisted by a lawyer. The police will then be given the right to reply to the written representations made on behalf of a detainee.

Finally the judge will consider the application, making a decision on whether to authorise the continued detention based on the written statements from the two sides.

The system has a number of unacceptable elements.

The provision that relatives will not be informed if it interferes with a police investigation would allow people to disappear without trace. It also appears from the proposed Bill that detainees would not be informed of the reasons being advanced by police for their continued detention. How then, can they be expected to make meaningful representations for their release?

There is some ambiguity in the Bill about whether the judge would be able to hear oral evidence. The situation will probably arise that the statements by the police and detainee will be contradictory. Under normal circumstances, the court would resolve such conflict by hearing oral evidence from both parties. But what will be

the reaction of judges who feel the law does not entitle them to hear the detainee?

The new Bill, while apparently giving judges power with one hand, takes away from the power of the courts with the other: there is a provision that "no court of law shall have jurisdiction to pronounce upon the validity of any action taken in terms of this section, or to order the release of any person detained in terms of this section".

Human rights lawyers are concerned because the new Bill continues to deny detainees access to legal counsel (except for making representations to a judge at the end of the 14 days).

Among the critics of the new Bill is law professor Kader Asmal, a member of the ANC's constitutional committee. He commented that torture of detainees tended to take place soon after detention. Fourteen days without access to counsel was therefore unacceptable.

He also predicted the proposed changes would be marketed overseas, highlighting the involvement of the judiciary. However concealed flaws which might reduce the judiciary to a rubber stamp, would not be revealed.

Human rights legal expert at Natal University Tony Mathews agreed. "Once again this Bill gives no adequate control over what happens in the cells." He also said the changes to the law "still did not give the police the message that they must go over to efficient professional methods instead of using coercion to elicit information".

National director of Lawyers for Human Rights Brian Currin said he would prefer to be a detainee under the new provisions than under the old law, but that the Bill was still "fundamentally flawed".

He too was concerned the government could manipulate the courts by claiming that "detention is no longer an arbitrary act, but that it has judicial sanction. This will protect the government from criticism on the grounds of human rights violations."

Friday May 10 1991

Death penalty alive and well

Sowetan 10/5/91 *252* *[scribble]*

THE death penalty is alive and well in spite of perceptions that South Africa is moving away from capital punishment, says law professor Dr Dennis Davis.

There were still 341 prisoners on death row, he said

Of those, 298 were sentenced before new legislation making the death penalty no longer obligatory in capital crime cases with no mitigating circumstances

Davis, head of the Centre for Applied Legal Studies at Wits University, was speaking at the launch of *Death by Decree*, a book about the death penalty in South Africa

The launch was sponsored by the Institute of Criminology at the University of Cape Town and the Society for the Abolition of the Death Penalty.

Since the change in legislation last year, there had been 531 convictions for murder, of whom 43 offenders were sentenced to death, Davis said

The 298 prisoners sentenced under the old legislation are having their cases reviewed by a panel which will decide whether the new laws apply

Davis likened this procedure to cricket umpires judging matches at the end of the season, using different rules to the ones played on the field

It is, Davis said, a "very unscientific way of deciding who lives and who dies"

"There is no criminologically justified way to find the death penalty an appropriate sentence," he said

Davis said the only argument in favour of the death penalty was retribution, but this could no longer be argued in light of the recent commuting of Pretoria mass-killer Barend Strydom's death sentence.

"It was suggested that his circumstances and situation were the same as, for example, (ANC bomber) Robert McBride

"But McBride's motivation was fighting for a just and equal society and Strydom's justification was hatred of people of colour, which anywhere else, I believe, would be an aggravating not a mitigating circumstance"

Davis said the majority of executions took place during the "darkest time" of South African history, in the Verwoerd, Vorster and Botha eras, and it would be a "magnificent symbolic act" if the state no longer sanctioned institutionalised killings.

Highest rate

Mr Geoffrey Robertson, QC, in South Africa from Britain representing Amnesty International at the appeal proceedings of the Upington 25 in Bloemfontein, said Namibia and Mozambique were the most recent African countries to abolish the death penalty

He also said that Nigeria had the highest rate of capital punishment - 122 shot by firing squad last year. But, he said, of all countries in the world, South Africa was the one which took the death penalty most seriously.

It was ironic that authorities were looking for a formula to legitimate state violence through the death penalty, while also trying to find a solution to violence in the country

In the early years of Mrs Margaret Thatcher's premiership, when capital punishment was once again mooted in Britain, judges threatened to resign rather than pass the death sentence, he said - *Sowetan Correspondent*

DEATH ROW ^{FM 10/5/91}
(252) ~~253~~

NO TO NOFOMELA

Butane Almond Nofomela — the man whose allegations of death squads in the security police led to the Harms Commission — has had his appeal rejected for his death sentence to be commuted

Nofomela's revelations from the death cell led to a stay of execution. Now his case will go back to the Appeal Court for re-examination but, if no extenuating circumstances are found for his murder of a Brits farmer, his only remaining avenue will be an appeal for clemency to the State President.

In October 1989 Nofomela gave the Lawyers for Human Rights organisation explicit and extensive allegations about the assassination of human rights lawyer Griffiths Mxenge at the hands, he said, of members of his unit commanded by Captain Dirk Coetzee.

The unit, he added, fell under Section C1 of Pretoria security branch headquarters. Nofomela claimed he made his revelations

continue

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CURRENT AFFAIRS

because his superior officer, Major Eugene Kok, had allegedly told him he would get him off Death Row — but then, one day before his scheduled execution, told him to "take the pain".

Nofomela last year applied for his case to be re-examined by the Review Board set up

in terms of new legislation on the death penalty. Had the board found that the trial court hearing his case might have imposed a lesser sentence under the new legislation, his sentence would have been commuted. Twenty-seven other Death Row prisoners have had their sentences commuted in the past

two months as a result of the Review Board procedure. All except one are political prisoners.

New sentences range from 10 years to life imprisonment. The political prisoners have applied for release in terms of the Groote Schuur and Pretoria Minutes. *Charlene Smith*

ARCUS (252) 10/5/91

Any competent person can do it, says first black woman magistrate

The Argus Correspondent

JOHANNESBURG. — South Africa's first black woman magistrate has been sworn in by the chief magistrate of Johannesburg, Mr A O. de Meyer, but she does not think her appointment warrants any fuss.

Mrs Zola Moletsane, who begins her duties on Monday, has long dreamed of being a magistrate.

"I have always wanted to be involved in the administration of justice, and I may even still be on the bench 10 years from now," she said.

Asked whether the appointment of more black magistrates would have any bearing on the administration of justice in the lower courts, she replied: "Anyone who is competent can do the job."

"Colour has nothing to do with it, politics has nothing to do with it."

NO CLASH OF ROLES

Combining her high-pressure job with running a family is something Mrs Moletsane, who has a five-year-old son, takes in her stride.

"They don't interfere with each other. It's a question of setting your priorities — you just have to schedule your time," she said.

She firmly rejects the idea the legal profession is still dominated by men.

"You could say that in days gone by, but these days you will find many women working in all fields of the law."

MODEST ACHIEVER

The modest achiever, who declined to be photographed, had not even told her family of her appointment.

"I waited until everything was confirmed. I will tell them when I get home tonight," she said.

Mrs Moletsane was born in Krugersdorp and studied law at the University of the North. She worked as a prosecutor in the Johannesburg Regional Courts since 1988.

First black woman magistrate appointed

CAH Tim Down Correspondent 10/5/79 (250) 252

JOHANNESBURG — Ms Zelda Moletsane this week became South Africa's first black woman magistrate

In an interview after being sworn in by Johannesburg chief magistrate Mr O A de Meyer on Wednesday, Ms Moletsane said she was excited at being given a chance to prove her worth as an administrator of justice

"The appointment will enable me to fulfil my potential to the best of my ability," said Ms Moletsane, who was previously a public prosecutor.

She said her appointment had nothing to do with her being black or a woman "People are not appointed to senior positions because they are black or women but because of their abilities," she said

Mr Moletsane was born in Krugersdorp After matric she enrolled in 1979 for a B Juris degree at the University of the North, where she graduated three years later

Horror as 'courts' sentence boys to death

KANGAROO courts in Pretoria townships have "sentenced" four teenagers to death in the past three weeks for petty crimes. Three were hanged and a third doused with petrol and set alight. Miraculously, three survived

Attempts were made by frightened members of the "courts" to save the condemned teenagers. In the first case, they doused the flames enveloping the doomed boy just in time to save his life

Gallows

In the second they cut the boys down from the improvised gallows. The lives of two of the victims were saved in hospital. The third died three days later.

The incidents happened as follows
 ● The afternoon of April 24 was an ideal one for playing and Ronnie Nhlabathi (14) was kicking a soccer ball in the streets of Mamelodi with friends.

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JOVIAL RANTAO

Out of the blue, he was accosted by a group of 15 "comrades". Without telling him why, they frog-marched him to a secluded spot in the township, where he was accused of stealing a plaster statue from a neighbour's garden.

Ronnie, a Std 1 pupil at the Khuthalani Primary School, was told he would be killed if he did not produce the statue. His pleas of innocence fell on deaf ears — and the horror story began.

"They beat me up with anything from sjamboks to wires. I was kicked, hit with fists and trampled upon for the whole night. The worst came when I was told that if I did not say where the statue was, I would be set

● TO PAGE 2.



ORDEAL: Ronnie Nhlabathi (14) shows the scars left by his "sentence". ● Picture: JOVIAL RANTAO

Courts

● FROM PAGE 1.

alight.

"I told them that I knew nothing about the statue. I was then stripped and doused with petrol. Before setting me alight some of them extinguished cigarettes on my penis," Ronnie said.

The group, known to be members of a street committee, then set him alight.

At this point, some of the members of the group relented: the flames were doused but Ronnie's legs were burnt.

Another person was later found to have stolen the statue and it was recovered.

Ronnie spent three days in Mamelodi Hospital recovering from his wounds. His body is

still scarred from the beating and the flames.

● In Soshanguve two weeks ago, Sello Kubayi (15), Sonnyboy Chauke (15) and Samuel Mbat-sani (14) were rounded up by 17 "comrades" who accused them of stealing a TV set.

According to Sello's relatives, the youths were taken to a "court-house", where they were tried and convicted. They were tortured, assaulted and hanged with ropes.

Compassion overtook some members of the kangaroo court. The ropes were cut and victims were taken to the local police station where they were taken to hospital.

Sello Kubayi died on April 24 in the Ga-Rankuwa Hospital. Police have since arrested a different person in connection with the theft of the TV set.

Modest Zelda makes legal history

PAT DEVEREAUX

SOUTH Africa's first black woman magistrate is camera-shy

"I must first go on a Weigh Less course before I have my photograph taken," joked Zelda Moletsane, who takes up her post in the Johannesburg Magistrate's Courts on Monday

Sworn in on Wednesday this week at the Johannesburg Magistrate's Court by Chief Magistrate O A de Meyer, Mrs Moletsane said she welcomed the appointment with mixed feelings

"I am naturally a shy and conservative person and never realised this



ZELDA MOLETSANE:
"Naturally shy".

move would throw me into the limelight as South Africa's first black woman magistrate," she said in an interview this week

"Some of my women friends are magistrates

in the homelands so I did not think I would be the first," she said

She hastily added "But it is all a matter of competence, not politics — colour doesn't come into it"

Mrs Moletsane is not only camera-shy, she is also coy about her age, describing herself as "thirty-something" Her curriculum vitae says she is 31

Mrs Moletsane joined the Johannesburg Magistrate's Court as a prosecutor in 1988 after graduating at the University of the North, near Pietersburg, with a B Juris degree She is now studying for an LLB through Unisa

Born in Krugersdorp and schooled in Rustenburg, Mrs Moletsane said "I always wanted to be an air-hostess, but I soon realised I had brains and not beauty and studied law instead"

Other members of Mrs Moletsane's family, including her husband and her 21-year-old brother, are also pursuing legal careers

The mother of a five-year-old son, Mrs Moletsane said she loved entertaining and cooking "I would like to do a gourmet cooking course and a wine-tasting course"

"My other favourite thing is swimming, and whenever I get the opportunity I use friends' swimming pools"

Friedman to head Cape bench

250



JUDGE ...
Mr Justice Friedman

By BARRY STREEK

AN Appeal Court judge, Mr Justice Gerald Friedman, has been appointed the new Judge President of the Cape in the place of Mr Justice George Munnik, who is retiring

And a judge in the Cape Supreme Court, Miss Justice Leonora van den Heever, has been appointed to the Appellate Division and will become SA's first woman appeal judge

This was announced yesterday by the Minister of Justice, Mr Kobie Coetsee.

Mr Justice Friedman's appointment takes effect on February 1 next year. Miss Justice van den Heever becomes an acting appeal judge on June 15 and a permanent member of the Appeal Court on November 1 this year.

Mr Justice Friedman, 63, who obtained BA and LLB degrees from the University of Cape Town, took silk in 1970, was permanently appointed to the Cape Bench in 1977 and became a permanent member of the Appellate Division on October 1 last year.

Before he was made a judge, he was president of the Cape Bar Council.

Miss Justice Van den Heever, 65, is the daughter of the well-known poet and Appeal Court judge, Mr Justice Toon van den Heever. She obtained an MA from Pretoria University and an LLB from the University of the OFS, before being admitted to the bar in Bloemfontein in 1952.

She became an SC in 1968, a judge in the Northern Cape division of the Supreme Court a year later and was transferred to the Cape Bench at the end of 1979. She is currently the most senior judge on the Cape Bench

Miss Justice Van den Heever was an appeal judge in Bophuthatswana between 1982 and 1985 and was the chairman of the commission of inquiry into irregularities in the Department of Education and Training.

● Mr W A van Deventer and Mr G A Kuhn have been appointed judges in the Cape division of the Supreme Court

ct 11/5/91

Intruder in ANC still not named

JOHANNESBURG — Police yesterday identified the man who was shot and killed by a security guard in ANC offices here yesterday morning — but late last night the dead man's name was not yet available

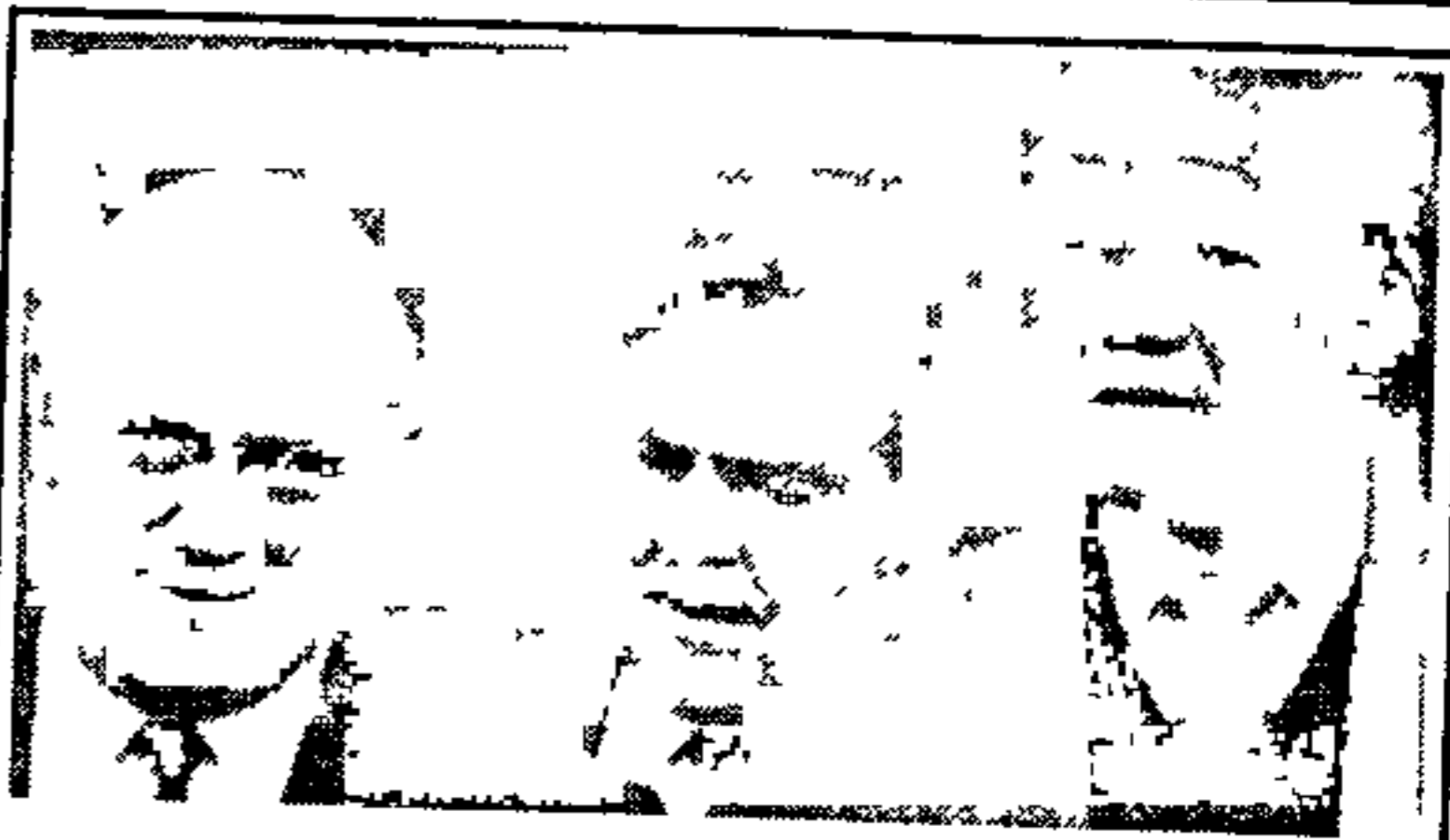
Police spokesman Colonel Frans Malherbe said the dead man was white and aged 21

He said late last night "It appears as though this man was a genuine housebreaker. He has no fixed address and we are still trying our best to get his family"

A charge of housebreaking and theft was being investigated and it was possible a second person was involved in the burglary

Colonel Malherbe said the security guard shot the man when he saw him climbing on to the roof from the ground floor — Sapa, Staff Reporter

● Picture — Page 2



MANDELA GIVES DE KLERK 7 DAYS

See PAGE 2



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Law set for trial by video

Political Staff

dt 11/5/91

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TRIAL by video — with link-ups between different towns — for less serious offences could soon become a feature of the South African legal system

A bill allowing for this was tabled in Parliament yesterday and Minister of Justice Mr Kobie Coetsee, speaking during his Budget vote, said "justice delayed is justice denied" and using modern technology could help speed up trials

In terms of the Criminal Procedure

Second Amendment Bill the system would only be used for less serious offences where the accused intended to plead guilty.

The procedure would involve communication between the presiding officer in a courtroom and the accused in a place of detention

These trials would be open to the public and the special precautions would be taken to assure the accused was not disadvantaged.

However, Mr Coetsee told Parliament

the bill should be seen as a working document at this stage, and not the government's final word on the subject

The measure was to be referred to the parliamentary standing committee on justice.

According to the bill the telecast trials would take intended pleading guilty to an offence which carried a maximum fine of less than R1 000 or imprisonment of less than three months

The magistrate could, as in an ordinary trial, put questions to the accused.

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Kangaroo

suspects

arrested

By ELIAS MALULEKE

POLICE this week swooped on a kangaroo court in Soshanguve and arrested 15 suspects who allegedly assaulted three youths "found guilty" of stealing a television set last month.

One of the victims, Harold Sello Khubayi, 15, died on April 24, three days after the assault.

Those arrested include the "judge" who allegedly passed the "death sentence" and other "comrades" who meted out "justice".

Police spokesman Maj A Vlotman confirmed the arrests which followed disclosures of the April 21 "trial" by City Press last Sunday.

Meanwhile, survivors Sonnyboy Mbatsane, 15, and Samuel Chauke, 14, were taken from their homes this week by two men claiming to be from the Federal Inter-Denominational Alliance (Fida).

Fida officials could not be reached for comment.

FRIEDMAN TO HEAD THE CAPE BENCH

Weekend Argus Reporter

THE new Judge President of the Cape will be Appeal Court judge Mr Justice Gerald Friedman, who will replace retiring Mr Justice George Munik early next year.

And South African legal history will be made later this year when Cape Supreme Court judge Miss Justice Leonora van den Heever will become South Africa's first woman Appeal Court judge.

Announcing the appointments yesterday, Minister of Justice Mr Kobie Coetsee said Mr Justice Friedman's appointment would take effect on February 1. Miss Justice Van den Heever will become an acting appeal judge on June 15 and a permanent member of the Appeal Court at the beginning of November.



**Mr Justice
Friedman**

Mr Justice Friedman, 63, a former president of the Cape Bar Council before his appointment as a judge, obtained his BA and LLB degrees from the University of Cape Town. He took silk in 1980 and was appointed to the Cape Bench in 1977.

Miss Justice Van den Heever, 65, now the most senior judge on the Cape Bench, obtained her MA from Pretoria University and LLB from the University of the OFS. She was admitted to the Bar in Bloemfontein in 1952 and became an SC in 1969.

HOUSE OF DELEGATES

INTERPELLATION

General Affairs

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

Criminal Procedure Act: section 205

1 Mr M RAJAB asked the Minister of Justice

Whether, in view of the Government's announced programme of reform, it is his intention to repeal or amend section 205 of the Criminal Procedure Act, No 51 of 1977, if not, why not, if so, (a) in what manner and (b) when?

D153E INT

The DEPUTY MINISTER OF JUSTICE Mr Chairman, the purpose of section 205 is to ensure that criminals are brought to trial. This is done by compelling persons who are likely to be in possession of material or relevant information pertaining to an offence, but who do not want to reveal it to the police, to furnish the information under oath.

The obligation to assist in combating crime and lawlessness rests on society as a whole. I submit that in this period of escalating unrest and crime, there can be no doubt about the validity of this statement. When I say that the responsibility to combat crime rests on society as a whole, it is clear that no section of society, including the media, can be exempted from this obligation. They, just as much as any other sector of the community, must take the responsibility for bringing criminals to book where possible.

Having said that, I must emphasise that the Government and the hon the Minister of Justice in particular are fully aware of the sensitive nature of section 205. For this very reason the hon the Minister has already initiated certain amendments to section 205, which were discussed with interested parties and which were placed on the Statute Book during the present parliamentary session by means of the Criminal Procedure Amendment Act, 1991. The repeal of this section or even a further amendment thereto is not under consideration at this stage.

HOUSE OF DELEGATES

These amendments referred to were discussed with, *inter alia*, the Media Council of South Africa. During consultations with the hon the Minister in March this year, the Media Council and individual legal representatives accepted that section 205 in its amended form should remain on the Statute Book and that this mechanism should be at the disposal of the State in appropriate circumstances.

In reaction to the reply the hon the Minister gave in Parliament on 9 April 1991, the Media Council again pointed to the fact that it supported the said amendments, but that there were certain practical problems regarding the application of the section that were in need of attention.

Certain proposals pertaining to administrative co-operation in the event of media involvement, which *inter alia* include a closer interaction between the Attorneys-General and the interests of the media, have been made. These proposals are at present receiving our attention. The hon the Minister reaffirmed this when, on Friday 10 May 1991, he said that with the blessings of the Media Council attempts would be made to bring about solutions which would, on the one hand, serve justice and, on the other hand, ensure that the privacy of the sources of journalists was honoured as far as possible.

Mr M RAJAB Mr Chairman, it is precisely because I view the hon the Minister of Justice as being in the vanguard of reform in this country that I have posed this interpellation to him. I wish to assure the hon the Deputy Minister that I have read all of the debates to which he referred.

The hon the Deputy Minister has, in fact, referred to a press statement released by the Media Council. I also would like to take this opportunity of referring to this particular media release. The statement was made by the Alternate Chairman of the Media Council, Mr Kotze, and is dated 10 April. He said it was necessary to clarify confusion in regard to this matter. He said:

The amendment of section 205 accepted by the Media Council and referred to by the Minister was only an interim step in negotiations between them, aimed at resolving problems arising from improper use of section 205 against journalists.

Will the hon the Deputy Minister now tell us—as he and the hon the Minister have up to the

present moment failed to tell us—whether negotiations with the Media Council are still taking place in this regard?

I want to place on record that I accept that the public has a right to the evidence of each and everyone. However, my plea is for an amendment in so far as the protection of journalists is concerned. I want to say to the hon the Deputy Minister that every action currently taken in the administration of justice, creates a precedent for a future regime and this alone is sufficient reason, at the present time, for widespread concern over the prosecution of journalists like Mr Patrick Laurence.

The simple question is this: Why should a journalist be under less of an obligation than any other citizen to disclose information that the authorities may need or may claim to need in the administration of justice? The short answer is that much of the most valuable information that a journalist receives, is given in confidence. To betray that confidence would not only be unethical, but would effectively close future sources of information. This in turn would frustrate the legitimate and surely valuable role of the media in exposing abuses.

To understand the importance of this, quite apart from the concept of the freedom of the Press, to which we subscribe, it is only necessary to cast one's mind back to the Information scandal of the late eighties. Had the reporters who exposed this blot on South African society not been able to offer informants a pledge of confidentiality, the whole investigation would almost certainly have fizzled out and the wrongdoing would have continued unchecked. In our view, therefore, the potential for political abuse of section 205 is obvious.

At a time when our administration of justice and civil liberties are under general review, we believe that a look should certainly be taken at this vexatious piece of legislation. I refer the hon the Deputy Minister to the situation that obtains in the USA, for example. I am sure he is aware that from 1932 onwards this privilege that journalists enjoy, has survived unscathed in numerous judicial decisions in that particular country. [Time expired.]

Mr M F CASSIM Mr Chairman, the idea that journalists should have the freedom to report, is an idea that is of absolute importance in any

democracy and we support that principle. We say that it is the right of journalists to be able to report freely. However, the matter which is of crucial importance here, is the matter of justice.

As the hon member for Springfield has pointed out, Mr Kotze was particularly concerned about the improper use of section 205, the emphasis being on the "improper use". Section 205 has relevance in that it is important in the interests of justice to have the most comprehensive evidence possible. Any court attempting to give judgment without the benefit of such evidence, may not give a decision that is in the interests of justice.

Here we have a balancing act. On the one hand it requires that the freedom of the journalist must be made paramount, as in the United States. It ought to be unscathed so that the public is entitled to know what is happening. On the other hand, if the course of justice is going to suffer, surely this matter will require a great deal of give and take between the Media Council on the one hand, and the hon the Minister of Justice on the other hand. Provided that such discussions are taking place, some sort of agreement can be reached. While it would not be a compromise, and it would not compromise either of the parties, it would allow for both these ideals to prevail in such a way that the reporter would have his total freedom, and the Department of Justice would be seen. [Time expired.]

Mr M ABRAHAM Mr Chairman, it is very clear that the hon member Mr Cassim has not heard my colleague articulating his point of view.

In my opinion, freedom of speech not only implies the right or the liberty of a person to speak freely, but it also embodies the right not to speak if one so desires. In this context especially one should respect the confidentiality which the journalist or reporter gives his or her source of information. In a society, especially one such as ours which finds itself in a period of transition, in which everything one does or says is viewed with an air of suspicion, we appreciate the efforts of journalists who try to expose corrupt practices and crimes.

If they choose not to speak, at times withholding confidential matters, one should respect that freedom. I am certain that if another incident like the unfortunate prosecution of a journalist such as Patrick Laurence occurs, one may have to live with a lot of intrigue and mystery in our

HOUSE OF DELEGATES

society, because very few journalists would want to take the chance of exposing their sources of information

My hon colleague has referred to the situation in the United States. In the US, no journalist is compelled to testify in a court of law during a trial as to where he got his information, and we hear of no serious problems taking place there [Time expired]

Mr M F CASSIM Mr Chairman, it does not give me great pleasure to speak after the hon member for Tongaat. For as long as he has been in this House, he has never managed to understand the sentiments that I have expressed. His negative views are on record for all to note

The question that is of the utmost importance, is the question of obligation. The hon member for Springfield has also referred to this. The crucial question here is whether someone is under an obligation or not. If one accepts the words of the hon member for Tongaat which I have written down—"if one so desires" and "if they choose not to speak"—it boils down to a matter of desire. The hon member is leaving the matter in the realms of choices and desires. This is hardly the correct way of determining the issue. The main issue is one of justice.

I want to make it clear that we on our side are as much in favour of justice as we are in favour of freedom of the Press. What we are appealing for, is a mechanism that will allow both these concepts to be held in balance. Surely that is what the entire issue is about. My appeal to the hon the Minister is to give favourable consideration to the freedom of the Press. The hon member for Springfield is absolutely correct when he says that in any country the rules and norms which one applies, are rules and norms which may also apply in the future.

We should not curtail the freedom of the Press lest that freedom be curtailed in a future dispensation. For the protection of our democracy now and forever, yes, I agree that the right of the Press must be paramount [Time expired]

Mr M RAJAB Mr Chairman, after having listened to the hon nominated member Mr Cassim, I am not sure whether he supports my view that a further amendment to the Act is necessary.

HOUSE OF DELEGATES

I wish to remind the hon member that section 205 could well be used against him. I believe that he was involved in a fracas with the hon the Leader of the Official Opposition because of his alleged conservative views in the committee that discussed the Land Acts. This kind of action does the already tarnished image of this House no good. I trust that in the interests of the public, that hon member will make a statement on this matter before section 205 is, in fact, invoked against him [Interjections]

Mr M F CASSIM Just let justice prevail!

Mr M RAJAB In the United States, nearly all of the states have a provision to protect the confidential information given to journalists. I looked at the statute of the state of Arizona which says in article 4 under "Privileged Communications":

A person engaged in newspaper, radio, television or other such work, or connected with or employed by a newspaper, radio or television station, shall not be compelled to testify or disclose in a legal proceeding or trial or any proceeding whatever, or before any jury or commission, or before a committee, or elsewhere, the source of information procured by him for publication in a newspaper or for broadcasting over a radio or television station with which he was associated or by which he is employed.

It is important to note that this comes under the heading of "Privileged Communications". Communication between husband and wife also falls under that heading. We know that in our law no communication between husband and wife can be used against one or the other in a court of law [Time expired]

The DEPUTY MINISTER OF JUSTICE Mr Chairman, I thank the hon members for their fair argument of this case. I would like to give the hon member for Springfield the assurance that this matter will be considered by the hon the Minister and the Media Council.

Much has been made of the example of the Laurence case. In very brief terms, what happened? What I find interesting is that reference is made to the Laurence case, but not to the Beyers case. In the Laurence case the allegation was made that certain ANC members took Mr Mkgwe away. What does Beyers say? Beyers says in the CP newspaper that it was the Intelligence Police who took the man away. The public

in South Africa has two versions. After all, does justice not demand and does society not demand that we should know what the facts are? Does justice not demand that we should know where the information comes from? I think that is a very important aspect that must be taken into account.

The hon member for Springfield referred to the question of privilege. That is really the crux of the matter. Does a journalist have an absolute—I emphasise "absolute"—privilege not to disclose his sources? That is not the case in South Africa, but I want to submit to the hon member that that is also not the case in the United States or in Britain. I want to refer the hon member to the case of *Branzburg v Hayes*, 1972, in the United States. On 25 April this year, a female journalist of *The Washington Post*, a Miss Linda Wheeler, was sent to jail for refusing to disclose her sources on a police raid which had failed. So it is also not an absolute privilege in the United States. We are in line with international standards as far as this is concerned.

Finally, may I say that the Government has a sound appreciation for the necessary role of the media in this case to protect their sources. On the other hand there is the demand by society that justice must be done. I believe that the Government has struck a fair balance. As the hon nominated member Mr Cassim said, there must be a balance between these two interests [Time expired]

Debate concluded

QUESTIONS

†Indicates translated version

For oral reply

General Affairs

Question standing over from Tuesday, 7 May 1991

Operation Vula: indemnity/investigation

*4 Mr M RAJAB asked the Minister of Law and Order

- (1) Whether the Government has granted indemnity to Operation Vula trialists,
- (2) whether the Government's decision in this regard has been made public, if not, why not, if so, in what manner,
- (3) whether a certain University of Durban-Westville lecturer, whose name has been furnished to the South African Police for the purpose of the Minister's reply, is still being sought in connection with the Police investigation into Operation Vula, if so, (a) why, (b) what are the circumstances surrounding the matter and (c) what is the name of the lecturer in question?

D115E

The DEPUTY MINISTER OF FOREIGN AFFAIRS (for the Minister of Law and Order)

- (1) Yes, only in respect of those who were charged and appeared before the court
- (2) Yes, in *Government Gazette* No 13131 of 22 March 1991 and the media
- (3) Yes

- (a) and (b) The person has not yet received indemnity in terms of section 1 of the Indemnity Act, 1990 (Act 35 of 1990). The South African Police would like to interview him regarding certain issues which are of a confidential nature. I am therefore making a friendly appeal to the person to make contact with the South African Police in order to enable the Police to finalise the matter. It would be appreciated if the hon member could be of assistance in this regard
- (c) M Shaki

Mr M RAJAB Mr Chairman, arising out of the hon the Deputy Minister's reply, may I ask him whether this particular gentleman has not, in fact, applied for indemnity?

The DEPUTY MINISTER OF FOREIGN AFFAIRS Mr Chairman, the answer clearly states that indemnity has only been granted to the people who were charged and appeared before the court. I am not aware of the facts of the matter and therefore cannot be of further assistance.

HOUSE OF DELEGATES

Thumbs-up for bill of rights (252)

DURBAN — There is broad consensus within the ANC and among democratic South Africans that a bill of rights is essential for a democratic South Africa. *Saw 14/5/91*

This emerged in a statement yesterday after a weekend conference in Salt Rock, north of Durban, on a bill of rights, hosted by the ANC's constitutional committee and the Centre for Socio-legal Studies at the University of Natal.

The statement said a bill of rights would guarantee political and civil rights and address the basic social and economic needs of all South Africans.

Issues which received special attention were the protection of gender equality, rights to education, health and land, and citizen's rights — Sapa

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Two new judges for Cape Bench

22 of 1985/1981

Supreme Court Reporter

TWO new judges, Mr Justice Willem Adriaan van Deventer and Mr Justice Gerhard Andre Kühn, have been appointed to the Cape Bench

This was announced by Justice Minister Mr Kobie Coetsee on Friday.

Mr Justice Van Deventer obtained a BA at Stellenbosch University in 1950 and his LLB with Unisa in 1954. He did his articles in Vredenburg.

He practised as an attorney in Nelspruit for seven years before joining the Johannesburg Bar. He joined the Pretoria Bar in 1978 and became a senior counsel in 1986.

He joined the Cape Bar in June 1988 and has served three terms as an acting judge.

Mr Justice Kühn matriculated at Outeniqua High School, George, in 1949, obtained a BA degree at Stellenbosch University in 1952 and his LLB two years later.

He qualified as an attorney in 1956 and joined a city law firm in 1958, first as an assistant and later as a partner. He joined the Cape Bar in 1972, took silk in 1987 and was appointed an acting judge in 1989.

● Mr Fritz Brand, SC, has been appointed an acting judge and will serve until June 21.

Mr Brand matriculated at Vredenburg High School in 1966. Between 1973 and 1976 he was a senior lecturer in commercial law at the University of Stellenbosch.

In 1976 he obtained his LLM degree (cum laude) and was admitted to the Cape Bar the following year. He took silk in 1989.



Mr Justice van Deventer



Mr Justice Kühn

Mr Fritz Brand

Mounting concern over political prisoners on hunger strike

By VIVIEN HORLER
Medical Reporter

HERE is mounting concern about the state of hunger-riking political prisoners who have been fasting for 15 days.

A doctor told The Argus that a hunger strike is starting. Patients tended to start developing serious problems

HEALTH

ter 10 to 14 days, including the possibility of kidney and other organ failure

There have been claims from political prisoners that hunger strikes in the prison's sick bay are being conducted without medical care oversight and that the strikers' physical condition is not being properly monitored

And there have been claims that fasting prisoners who had been transferred to Somerset hospital were shackled to their beds, although according to the medical superintendent of the hospital, Dr P J Roux, who visited the prisoners in their ward yesterday at the request of the Medical Association of South Africa, they are not shackled now

But a woman who visited one of the prisoners in the ward on Monday night told The Argus she had seen the shackle running from a single ankle cuff to the prisoner's hospital bed

The department of Correctional Services has denied that prisoners were chained. A spokesman said the prisoners were being treated "strictly in accordance with the internationally accepted guidelines pertaining to the handling of such (hunger-riking) prisoners"

She confirmed that six hunger-

striking prisoners had been admitted to Somerset Hospital since last Monday, but declined to comment on the conditions of any of them individually. A spokeswoman for the hospital referred callers to the department

Dr Tony Behrman, deputy chairman of Masasa's Cape Western branch, said the prisoners at Somerset were under the care of a kidney specialist Professor G Keeton of the University of Cape Town's faculty of medicine

Nineteen hunger-striking prisoners remain on Robben Island, pledged to continue their fast until release or death

The prisoners have been on hunger strike since May 1. In December last year the ANC declared April 30 as the deadline for the release of all political prisoners. But in terms of the Pretoria Minute in August last year, the government and the ANC referred to April 30 as an "envisaged target date" for the prisoners' release.

The ethical issues involved in the treatment of patients on hunger strike are covered by article 6 of the Tokyo Declaration, to which the Medical Association of South Africa is a signatory

The article says "Where a prisoner refuses nourishment and is considered by the doctor capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially."

"The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be

explained by the doctor to the prisoner"

A hunger striker loses three to four kilograms in the first week of fasting, which slows to about 300g a week after that. After about 48 hours of total fast the body's stores of carbohydrate are largely depleted, and then energy needs are met from a breakdown of fat stores and also, to a smaller extent, from muscle

After about four weeks — less in a thin person or someone who has been on an inadequate diet — fat stores are used up and then the body starts to feed on its own protein. At this stage bodily functions begin to deteriorate rapidly

Early symptoms of starvation include hunger (which passes in a few days), weakness, headaches, feeling cold, lack of concentration, irritability, insomnia, dizziness and stomach cramps

Later the patient may become dehydrated, have circulatory and heart problems, become confused or apathetic, succumb easily to infections, lose body heat and suffer from diarrhoea. Prolonged fasting leads to the failure of the kidneys and other organs

According to medical guidelines, patients should be admitted to hospital if they have lost 10 percent of their weight, lose their sense of thirst, become confused, sick, feel the cold badly especially in their hands and feet, or suffer from diarrhoea.

In guidelines sent to doctors they are told that a hunger strike is not a form of suicide. "The intention of this act is not to cause death, rather voluntary total fasting is one of the few possible ways still open to the participant

of making a statement on some issue"

Concern about the hunger strikers has been voiced by doctors from the National Medical and Dental Association, Namda, by prisoners who were released from the Island last week, by workers and families at Cowley House, the halfway house for released prisoners, and by lawyers who have been denied access to the prisoners for the past 10 days.

Dr Kammy Chetty of Namda said the health status of the prisoners on the Island was unknown. "The problem is one of access. Those on the Island are not allowed to see their private doctors and they are not being allowed to see their lawyers either

"Fasting is a severe health risk and all fasting prisoners should be placed in hospital to ensure continual medical and nursing care. Keeping prisoners in prison, where they are not assured of constant medical and nursing care is placing their lives at severe risk"

A visitor to one of the patients at Somerset said he had seen his weight drop from 75kg to 61kg. "Their spirits are high, but when you look deep into their eyes you can see the suffering. They are weak"

A doctor who examined two of the prisoners who were freed last week after fasting for eight days said they were weak from starvation and emotionally overwrought

He said people were also worried about the prisoners' psychological state. "One is less able to cope with stress and tension when one is fasting, and these

prisoners have been on tenterhooks about their future for several months, with no idea of when or if they are to be freed

"The prisoners who were released on Saturday were given only two or three hours' notice, which is traumatising. People need time to adjust to the thought of freedom, to pack their belongings and to say farewell to people they have been imprisoned with."

Many of the prisoners, anticipating their release, had used up their quota of visits

Mr Mosa Nkaota was released on Saturday after fasting for 11 days. "I am recovering now. I started to eat on Sunday and already I feel stronger. There have been no long-term effects on my body"

Mr Nkaota said that while he was fasting he had stomach cramps, a headache and felt dizzy. "It was very difficult. I am very worried about the people we have left behind. Why can't they just release us all, why three to-day and six tomorrow?"

Civil rights lawyer Willie Hofmeyr, who went on a hunger strike for 27 days in 1989 while he was detained, said "From 10 days on you feel terrible. You feel weak and your whole metabolism slows as your body starts to consume itself

"The supply of glucose to the brain is cut, which results in a continuous nauseous headache. After the first few days the overpowering hunger disappears but you have an awful taste in your mouth and you long for the taste of something nice

"It becomes a hell of a strain to do anything for yourself."



FREEDOM . . . Mr. Sazi Ndlovu welcomed yesterday after being released from Robben Island.

3 Island prisoners, hunger striker freed

Staff Reporter

THREE political prisoners were released from Robben Island yesterday, and one from Somerset Hospital.

Thabo Memela, 21, was released from hospital where he had been admitted for kidney-related problems after being on a hunger strike for 14 days.

He had served four years of a 14-year sentence. Antonio Du Preez was released after serving four years of a 15-year sentence for his part in assisting ANC member Gordon Webster escape from a Maritzburg hospital.

MK members Sazi Ndlovu and Andrew Mathabatha were released after serving one year of their 12-year sentences.

There are 29 Robben Island prisoners still awaiting release from the island, 18 of whom are on hunger strike. Six have been hospitalised through hunger strike-related illnesses and one is undergoing therapy in Valkenberg Hospital.

'Urgent need' to ease courts' load

GERALD REILLY

252

PRETORIA — SA was in desperate need of a dispute-resolution mechanism to lighten the heavy burden of the courts, labour expert Nic Wiehahn said last night

Wiehahn has been appointed chairman of the Resolution Board — an organisation established to address the need for alternative dispute-resolution procedures for a wide range of issues.

These include matters ranging from collective and individual disputes to community, civil, environmental and marital disputes.

Wiehahn said mechanisms were urgently needed to meet society's and the individual's growing need to resolve conflict in times of rapid economic, environmental, social and political change. *8 Day 16/5/79*

The Resolution Board, he said, was a neutral and independent body offering parties the use of various dispute-resolving procedures, including mediation, conciliation and counselling

It also offered a wide range of neutral mediators, arbitrators, conciliators and counsellors drawn from more than 40 panellists.

Wiehahn said the board would be dedicated to solving conflicts and would provide expeditious, cost-effective and professional services to parties in southern Africa.

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Rantao	Simon	1946-09-25
Ranyaoa	Molekoane Joseph	1963-08-14
Rapolai	James Gabriel	1936-03-13
Rasmeni	Mlungisi	1957-09-05
Saidi	Lerato Ouma Rudo Jane	1953-10-10
Tau	Constance Sehlonyane	1958-09-04
Wulana	Mabandla Alfred	1967-12-23
Zithulele	Pefile	1959-10-05

(17 May 1991)/(17 Mei 1991)

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NOTICE 429 OF 1991
DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development; and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No. 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No. 74 of 1982), as the case may be.

KENNISGEWING 429 VAN 1991
DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENSKENNISGEWING No. 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENSKENNISGEWING VERSTREK HET

Die Direkteur-generaal: Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No. 501 van 6 Maart 1991 onderskryf het; en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrekket het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terronsme, 1967 (Wet No. 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No 74 van 1982), na gelang van die geval

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Adonis	Colbiert Thembinkosi	1960-04-14
Eyman	Sarah Sinah	1957-11-27
Khambule	Andries	1973-01-17
Kheswa	Dumisani	1973-09-10
Khowa	Thokozane David	1970-01-11
Khumalo	Linda Dominic Sibiya	—
Lebenya	Leo	1958-01-06
Ledwaba	Shono May	1953-10-15
Mabena	Sipho Elias	1962-05-06
Mabone	Tebogo Sydney	1954-10-17

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Madlala	Nala Moses	1973-05-08
	Mafekeng	Elizabeth Rokie	1918-09-11
	Maheli	Bob Frank	1929-06-23
	Mahlangu	Reuben	—
	Mahlati	Makhosonke Grifford	1942-04-07
	Majikijela	Linda	1964-12-31
	Mampane	Jan Mabuse	1945-05-15
	Mathe	Clarah Maropeng	1960-09-12
	Matidze	Wilson Takalani	1950-01-29
	Maywaza	Adani Adalberto	1956-12-02
	Mfuse	Richard	1949-11-13
	Mkhize	Victor Teddy	1966-08-01
	Mkhize	Petros Dumisani Ahmed	1960-03-21
	Mokoena	Abey Sampie	1952-07-22
	Molaoa	Ethel Mpho	1956-04-13
	Mongalo	Anthony Le Clerc	1936-07-08
	Moses	Thabo	1961-08-28
	Mosothoane	Desiree Mona	1967-01-26
	Motsialedi	Sethololo Stephen	1952-02-02
	Mpale	Zigqibo Dennis	1938-05-29
	Mpila	David Cijimpi	—
	Mpongoshe	Bonakele Barend	1963-08-23
	Msimang	Makhosazana Nonkululeko	1953-03-11
	Msomu	Patrick Ndabenhle	1957-01-17
	Mtbatten	Mani Qina	—
	Mtya	Hakhemile	1963-11-10
	Mvelase	Vusi Vivian	1968-10-29
	Nala	Themba	1953-01-01
	Ndaba	Richard Mluleki	1964-06-24
	Ndaba	David	1954-07-16
	Ndabana	Price Siphon	1940-04-02
	Ndebele	Siphon Mbuso	1963-06-07
	Ndlozi	Hudson Mthunzi Ephelon	1958-09-22
	Njobe	Makhunga Wintshi	1928-07-05
	Nkadimeng	Edward Nkatani	1963-06-17
	Nkanti	Mzwakhe	1963
	Nthunya	Nathaniel 'Mona	1956-06-04
	Ntlhokoe	Maedi Samuel	1967-03-20
	Ntsibande	David Shadrack	1960-09-28
	Nyawo	Jeffrey Sibusiso	1964-07-31
	Phala	Andrew Levoy	1961-10-12
	Phiri	Phillip Norman	1957-08-08
	Ramakaba	Irene	1931-05-08
	Setlhapelo	Qabilwe Roy	1955-03-21
	Shezi	Lucas Bongani	1968-07-15
	Shisana	William Oupa	1951-03-04
	Tau	George Molatlhegi	1958-03-16
	Thabede	Christian	1968-05-09
	Tsagae	Michael Rakuoane Mickey	1955-11-22
	Tshikare	Peter Lesego	1923-11-33
	Tshume	Hintsa	1938-07-12
	Tsietse	Tshehla Zacharia Mbele	1967-02-12
	Ulana	Alie Xolani	1971-03-31
	Wulana	Mabandla Alfred	1967-12-23

2 sentenced over death of black man

By Cathy Stagg

A young white man who beat up a black pedestrian and had him dragged away and left to die was jailed for 12 years yesterday by the Rand Supreme Court.

Mr Justice J M C Smit conditionally suspended half the sentence so that Marthinus Christoffel Lamprecht (21) would have a "sword of Damocles" hanging over his head.

A second accused, Cornelius Pieter Polley Flemming (18) was convicted of assault with intent to do grievous bodily harm and sentenced to five cuts and a suspended 18-month sentence.

The judge said both young men had shamed themselves and their families, and had caused incalculable harm to the relatives of the innocent man on whom they had launched a senseless attack.

Dragged

On November 27 1988 Lamprecht punched Fistus Dikolabe, knocking him down. This happened at Flemming's home in Krugersdorp North, where Lamprecht was a boarder.

Lamprecht went into the house to fetch water to throw over Mr Dikolabe, and told Flemming about the attack.

Flemming and another man dragged Mr Dikolabe under a tree and left him there in the rain. He was found by the police at 7 am the next day and rushed to hospital, but died hours later of brain damage.

Addressing Lamprecht in court yesterday, the judge said "If you had the courage of a man after your reprehensible deed and had taken Mr Dikolabe to hospital, he might have lived."

Mr Justice Smit said it would be a bleak day for South African justice if such a crime were not punished severely.

The judge found extenuating circumstances in the murder. Lamprecht was 19 at the time and under the influence of alcohol, and did not have the direct intention to kill. It was aggravating that it had been a continued, brutal assault on a helpless victim for no apparent reason.

Neither accused had previous convictions.

Farmer fined for whipping youths

Northern
Transvaal Bureau

Star 11/11/77
MESSINA — Wynand Johannes Erasmus, 37, has been found guilty in the Messina Regional Court of whipping nine youths on his farm near Weipe on November 22

3-6-77 252
Each youth received between eight and 20 strokes on their buttocks

Erasmus admitted whipping the youths, allegedly for stealing aluminium pipes

Naison Mbedzi (35), who held the youths while they were

whipped, was found guilty on the same charges

Erasmus was fined R12 000 (or two years) and given a suspended three-year sentence.

Mbedzi was fined R1 000 (or 300 days) plus a one-year suspended sentence

Bhagwati's visit rekindles debate on role of the courts

LAW & THE COURTS

Carmel Rickard (22)

A gale of fresh ideas blew through the South African legal establishment this month, with a visit by India's former chief justice, Judge Prafullachandra Natvarlal Bhagwati.

He shocked some and inspired others by his radical brand of judicial activism. His ideas have also rekindled debate on the role of the courts in a post-apartheid society and limits on their power.

A fascinating man, small and unprepossessing in appearance but intellectually remarkable, he has a passion for justice, particularly justice for the deprived.

He acknowledges Mahatma Gandhi as the principal influence on his life, and recalls to the minute hearing Gandhi urge the start of the "Quit India" movement, directed at achieving British withdrawal.

Inspired, he gave up his studies to participate in the movement. He was jailed, and was later sought by the police, going underground to evade arrest. The inspiration of Gandhi has never dimmed through his days as chief justice of Gujerat and later as India's chief justice.

Soon after his appointment to head the Gujerat bench Bhagwati visited the state's rural areas where he saw the poverty of the people and realised they were not benefiting from the decisions he made in the courts.

This shaped his thinking on legal aid and legal education programmes. It also made him determined to interpret the law to the advantage of those who needed justice most.

Bhagwati believes virtually nothing should stand in the way of the courts acting as they believe best for the people of the country.

Judges should find a way of creatively interpreting the law in order to ensure both that justice is done and that the human rights values he believes in are carried through

into society.

The values to which he would appeal are those found in international conventions and human rights charters, he says the fact that these values are enshrined in such conventions means they are a reflection of international morality and so are internationally applicable.

But this raises the debate whether the courts can make decisions, even where they embody internationally sanctioned principles of justice, when this is not obviously intended by the law or the law makers in parliament.

There appear to be at least three main schools of thought on the subject. The conservative, mechanistic view holds that judges should interpret the law strictly by content, asking merely what parliament intended. A more progressive position is that judges should interpret the law creatively in a way which favours fundamental liberties. At the other extreme is Bhagwati's brand of judicial activism which seems to go further than merely interpreting the law in a way favourable to human rights. This view seems to be prepared almost to go beyond the law in ensuring justice is done.

Progressive critics of this radical view say elected members of parliament, chosen by popular support, embody the will of the people more closely than an appointed judiciary, and that a judge's work is to interpret the law in a way most favourable to human rights — not to infringe the sovereign power of the legislature.

Bhagwati, who addressed lawyers and judges around the country, was brought to South Africa by the Legal Resources Centre as a special guest for the 10th anniversary celebrations of the Durban LRC.

Much of the work of the LRC in Durban and in other branches has been marked by the creativity of argument encouraged by Bhagwati and a passion for human rights similar to his.

Director of the Durban LRC, Richard Lyster, said most of the work of his office over the last 12 months concerned land, housing and squatters in and around Durban, getting the benefits of the law to those "at the bottom of the political and economic ladder".

But the range of the LRC is wide, and over its 10 years has included a landmark decision which radically changed the implementation of the notorious "idle and undesirable" section of the Urban Areas Act, leading to a dramatic decrease in the number of people carted off to labour camps.

Cases dealing with detention, consumer protection, labour issues, gender and race discrimination have all been taken to the courts by the LRC, with a high success rate.

The LRC has also been closely involved in issues related to Natal's civil war, and a major legal challenge to the dangerous weapons issue is due in the supreme court in June.

Commenting on the possible impact of Bhagwati's visit, Lyster said the Natal bench had shown itself in the past to be judicially innovative. He hoped Bhagwati's input would encourage this trend.

During his South African visit, the judge was also in contact with members of the Appellate Division, and Lyster said he hoped Bhagwati's "creative approach to legal interpretation" would encourage judges of the AD to continue the progressive work seen in a number of recent judgments.

LAWYERS
say Web
KNOW
Webster
Killer

By MARTIN WELZ

LAWYERS representing the Webster Family Trust believe they know the identity of one of the men involved in the murder of Dr David Webster on May Day in 1989

Sunday Times 19/5/91

But they want certain personal assurances from President De Klerk before they reveal what they know about the murderer of one of the country's leading left-wing academics

They are afraid of what might happen once they disclose the nature or source of the evidence to the police

Two weeks ago Idasa leader Dr Frederik Van Zyl Slabbert saw Mr De Klerk at his office in Parliament and conveyed a top-secret message from the lawyers

Dr Slabbert had an appointment to see Mr De Klerk about other matters, and agreed to use part of the time to convey the lawyers' request

252 Fear

The Sunday Times has been told the lawyers fear interference from military quarters. The lawyers point to the open defiance shown by senior military officers last year when they were ordered by President De Klerk and Defence Minister Magnus Malan to produce records of the notorious CCB

Dr Slabbert confirmed this week that he had seen Mr De Klerk in Cape Town "I had one of my rare interviews with him and wanted to invite him to address a meeting He was unable to accept the invitation"

Told that the Sunday Times knew of the lawyers' request, Dr Slabbert confirmed that he had agreed to convey a message from "certain lawyers" to Mr De Klerk

HOUSE OF REPRESENTATIVES

QUESTIONS

Indicates translated version

For written reply

General Affairs

Certain police stations offences

6 Mr L T LANDERS asked the Minister of Law and Order

(i) Pinetown	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
(ii) Clairwood (Montclair police station)	15	30	45	252	25	263	672	556	1 539	0
(iii) Mayville	9	13	33	145	17	93	352	94	489	0
(iv) Greenwood Park	55	51	94	507	50	395	520	560	1 084	6

Note

As the South African Police is not satisfied with the crime situation in the Republic of South Africa, drastic measures are being taken to combat the occurrence of crime in the country. In this regard I wish to draw the hon member's attention to Operation Sentry, including Operation Thunderbolt and other similar operations during the past twelve months. These operations have proved to be very successful. The situation, however, is continuously being monitored and I wish to assure hon members that everything possible is being done to prevent crime.

I also wish to draw the attention of the hon member to the fact that since 1 January 1990 the Port Natal Division no longer exists, but is part of the greater Natal Police Region.

Judges/magistrates visits to police cells

8 Mr P R E DA GAMA asked the Minister of Law and Order

On how many occasions in 1990 did (a) judges and (b) magistrates inspect or pay visits to police cells in connection with persons awaiting trial?

C44E

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) robbery, (g) theft of vehicles and cycles, (h) damage to property, (i) housebreaking with intent to steal and theft and (j) possession of drugs were reported at each specified police station in the (i) Pinetown, (ii) Clairwood, (iii) Mayville and (iv) Greenwood Park police station areas in the Port Natal Division in 1990?

The MINISTER OF LAW AND ORDER

C41E

The MINISTER OF LAW AND ORDER

(a) 2 occasions in respect of awaiting-trial prisoners
8 occasions in respect of detainees in terms of security legislation
(b) 113 occasions in respect of awaiting-trial prisoners
849 occasions in respect of detainees in terms of security legislation

SAP members charged with assault

10 Mr P R E DA GAMA asked the Minister of Law and Order

(1) (a) How many members of the South African Police Force were charged with assault during the latest specified 12-month period for which statistics are available and (b) how many such members were convicted,
(2) whether any of these members were dismissed from the Police Force as a result of being so convicted, if so, how many,
(3) whether the State has paid out any amounts to the victims of these assaults, if not, why not, if so, (a) what is the total amount involved and (b) in respect of what date is this information furnished?

C51E

The MINISTER OF LAW AND ORDER

(1) (a) 633
(b) 372
(2) Yes, 4
(3) Yes
(a) R888 212,88
(b) 1 January 1990 until 30 December 1990

Note

I also wish to draw the attention of the hon member to my reply to oral question no 9 in the House of Assembly on 7 May 1991

People's courts: incidents

13 Mr L T LANDERS asked the Minister of Law and Order

How many incidents involving people's courts were (a) reported to and (b) investigated by the South African Police in 1989 and 1990, respectively?

The MINISTER OF LAW AND ORDER	1989	1990
(a)	12	127
(b)	12	127

Policing activities drug abuse

16 Mr T R GEORGE asked the Minister of Law and Order

(1) How many members of the South African Police were involved in policing activities relating to drug abuse in the (a) Greater Johannesburg area and (b) Republic as at the latest specified date for which figures are available,
(2) (a) how many policemen of each race group were convicted of offences relating to (i)(aa) dealing in, (bb) using and (cc) theft of drugs and (ii) aiding and abetting drug dealers in each specified police station area in the Greater Johannesburg area during the latest specified 12-month period for which figures are available and (b) what disciplinary steps were taken against these policemen,
(3) whether he will make a statement on the matter?

The MINISTER OF LAW AND ORDER

C79E

(1) (a) 101

(b) 716 (including the 101 members referred to in paragraph (a))

(2) (a) (i) (aa) 1 Black member
(bb) No members
(cc) No members

(ii) No members

(b) After his conviction in a magistrate's court the member was discharged from the South African Police

(3) No

Soshanguve residents reject people's courts

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Sowetan 21/5/91

21/5/91

By ALINAH DUBE

THE Soshanguve Residents Association has distanced itself from the "kangaroo courts" in the township.

Sorea chairman Mr Benny Makena told residents at a meeting at the weekend that the organisation was aware that certain individuals were committing acts of violence "in the name of the struggle and that of Sorea"

He referred to the recent death of a 15-year-old in the township after a "kangaroo court" hearing and warned that more lives would be lost if perpetrators of such deeds were not dealt with

Sello Khubayi of Soshanguve, died at Garankuwa Hospital on April 24 after being severely assaulted by men who accused him of having stolen a TV set in the township.

Makena urged members of the com-

munity to take it upon themselves to ensure that structures such as people's courts did not operate in the area in accordance with a resolution taken by residents on April 7

"Those who allowed themselves to be used in the killing of their fellow brothers are agents of apartheid," he said.

Several speakers agreed that the best way to deal with the culprits would be to expose them once they had been found out.

Residents also complained about the so-called comrades who allegedly intimidated passengers on trains. They said people have had their tickets confiscated and others robbed of their belongings by "comrades".

Police 'not culpable' for Soweto killings

By Day 23/5/91

252

JONATHON REES

AN INQUEST into the deaths of 22 people in Soweto on 26 August 1986 found yesterday that police or municipal police might have been responsible for 20 of the deaths, but that they had not acted unlawfully.

Inquest magistrate C J de Lange said evidence was that a police unit based in Mapetla, Soweto, had been returning to base on August 26 1986 when they came across a group attacking a Peugeot with pangas, axes and sticks. One man was on the roof with a panga and a woman was heard screaming inside the vehicle.

When police stopped they were attacked, and opened fire to save the occupants of the vehicle and defend themselves.

Police had caused the deaths of five people during "drastic action required to save their lives" but had not acted unlawfully, the magistrate said.

On the same date, in Rockville and White City, also in Soweto, the magistrate said evidence was that municipal police had taken action during a night of public violence, at times firing shotguns loaded with buckshot. It was possible they had been responsible for the majority of the 15 deaths in the area.

"There was however no evidence that any of the deaths were brought about by an offence on the part of the police. The SAP had arrived only after 10 30pm and were

not responsible for any of the deaths, De Lange said.

He said the court was aware of the chaotic circumstances in Soweto at the time. Negotiations between residents and police at the scene would not have helped as people were "behaving like wild animals".

Media reports at the time indicated residents, particularly the youth, mobilised to defend themselves against eviction by Soweto council officials trying to break a rent boycott in the township.

The official death toll finally stood at 24, with almost 100 injured. The deaths prompted a parliamentary debate, with calls for a judicial commission of inquiry being led by former DP MP Helen Suzman.

Lawyers for Human Rights (LHR) litigation spokesman Ahmed Motala said the organisation was extremely disappointed by the decision, and expected more enlightened decisions by judicial officers.

"This clearly indicates the unwillingness of our courts to hold members of the security forces accountable for their actions," said Motala.

He said the LHR was concerned the inquest was heard more than four years after the incidents. "It is an indication that when there has to be an inquiry into the actions of members of the security forces, the wheels of justice turn very slowly."

Prof Robert Charlton of Wits U of Education Rector during y

Mabuza: let Promat run colleges

By Day 23/5/91

TANIA LEVY

FORMER KaNgwane chief minister Enos Mabuza said yesterday he would like to close down all teacher training colleges in the bantustans and in "white" SA and hand them over to the independent trust Promat.

Mabuza was speaking at the official opening of the Promat College of Education in Cullinan, north of Pretoria — SA's first independent non-racial teachers' training college to be opened in more than 30 years.

He said the experiences of Promat — whose matric colleges for teachers have become synonymous with impressive pass rates in recent years — should be used to reform and revitalise the education system.

The Promat College was essential to recreate education values, he said. The Promat College opened in January to 128 student teachers chosen from 4 000 applicants.

Situated on the farm of a former Lutheran mission, the Promat College campus was developed with R6m from the Anglo American and De Beers chairman's fund, R400 000 from the British government and R3m from German church group EZE and donations from several countries and major companies.

'Be traditional' at rally, Zulus urged

By Day 23/5/91

THEO RAWANA

INKATHA president Mangosuthu Buthelezi announced last night that Zulu King Goodwill Zwelithini would address a mass meeting of Zulus at the FNB Stadium near Soweto on Sunday and that they would be encouraged to wear "traditional attire".

The announcement came just days after President F W de Klerk reached an agreement with Zulu leaders, including Zwelithini, curbing the carrying of Zulu spears.

Inkatha spokesman Suzanne Vos said there would be no reason to fear any violence if there was no provocation, ambushes or attacks from ANC supporters.

"It is not an Inkatha gathering, but an 'imbizo' at which the king will deliver a special message to his people," she said. Vos denied the meeting was ill-timed.

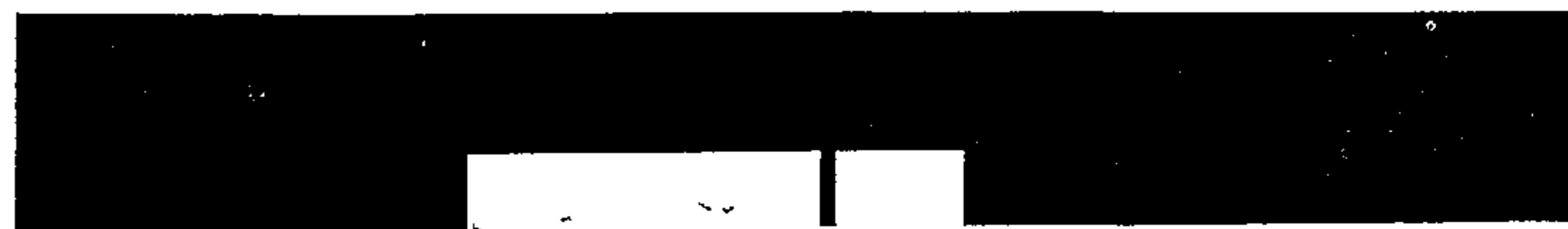
A statement called on Zulus from throughout Transvaal to be "attired in their cultural dress" as the king and his entourage would do the same. It did not specify whether this included "cultural weapons".

Zwelithini would be accompanied by Buthelezi, chiefs and other dignitaries.

Vos said the ANC should "do everything possible" to prevent its followers from provoking anyone.

To support her assurance that there would be no violence, Vos cited the rally Inkatha held in Jabulani, Soweto in March. "On that day the ANC was also burying a member who had died in a bomb blast. But there was no trouble."

PEANUTS By Charles Schulz



LAWSUITS *W/mant 1915 = 23/5/91* (252)

TWENTY lawsuits — three charges of malicious prosecution, 15 of unlawful arrest or detention and two of defamation — were brought against Justice Minister Kobie Coetsee during 1990

Two of these were successful, eight were settled out of court and two were not proceeded with by the plaintiff. In total, R25 850 was paid in out of court settlements.

Mbeki pays tribute to Van der Merwe

CAPE TOWN — Widely respected Green Point MP Tian van der Merwe would rest in peace if all South Africans joined hands to create a just and free SA, ANC international affairs director Thabo Mbeki told mourners yesterday.

The NG Kerk in Three Anchor Bay was packed for the funeral of Van der Merwe, who was killed in an accident on Sunday. In his address Mbeki said the country was proceeding on its way towards the kind of SA Tian van der Merwe wanted — a SA at peace and free.

"But as it proceeds towards what Tian wanted, there are moments of despair, like this one, difficult moments, as when people

in hospitals are about to starve to death, difficult moments when news is announced of the death of a friend of South Africans, Rajiv Gandhi and it is at particular moments like this that we need Tian, to bring that touch which lifts us."

DARIUS SANAI reports that in Johannesburg about 40 people gathered at a memorial service in the Central Methodist Church conducted by Bishop Peter Storey. DP MP Dave Dalling praised Van der Merwe's dedication to "the oppressed and underprivileged", and said the loss of a politician of his ability was especially tragic in the current political situation. — Sapa



DP MP Dave Dalling and Bishop Peter Storey at yesterday's memorial service. Picture: ROBERT BOTHA

Tourism

Revenue up to R2,47bn

LESLEY LAMBERT

CAPE TOWN — Foreign tourists brought a record R2,47bn into SA last year — 16% more than in 1988, according to the SA Tourism Board's (Satour) 1990 report.

Arrival figures from abroad totalled 1,02-million — a 10,6% increase over the total number recorded the previous year.

Of these, 51,4% came from African countries and 48,6% from overseas, the board reports.

Europe continued to be

Braklaagte incorporation appeal fails

BLOEMFONTEIN — The final bid by Braaklaagte community in the Marco district to reverse their incorporation into Bophuthatswana has failed. The Appeal Court has dismissed with costs the appeal by community leader Pusey Nsanyana Sebogodi.

The appeal dealt with Sebogodi's earlier application that the proclamation, whereby Braklaagte was incorporated from December 31 1988, be declared invalid.

Mr Justice Joubert found Sebogodi had failed to establish its invalidity. Mr Justice Nestadt, Mr Justice Kurlen, Mr Justice F H Grosskopf and Mr Justice Preuss (acting judge of appeal) concurred.

WILSON ZWANE reports that a Trauvaal Rural Action Committee (Trac) spokesman said the organisation was disappointed by the decision

The problems the community had faced since its incorporation into Bophuthatswana "will not go away unless the whole issue of communities who have been incorporated into the homeland is addressed politically".

Yesterday Mr Justice Joubert said counsel for Sebogodi had contended government had fettered its discretion before the State President acquired — on April 30 1987 — a vested statutory discretion in respect of the incorporation of the farm Braklaagte. Secondly, that the President, when he entered into an agreement with the Bophuthatswana President on August 30 1985 — fettered his discretion before he had even acquired the discretion on April 30 1987.

Mr Justice Joubert said the fundamental objection was unsound. The finality of government's decision of October 15 1984 that Brak-

laagte should be incorporated should be seen in its proper setting in the historical background to the case. The decision was taken after the opinions of interested people were canvassed in 1983. No objections were raised.

Mr Justice Joubert said the "finality" of government's decision of October 15 1984 was actually of a relative nature which amounted to a reversal of its earlier policy to resettle the occupants of the farm and to make it available for settlement by white farmers. In principle nothing precluded government from abandoning or altering its "final decision".

The judge found the submission that the decision of October 15 1984 fettered government's discretion could not prevail. Instead the case turned on the President's exercise of his statutory discretion. — Sapa

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... as the plaintiffs amend their claims in all 37 cases
The hearing continues — Sapa

White teenagers guilty of brutal assault on passerby

By SUSAN RUSSELL

THREE teenagers who fatally assaulted a black man on a Krugersdorp street were convicted of culpable homicide in the Rand Supreme Court yesterday.

The three, aged 15, 16, and 17 at the time, assaulted Patrick Butinyane Matihole on February 17 last year. They are all minors and may not be identified. They pleaded not guilty to murdering Matihole, who was with

Ida Sithole when the three attacked him in what the judge called a brutal assault.

The three said they had been to a party and had drunk strong liquor before going to sleep at the home of one of the teenagers' grandmothers.

They told the court Matihole was making a noise arguing with Sithole and they told him to be quiet. They denied they had intended to assault Matihole.

Mr Justice B O'Donovan said the three had made a bad impression. However, he accepted they had consumed strong liquor on the night of the attack.

He found the State had not proved necessary intent to commit murder.

Despite their youth the court found them guilty of culpable homicide. The trial was postponed to June 11.

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UNANSWERED QUESTIONS: JOHN PERLMAN looks at the evidence the SAP refuses to acknowledge

The bonfire of the memos

HUMAN rights lawyers could make a large bonfire out of the papers they have put before the police detailing abuse and lack of impartiality in situations of violence. The affidavits, statements, memoranda and appeals all stack up to an impressive height. Not so the results they have produced.

"When we have presented detailed allegations we have never had a satisfactory response. At best we are pressed to prove that we had good reason to release the memorandum," says Fink Haysom, an associate professor of law at the University of the Witwatersrand. "At worst there's no response at all."

Haysom's legal firm has been extensively involved — with trade unions, the United Democratic Front and others — in compiling memoranda detailing the role of police and of warlords in the violence.

"Lawyers are sent on a paper chase. The police ask to see the witnesses. They ask for more statements. They ask you to bring your witnesses to an identity parade. Sometimes the suspect who is being ID'd isn't there, and even if he is, nothing ever comes of it. One's client gives up hope of any satisfaction, particularly when raising a complaint jeopardises his life and the life of his family. No improvement in prosecution records has resulted from the memoranda we have compiled."

Another lawyer working in the field put it like this: "You end up becoming the policemen and the police turn into judicial officers investigating your claims. They say they will act when they have complaints. Compare that with the way they operated when investigating so-called security crimes."

"At first we attempted to make the fullest use of legal remedies," says Haysom. "We started off by pressuring and even assisting the police to prosecute the perpetrators of the violence, but we had so little success. There have been some 4 000 people killed in the Pietermaritzburg area alone, yet there have been about a dozen successful prosecutions for these crimes."

These are some of the major memoranda that have been put before the



MORE QUESTIONS THAN ANSWERS ... Fink Haysom with some of the evidence submitted to the police

Photo: KEVIN CARTER

minister of law and order and others:

● March 8, 1989, a memorandum was faxed to Law and Order Minister Adriaan Vlok: This document detailed a number of instances of "police failing to do their duty or acting unlawfully". In one instance, an Inkatha member, Thulam Ngcobo — who had been seen in the company of policemen and assisting with interrogation — was charged with attempted murder. Ngcobo's firearm, for which he had no licence, was seized and then returned — and only recovered for ballistic tests seven months after the incident

In another case, four men who had been granted an interim interdict in the supreme court protecting them from particular Inkatha members were attacked in separate incidents and two of them killed. Only one prosecution, however, arose from the killings. In a third instance, the memorandum documented the progress made in investigating two charges of murder, two of arson and one of kidnapping against a warlord named Sichizo Zuma. In the case of the murder of Rhee Ngubane, the document said, witnesses were sent

to the police, but were not even questioned.

In the second murder case, of Mduduzi Mdlala, witnesses were called to see the investigating officer, but he was not there. They were told to leave their statements, which would be "sufficient". All the alleged crimes involving Zuma took place in late 1987. By March 1989 no progress had been made — prompting the writing of the memorandum.

Given the seriousness of the allegations presented to Vlok, the lawyers requested a response within seven days. They never received one. A response much later outlined what witnesses had been interviewed and to what effect. "This was information we already had," a lawyer involved in the case said.

● A memorandum handed personally to Vlok on 20 February 1990, entitled "Cosatu and UDF: Concerns and Complaints about Policing in Natal": The document stressed at the outset that the police were not viewed as responsible for the violence in Natal. "Certain policing practices", however, were a "barrier to the resolution of the violence, and in certain cases, exacerbated or inflamed

the situation".

The memorandum charged that crimes were tending to go unpunished, even when the perpetrators were known

"Ordinary residents therefore commit retaliatory criminal actions, believing that violence goes unpunished," it said. A number of cases were detailed. In one, two members of a family alleged that they were assaulted after policemen and an Inkatha warlord entered their home. A criminal complaint was lodged, but "no attempt was made to trace the policemen involved and only the warlord was charged".

Three trial dates were set without the matter proceeding, once because the investigating officer failed to bring the docket to court. On the day before the next trial date, a witness was murdered. The matter was eventually withdrawn.

"Vlok said he would discuss our concerns with De Klerk and come back to us," Haysom says. "He never did".

● September 1990, a memorandum was presented to Vlok, State President FW de Klerk and Justice Minister Kobie Coetsee: The documents included details of court interdicts granted, restraining kwaZulu and South African police from assaulting residents of a number of townships including Mphophomeni, Mpumalanga and Isithebe. It set out charges of police complicity or failure to act. It detailed a number of cases of failure to prosecute. In one, an inquest court found "certain Inkatha members" responsible for the murder of three people in Mphophomeni. In another, an inquest court in 1986 found David Ntombela, a member of Inkatha's central committee responsible for the death of Angelic Mkhize and her young daughter. Ntombela has not been arrested or charged.

In November 1989, an inquest magistrate found that certain policemen, including a New Hanover station commander, had "possible complicity" in the murder of 1 township residents. No arrests had been made.

The documents also complained that previous memoranda had not been dealt with adequately. A reply to this initiative has not yet been received.

Interim measures towards a more representative judiciary

A crop of new senior counsel announced in Natal this week included veteran political activist Zac Yacob.

His appointment brings the number of black silks in South Africa to a grand total of four — obviously far too few to cope with the demand that the judiciary better reflect the population composition.

Many people are concerned about what should be done to deal with this problem and others which have developed because of apartheid and the elitism of the profession.

Obviously a restructuring of the profession and the legal system must be on the cards, but in the meantime two interim recommendations are doing the rounds: dropping the Latin requirement and introducing judges' clerks modelled on those in the United States.

In Cape Town last Friday parliament passed the Admission of Advocates Amendment Bill, likely to become law soon. It changes the Latin requirement for admission to the Bar, from a full university first-year Latin I credit to Special Latin or matric Latin.

The Democratic Party and Conservative Party found themselves voting partners against the Bill — the DP because it wants the Latin requirement scrapped altogether, the CP because it wants the old requirement of Latin I retained.

The DP view is that Latin should go because virtually no other country in the world requires it of lawyers.

The party says the requirement is an infringement on the right of the profession to set its own standards: the advocates' profession, attorneys, the deans of every university law school, as well as law teachers and students, all want the requirement

w/mad 24/5 - 29/5/91.
LAW & THE COURTS

Carmel Rickard (52)

scrapped

Opponents, including the African National Congress' Kader Asmal, contend that the Latin requirement is elitist and discriminates against the majority of students, whose schools do not offer Latin.

Only one black school under the Department of Education and Culture offers Latin. It is offered at five of the 2 054 coloured schools, none of the 142 Indian schools and 75 of the 659 white schools.

Ironically, Latin is the only subject besides English and Afrikaans which the government prescribes must be passed for admission as an advocate. There are no state requirements that, for example, would-be advocates must have criminal law or constitutional law in their degree.

Those against retaining the Latin requirement say it is a relic of the days when lawyers tried to keep a closed shop, with barriers to ensure only certain social classes had entrance.

It is certainly not in keeping with the needs of the profession in South Africa today.

Among the objections raised is that Latin is not the only subject the study of which ensures discipline of the mind. Neither Latin I nor Special Latin equips a student to read the old Latin texts — the justification used by some to retain the requirement.

It also reinforces the advantage of students from the few elite schools where Latin is offered and acts as a self-screening hurdle, keeping out students who might otherwise make a valuable contribution to the profes-

sion in a new order.

Maybe the pool from which judges are chosen will be widened beyond senior counsel, but until then the concern about how to increase the number of silks from disadvantaged groups continues. Retaining Latin will not help.

More positively, the introduction of judges' clerks modelled on those in the United States has been suggested as an instrument of affirmative action.

The big law firms handling commercial work rarely brief black counsel, one of the reasons why black advocates often lack the all-round experience needed for appointment as senior counsel.

If new graduates were to spend time clerking for judges, it would improve their confidence and skills, and help overcome the traditional prejudices against briefing black counsel.

What about funding? Experts in these matters believe overseas funders might be taken with the idea as a novel affirmative-action programme. The legal profession may also be prepared to help finance bursaries which pay the salaries of such clerks.

Visiting Fullbright US constitutional lawyer Thomas Krattenmaker says the idea merits consideration, both as a help to judges and as an affirmative-action device.

On the basis of the US experience, he dismissed fears that judgments might decline in quality, as well as concerns that new graduates "would not have much to contribute".

But he did anticipate some difficulties. If the hiring of clerks was left to individual judges, for example, they may choose students with whom they were compatible — which could mean old-school-tie considerations would come into play, defeating the affirmative-action intentions of such a scheme.

Peace proposals range from Umtag force to youth camps

PRETORIA — Strong government action was necessary to wipe out state lawlessness, Lawyers for Human Rights national director Brian Curtin told the two-day Conference on Intimidation and Violence

LHR's experience was that in certain quarters of the security forces a culture of violence and lawlessness existed, he said

Mr Curtin urged the government to consider appointing a permanent judicial commission of inquiry into state violence

Thousands of people in the country experienced state or police violence, he said. A possible solution to this would be to take the extreme measure of appointing a United Nations peacekeeping force or a peace-keeping force comprising South Africans

Other proposals made by delegates at the conference included Professor H WE Nisanwisi, Chief Minister of Gazankulu and president of the Ximoko Progressive Party. The only source of peace and national unity was power sharing rather than the unqualified assumption of power by one group.

Dr Oscar Dhlomo, chairman of the Conference for Multiparty Conference A Code of Conduct drafted and endorsed by all political parties, legislation to combat political intimidation, a standing commission on violence, a Code of Conduct for the police

Professor Laurence Schlemmer, Wits University Centre for Policy Studies Independent, representative, paid and trained task groups at a local level was a possible solution to the violence

Ms M Venter and is a member of the elite State President's Unit, the police unit responsible for security for the presidential couple

ESTHER WAUGH and ROBERT BRAND

Marike's comely guard is no pushover

OWN CORRESPONDENT

in advising the Government of the legislation requirements of the country in the interim period

Zulu King Goodwill Zwelethini Nationwide peace action programmes

Mr John Kane-Berman of the Institute of Race Relations Disarmament, a standing independent tribunal to investigate complaints against the police, to seize destabilisation, intimidation and the "language of vilification" and a code of conduct to be negotiated between various political parties

The leader of the opposition in the House of Representatives, Mr Jack Rabie The establishment of youth camps to "debrutalise" South Africa's youth

Mr John Mavuso of the National Forum The South African Defence Force should teach black youths discipline and skills



Kangaroo courts outlawed

By ELIAS MALULEKE

PEOPLE'S courts in Soshanguve near Pretoria have been banned by the local residents' association following a public outcry over the death of a youth punished by one of these courts.

The Soshanguve Residents Association (Sorea) has called on residents to

ensure that structures like "people's courts" do not operate in the township

Addressing a public meeting in Soshanguve last weekend, Sorea chairman Benny Makena told residents that acts of violence had been committed in the name of the struggle.

Sorea's name had also

been tarnished, he said

City Press revealed recently that 15-year-old Sello Khubayi died shortly after being assaulted when he was found "guilty" and sentenced to death by a kangaroo court for allegedly stealing a television set

Two other youths, Sonyboy Chauke, 15, and

Samuel Mbatsane, 14, were also "punished".

The three were admitted to the GaRankuwa Hospital on April 21 and Khubayi died three days afterwards

Police have arrested more than 15 people in connection with the assaults

R171 780 legal fees probed

by Bar Council

star 27/5/91
Pretoria Bar Council announced at the weekend that it will hold a formal inquiry on June 8 into fees totalling R171 780 charged by three advocates.

Brian Southwood, chairman of the council, said in a statement it had been reported in the media that three members of the Pretoria Bar, advocates S W Burger, SC, P Kemp and H Goosen, charged fees totalling R171 780 for appearing on behalf of the Minister of Defence, the Chief of the South African Defence Force and Colonel Malcolm Kinghorn in an urgent application brought against them during February and March this year by three members or former members of the Civil Co-operation Bureau.

"The Bar Council of the Pretoria Bar has obtained copies of the statements of accounts rendered by these members to their instructing attorney, the State Attorney of Pretoria.

"On the information available at present, the Bar Council is prima facie of the view that the fees are so excessive that they can only be described as shocking.

"The Bar Council is extremely concerned about the fact that the instructing attorney and the clients apparently accepted these fees as reasonable and effected payment of these fees to the counsel concerned" — Sapa

- (2) No The report will be released as a discussion document for comments, and this constitutes a further phase in the development of an education renewal strategy
- (3) No The report is a discussion document and the Government awaits the final recommendations

Certain court cases: counsel/fee

*9 Mr C W EGLIN asked the Minister of Law and Order

- (1) With reference to the cases of *The Methodist Church in Africa vs The Minister of Law and Order* and *P N Mzanga and 20 Others vs The Minister of Law and Order* (Case Numbers 13082/86 and 13083/86 of the Cape Town Supreme Court between September 1987 and March 1990), (a) how many counsel were engaged by the State and (b) what was the amount of the fee paid or due to be paid to each such counsel,
- (2) whether any additional legal fees to lawyers and other parties have been paid or are due to be paid by the State in these cases, if so, what fees,
- (3) whether any amounts were paid in settlement in these cases, if so, what amounts?

B1058E
The DEPUTY MINISTER OF LAW AND ORDER

- (1) Cases Nos 13082/86 and 13083/86 were heard together during the period September 1987 till March 1990. Approximately 3 220 claimants instituted separate claims to the amount of R5 130 637,00 against the State, which claims depended on the fate of the decision in the aforesaid two cases (known as the Mzanka case)
- (a) Two senior advocates and two junior advocates were engaged for the trial
- (b) The monies which were paid to the senior advocates are R1 810 956,39 and R1 272 046,00 respectively. The monies which were paid to the two junior advocates are R1 109 509,78 and R1 070 987,20 respectively
- (2) The state did pay additional legal monies to the amount of R4 175,00 to legal

HOUSE OF ASSEMBLY

- (1) Whether it is intended to erect a new magistrate's court in Pinetown, if not, why not, if so, (a) when will the erection of the new court building be commenced and (b) on what site will the court be erected,
- (2) whether there has been any delay in the commencement of the erection of a new magistrate's court for Pinetown, if so, what occasioned the delay,
- (3) whether he will make a statement on the matter?

B1061E

THE MINISTER OF JUSTICE

(1) Yes

- (a) The erection of a new magistrate's court holds a position on the major works building programme with the tender date January 1996. I visited Pinetown during April 1991 and found the prevailing conditions unacceptable for the effective administration of justice. I directed that steps be taken to upgrade the existing facilities and the refurbishing of the prefabricated structures. The service has been approved and tenders will be invited during July 1991.
- (b) As objections were lodged against the site which was identified, I directed that an alternative site be obtained. The matter is presently being investigated by the Department of Public Works and Land Affairs.

- (2) Yes The delay was occasioned by the fact that numerous objections were received against the erection of a magistrate's court building on the site which was identified during June 1989 and the fact that a suitable alternative site has not yet been acquired
- (3) A statement is not necessary

INTERPELLATION

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

Own affairs

Pre-primary schooling: extension

1 Mr R M BURROWS asked the Minister of Education and Culture

Whether he, either separately or in consultation with the rest of the Committee of Ministers of Education, will consider an immediate extension to all children of one year of pre-primary schooling for the pre-school year, if not, why not, if so, what are the details in this regard?

B1087E INT

THE MINISTER OF EDUCATION AND CULTURE Mr Chairman, in its assessment of education priorities my department takes into account the need for pre-primary education and the positive role it could have in the new South Africa to prepare all children for primary education. My department also acknowledges the fact that pre-primary education is an important key to social and economic progress in a developing country.

However, as a non-compulsory facet of the national education programme, the provision of pre-primary education has become almost unaffordable for my department. In order to maintain pre-primary education, some of the funds allocated to ordinary school education are being redirected to pre-primary education, and this within the constraints of a very tight budget. My department is therefore considering various alternatives regarding this important issue. As a first priority, this includes finding alternative ways of financing pre-primary education.

In 1989 the Ministers' Council approved, in principle, the gradual implementation of a per capita subsidy system to replace the present salary subsidy system. When the decision was referred to the provincial education councils for consideration and advice during 1990, three of these councils were not in favour of the recommended per capita system. Therefore it was decided to maintain the status quo funding for the 1991-92 financial year. However, we are now looking at viable alternative options, and the introduction of a non-compulsory bridging-year curriculum for five-year-old or six-year-old children is one such option.

Any future strategy should have only one goal in

HOUSE OF ASSEMBLY

Also makes provision for
hment of pre-sentence
committees to advise pro-
rs

Johannesburg's youthful former senior deputy health di-
rector Nicky Padayachee was expected to be appointed
the city's new health and housing executive director at a
council meeting last night

Picture ROBERT BOTHA

Advocates paid R5,3m in case claiming R5,1m

CAPE TOWN — Government paid R5,3m to four advocates who appeared in the KTC case when 3 220 victims of "witdoek" violence claimed R5,1m from the police, Law and Order Minister Adriaan Vlok disclosed yesterday

The fees paid to these four individuals who served as counsel were "staggeringly high", DP caucus chairman Colin Eglin commented

Eglin also said he would certainly be putting more questions in Parliament about the matter

"This appears to be a case that should be referred to the Cape Bar Council, particularly in view of the large amount of taxpayers' money involved," he added

The case was eventually settled after extended evidence over two-and-a-half years when the state agreed to pay R2m to the KTC Relief Fund which was established to undertake community development projects and make ex gratia payments to people who had suffered losses in the violence in May and June 1986

Vlok, replying to a question tabled by Eglin, said two senior advocates

who appeared for the police were paid R1,81m and R1,27m

The two junior advocates were paid R1,10m and R1,07m in the cases of The Methodist Church in Africa vs The Minister of Law and Order and P N Mzamka and 20 Others vs The Minister of Law and Order

These cases were agreed test cases for the claims of the 3 220 KTC residents and lasted, with some breaks, from September 1987 to February 1990

The KTC residents were represented by one senior counsel and initially two junior counsel but this was reduced during the trial to one junior advocate They were briefed by the Legal Resources Centre

The fees paid to these advocates are understood to be substantially lower than those paid to the advocates who appeared for the police

During the trial, the former head of the riot squad in the Cape Peninsula, Maj Dolf Odendaal, gave evidence for about three months This is believed to be longest time any individual has spent in a witness box in a trial in SA

Political Staff

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Bill proposes sweeping changes to sentencing

CAPE TOWN — Far-reaching changes to the system of sentencing in SA, including correctional supervision as an alternative to prison sentences, have been proposed in a new Bill, tabled in Parliament yesterday

In terms of the Correctional Services and Supervision Matters Amendment Bill, the courts will be entitled to impose sentences of probation or supervision under government-appointed officers or send offenders to rehabilitation centres

Together with the increasing use of community service sentences, the new measure could drastically reduce overcrowding of SA prisons and place far greater emphasis on rehabilitation

The Bill also proposes greater community involvement in the correctional system through the establishment of correctional boards

with representatives from both the local community and the Correctional Services Department, institutional committees with release powers and a national advisory board

An attorney-general or a prosecutor will now be empowered before judgment in a criminal case to reconsider and suspend the proceeding so that the accused can, with his concurrence, be placed under correctional supervision

Courts will be able to impose correctional supervision or imprisonment

An accused who is released on bail could be placed under the supervision of a probation officer or a correctional official

Instead of being released on bail or being kept in custody, a juvenile could be placed under the supervision

of a correctional official

The Bill also gives the Justice Minister the power to make regulations for pilot projects to launch correctional supervision as an alternative to prosecuting

In a related measure, the Probation Services Bill was tabled by National Health Minister Dr Rina Venter yesterday

This Bill is to make provision for programmes for the treatment of criminals and the victims of crime, the rendering of assistance to families of people in custody and the performance of community service

It also provides for the establishment of information classes regarding the causes and consequences of criminal tendencies

The Bill also makes provision for the establishment of pre-sentence evaluation committees to advise probation officers

Political Staff

NEWS IN BRIEF

Advocate

SA low on UN human rights list

Star Foreign Service

ROME — South Africa's human rights record has earned it a place close to the bottom of a United Nations table.

In a survey of 88 countries from both the developed and the developing world, South Africa ties with the Soviet Union for the post of sixth from last. Only Iraq, Romania, Libya, China and Ethiopia fare worse.

The UN scorecard uses 40 guidelines taken from the World Human Rights Guide to establish each nation's performance in terms of democracy and personal freedom. They include the existence of universal suffrage and a multiparty system, the right to travel freely, inside and outside the country, racial tolerance, and social and financial equality for different ethnic groups.

The ratings also take into account factors such as freedom of speech and the press, the use of torture, the death penalty, and illegal detention.

Countries with the best human rights records include Sweden, Denmark, Finland, Norway, Austria, and the Netherlands.

But when it comes to assessing the quality of life of its inhabitants, South Africa fares better, coming 57th in a list of 160 countries.

(252)
**Advocates each
paid over R1-m**

Two senior counsel in two long-running court cases were paid R1 810 956 and R1 272 046, Minister of Law and Order Adriaan Vlok said in the House of Assembly yesterday.

Replying to a question from Colin Eglin (DP, Sea Point), he said the cases — the Methodist Church in Africa vs the Minister of Law and Order and P. N. Mzanga vs the Minister of Law and Order and 20 others — had run in the Cape Town Supreme Court from September 1987 to March last year.

These two cases had flowed from the destruction of squatter huts in the KTC/Crossroads area during the height of clashes between "witdoeke" and Comrades in May/June 1986.

Two junior and two senior counsel had been engaged. The juniors were paid R1 109 509 and R1 070 987 — Sapa.

Community sentences mooted for offenders

Political Staff

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and create a more affordable penal system

Cutting the chronic over-population of prisons and boosting efforts to rehabilitate prisoners through the wider use of community sentencing are among the goals of new legislation tabled in Parliament yesterday

The Correctional Services and Supervision Matters Amendment Bill provides for the wider use of what it calls "correctional supervision", which a recent White Paper described as the most logical option from the point of view of cost and rehabilitation

It provides for the "correction" of offenders outside prisons, but under supervision

Ultimately, the Government argues, the measure will help to reduce the prison population

Among the Bill's provisions

- An attorney-general or prosecutor has the power before judgment in a criminal case to reconsider the case and suspend proceedings so that the accused, on certain conditions, can be referred for correctional supervision

- A court can impose correctional supervision and imprisonment as penalties, which can be converted by the Commissioner of Correctional Services into correctional supervision, under certain conditions

The new system, based on research into penal systems overseas, is likely to be introduced at one or two of the larger centres as pilot projects, if the legislation is approved

State KTC lawyers got R5,3m

By BARRY STREEK

THE government paid R5,3 million to four advocates who appeared in the KTC court case in which 3 220 victims of "witdoek" violence claimed R5,1 million from the police, Law and Order Minister Mr Adriaan Vlok disclosed yesterday

The fees paid to these four individuals who served as counsel were "staggeringly high", said DP caucus chairman Mr Colin Eglin

Mr Eglin also said he would certainly be putting more questions in Parliament about the matter

"This appears to be a case that should be referred to the Cape Bar Council, particularly in view of the large amount of taxpayers' money involved," he added

The case was settled, after more than two years of evidence, when the state agreed to pay R2 million to The KTC Relief Fund. The fund was established to undertake community development projects and make *ex gratia* payments to people who had suffered losses in the violence of May and June 1986

Mr Vlok, who was replying to a question tabled by Mr Eglin, said two senior advocates who appeared for the police were paid R1 810 956,39 and R1 272 046

The two junior advocates were paid R1 109 509,78 and R1 070 987,20 in the cases of the Methodist Church in Africa vs the Minister of Law and Order and P N Mzamka and 20 Others vs the Minister of Law and Order

These were agreed test cases for the claims of the 3 220 KTC residents and lasted, with some breaks,

To page 3

From page 1

from September 1987 to February 1990

● Advocates Mr Charles Louw, Mr G D Griesel, Mr L Visser and Mr Fritz Brand appeared for the minister

Last night Mr Louw and Mr Griesel refused to comment. Mr Brand was appointed an acting judge last week.

Mr Wilf Thring, chairman of the Cape Bar Council, said he did not wish to comment at this stage

● The four-man legal team who represented the KTC squatters were paid about R1 million

Fees paid to attorney's and advocates appearing for the police and Defence Force have come under fire recently

● In March, the R3,5 million paid to lawyers representing police and defence force members before the Harms Commission was also criticised in Parliament

Senior advocate Mr L Visser also represented police in this hearing

● This week three Pretoria advocates who appeared for the state in cases against members of the CCB had their fees slashed by more than 80%

The three advocates, who submitted a combined bill of R171 780, now face investigation by the Pretoria Bar Council

● Last month the Cape Bar Council postponed an inquiry into the conduct of two senior Cape advocates who allegedly suggested to a client that he should pay them a R600 000 retainer

at 29/5/91

Lawyers back new system

A "no win, no fee" legal system like the contingency law practised in the United States has been approved in South Africa *Sowetan 29/5/91*

The Association of Law Societies on Monday announced its approval of the system, which is applicable only to damages claims.

The decision was a result of concern over the high costs of litigation and the consequent inaccessibility of the courts, said ALS president Mr Ed Southey.

According to the system, the client would pay his attorney's fees only if the case was successful. Attorneys who won such cases would earn a fee higher than normal.

Advocates to be engaged in such cases are advised to first obtain permis-

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sion from their bar councils before accepting a brief.

Southey said: "It will start off slowly, but I think there are quite a lot of attorneys and advocates who would eventually participate

"It is simply a way of formalising a practise which is already in use in the legal fraternity, a way of instituting proper control over the fee structure," he said.

Asked whether the system would not lead to unnecessary litigation, Southey said it was unlikely.

"An attorney is unlikely to take on a case which he has no potential of winning in a contingency case," he said -
Sowetan Correspondent

Upington 14 leave prison

From Page 1

Jan Basson who found no extenuating circumstances in the killing of Constable Lucas Sehwala at Paballelo township, Upington, in November 1985

Their applications for leave to appeal were refused in the Kimberley Supreme Court in 1989, but charges last year to the law on capital punishment made the right of appeal automatic for people sentenced to death

Mr Justice Grosskopf, with the concurrence of Mr Justice Smalberger and Mr Justice Nienaber, yesterday gave judgment in the appeals of the 25 who had leave to appeal

Enonoch Nompondwana, who was imprisoned for eight years for attempted murder, did not have leave to

appeal.

Sehwala was killed after he had fled from his house when it was stoned by a mob

Grosskopf said the evidence of Sehwala's mother was supported in material respects by her daughter, Magdalene, and the two Xaba daughters

Magdalene had identified 10 of the accused as persons who had been in the group outside the house

The judge said that with the exception, perhaps of Bekebeke, the identity of all the appellants had been in dispute at the trial.

They had denied any part in the incident at the house or the later killing of Sehwala.

The appellants' alibis had all been rejected by the trial court as not reasonably possibly true.

On the question of the 16 who had received leave to appeal on the basis that they formed part of the crowd at the house and which threw stones, the judge said to convict a person of murder it had to be proved that he had the intention to kill a person and, generally speaking, he had committed the act that had caused the person's death.

Sowetan 30/5/91

Death Row to freedom

ELEVEN of the Upington 14 sentenced to death in 1989 for the murder of a municipal policeman walked out of prison free people yesterday after the Appeal Court overturned their convictions and death sentences.

Lawyer Ms Andy Durbach said from Pretoria that they were ecstatic but sad at leaving three prisoners behind.

The court overturned 21 of the 25 murder convictions in the case. Three people were acquitted.

The 25 were the first people in South Africa to be convicted of murder on the grounds of common purpose.

In a 212-page judgment yesterday, the Appeal Court substituted 11 death sentences with terms of imprisonment varying from a year, suspended for five years, to 12 years.

Nineteen sentences were suspended.

The group who were freed yesterday included grandmother Evelina de Bruin, the only woman on Death Row, and her husband Gideon Madlangolwane, whose convictions of murder were changed to guilty on public violence.

Murder

The others are Kenneth Pranke Khumalo, Eric Tros Gubula, David Lekhanangane, Myner Gudanani Bova, Zuko Zaberandini, Andrew Lekhanangane, Wellington Mazisa, Boy Jafa and Albert Tywill.

Xolile Yona and Justice Bekebeke had their murder convictions confirmed but their death sentences were changed to terms of imprisonment between eight and 12 years.

The 14 have been on Death Row since they were sentenced to hang in May 1989 by Mr Justice



a display of Kalashnikovs in the centre of Addis Ababa, Ethiopia, is taken over the Ethiopian Press

Talkback show

The World Health Organisation and other similar bodies have declared tomorrow International Non-Smoking Day. Do people have the right to tell others to stop smoking or do smokers have rights too? Telephone Radio Metro DJ Tim Modise between 4.30 and 5pm today and share your opinion with the nation. The hotline number is 714-8063. Listen to the Sowetan/Radio Metro Talkback programme on mediumwave 576 Khz.

MONTH-END SPECIALS

T.C.B.
200 ml +
200 ml +
R6,99

DYNAMIC
CURL
SHAMPOO &
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250 ml
R1,99
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KNEE
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Goedgevonden judgment may be handed down today

Bl Day 30/5/91

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THE fate of 300 squatters on the state-owned western Transvaal farm of Goedgevonden will be decided by the Pretoria Supreme Court either today or on Monday.

The court yesterday heard the second day of an application brought by the Agriculture and Agricultural Development ministries and six farmers from neighbouring farms to have the squatters removed. The farmers are also seeking injunctions preventing the squatters from moving onto neighbouring farms.

The squatters have brought a counter application stating that they have a legal right to be on the land.

Adv Lewis Goldblatt SC, for the squatters, told the court it had to decide whether the Goedgevonden farm belonged to government or the squatters. He said the application brought by the Minister, the farmers and the current tenant of the land, Petronella Hall, would become invalid if the court ruled the land belonged to them.

Goldblatt said the Minister had invalidated his right to bring action against the squatters because an Agriculture Department official had reached an agreement

with the squatters' lawyer on April 13, letting them stay on the farm temporarily.

"He cannot allow the respondents to retain possession of the land and then renew the application (to remove them)," he said.

Adv Piet van der Byl, for the Minister and other applicants, said the official had allowed the squatters to remain on the land for humanitarian reasons.

Sapa reports that Van der Byl said the official had made the agreement when members of the foreign Press were on the farm. Van der Byl said the applicants realised the implications of their application, "but the line had to be drawn somewhere".

Goldblatt asked for the application and counter-application to be postponed indefinitely so the full details of the case could be brought before the court, and said his clients would accept interim injunctions not to build or cut down trees on the farm.

Mr Justice E L Goldstein said he realised the importance of a ruling in the application and would attempt to give judgment as soon as possible.

PRETORIA — The National Union of Mineworkers (NUM) yesterday obtained a Supreme Court order setting aside the findings of an Oberholzer magistrate and a mining inspector on the deaths of seven miners at the Western Deep Levels West Mine in 1988.

Mr Justice Stafford declared a regional environmental engineer, F Lloyd, a relevant and material witness and said his testimony should be heard at the resumed inquest proceedings. The tribunal had refused to call Lloyd as a witness. Magistrate J J van

Judge sets aside finding on Western Deep disaster

Bl Day 30/5/91

(252) (252)

Vuuren had found that the six died of inhalation of noxious gases from a fire.

It was found that the mine had acted reasonably by implementing remedial action in areas where chilled water pipes were covered with polyurethane, and that there was no evidence of any unnecessary delay in carrying out rescue operations which could amount to an omission of a criminal nature.

The magistrate found the

cause of the fire had not been spontaneous combustion, but that it was started inadvertently through illegal smoking, or intentionally through arson.

NUM safety officer May Hermanus said in an affidavit the ruling not to call Lloyd as a witness had disabled the tribunal from conducting an adequate or thorough investigation. Consequently neither the inquest nor the inquiry had been full and fair — Sapa

Magistrate J J van



Battle for lawyers as towns fight to keep petty apartheid

with mail 30/5 - 6/6/91

Around the country human rights lawyers are matching wits with segregationist town councillors. In the platteland and in towns around the big cities, these councillors are fighting to implement disguised petty apartheid.

Following the repeal of the Separate Amenities Act, the search is on for ways of ensuring libraries, swimming pools, parks, even graveyards, stay white.

Some municipalities have already introduced new by-laws which effectively keep these amenities white, others are negotiating new regulations which will have the same effect.

But their efforts are being monitored by Legal Resources Centres and other human rights lawyers, determined to test any loophole which could frustrate the scrapping of the Act.

Latest to tilt at new look municipal apartheid is Durban's LRC which is taking on the Vryheid librarian and town council on behalf of two black clients, Johannes Mnyeni and Ignatia Khumbuza, who want to join the library.

They tried to become borrowers but were told this was out of the question because they were "not residents of Vryheid" (they live in townships nearby).

The librarian advised that they approach their local authorities to establish libraries in these townships

The by-laws allow for an appeal to the council should library membership be refused, but nearly three months later Mnyeni and Khumbuza have not heard the result

Instead, the town clerk told the LRC that the Vryheid library committee had recommended the library be opened to all races

252 248

LAW & THE COURTS

Carmel Rickard

"after certain by-laws had been amended to substantially increase the tariff of charges for new members wishing to join".

The town clerk also said that at present no black person could join the library and that when it was opened to all races, a levy of R20 or R30 would be charged to all new members.

LRC has now launched an application in the supreme court saying the council had an ulterior motive in changing the by-laws, and asking that Mnyeni and Khumbuza be admitted as library members — the first time since the repeal that a court has been asked to order that a council admit blacks as members of a municipal facility.

The Johannesburg LRC has had to deal with a similar problem when the Springs council tried to close down two swimming pools. This was overruled by the supreme court, but lawyers at both centres said there had been a rash of new by-laws introduced by municipalities trying to ensure the Separate Amenities Act lived on.

Director of the Johannesburg LRC, Mahomed Navsa, said it was happening on such a scale that it presented a "massive problem". However, it was not a task that lawyers alone should tackle, but had to be attacked "at a political level".

Howard Varney of the Durban LRC said it was also a significant problem in Natal, where various stratagems were used to keep black people out: some municipali-

ties had a ceiling on the number of people who could use certain amenities; others began to charge exorbitant joining fees for a facility previously offered at no cost; some only admitted rate-payers or residents.

He said the LRC would monitor and challenge changes to by-laws which had the effect of keeping out black people.

The court challenges resulting from this kind of monitoring will be important for redefining the law

Many long-settled legal questions will have to be looked at again and decided by the Appellate Division, some of which have been raised by David Knight SC, attached to Cape Town's LRC.

For example, the old "separate but equal" doctrine would appear still to hold in the provincial divisions until the AD sets it aside. According to this ruling, if "separate but equal" facilities are provided for different race groups, the courts will not interfere on the grounds of discrimination.

What arguments will lawyers have to advance to persuade the AD that separation is itself discriminatory, and that society's views have changed since the 1950s?

If, after the scrapping of the Separate Amenities Act, a municipality provides a park for blacks and another with similar facilities for whites, would there be grounds for a successful legal challenge?

And what would be the situation where a municipality had provided "separate but substantially equal" parks long before the Act was scrapped?

These and many related questions must be answered by the highest court, but judging from the prevalence of the problem, there will be no shortage of opportunities for the AD to give attention to these issues

Judge will follow law, however painful

Staw 30/5/91
Pretoria Correspondent

The court would have to rule against the Goedgevonden squatters — regardless of the suffering it would cause — if argument by counsel for the Government and farmers was legally correct, a Supreme Court judge said yesterday

Mr Justice Goldstein, who has been asked by the Minister of Agriculture and Development and seven farmers (who are hiring farms in the area from the Government) to rule that the squatters must leave the land, is expected to pass judgment in the Pretoria Supreme Court today

“(There is no doubt that if submissions by counsel for the applicants are legally correct, I must grant their order regardless of how much grief will be caused,” the judge said

PC van der Byl, SC, assisted by Q Pelser, argued that the squatters had unlawfully deprived P J Hall of her peaceful and undisturbed possession of Goedgevonden when they moved on to the land between April 9 and 12

His clients did not think “it was unfair to expect the squatters to return to where they came from”

Government had “provided

machinery the squatters could use in view of new developments in the country”

The judge replied that it was not his duty to answer this political question, but the Government’s. The court simply had to apply the law

“We are not heartless and we are aware of the implications the case holds, but somewhere a line has to be drawn,” Mr van der Byl argued.

Appearing for the squatters, LI Goldblatt, SC, assisted by PM Kennedy, told the judge that on April 13 a Government official had given people already on the land permission to remain there

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Intention to murder could not be proved

Star
20/5/91



Uppington, May 26 1989
Tears of despair as relatives leave the court after hearing the death sentence passed on 14 of those on trial

THE APPEAL COURT yesterday set aside the death sentences imposed on 14 of the 25 people convicted of the murder of a municipal policeman Constable Lucas Sethwala, at Paballelo, Uppington, on November 13 1988.

Terms of imprisonment that varied from one year, conditionally suspended for five years, to 12 years' jail were substituted.

The convictions of 16, including Evelyn de Bruin — who is 70, her mid-60s and who was the only woman on Death Row — and her husband Gideon Madlongwe, were changed from guilty of murder to guilty of public violence.

The convictions and conditions suspended imprisonment of six years of Xoliswa Dube, Roy Swartbooi and Ivan Kazi were set aside.

The court dismissed the appeals of Zona Mokgatle and Zolile Yona against their convictions for murder, but substituted imprisonment of 12 years for Mokgatle and 10 years for Yona instead of the death sentences.

Justice Bekebeke, who had leave to appeal only against his death sentence, succeeded to the extent that he has been jailed for 10 years.

Elisha Matsiboba unsuccessfully appealed against his imprisonment for eight years.

Twenty-six people were convicted by Mr Justice J J Basson in the Circuit Court at Uppington on April 27 1988 after 25 were found guilty of murder and one of attempted murder.

After a long adjournment for argument in mitigation to be prepared, judgment on extenuation was delivered between May 23 and 25 1989. In the case of 14, no extenuation was found for the murder, and the death sentence, which was obligatory at the time, was imposed.

The remainder received terms of imprisonment that varied between six years, suspended on condition that they did community service, to actual imprisonment of between six and eight years.

Yesterday Mr Justice E M Grosskopf, with the concurrence of Mr Justice Smalberger and Mr Justice Nienaber, gave judgment in the appeals of the 26 who had leave to appeal.

Enoch Nompondwana, who was jailed for eight years for attempted murder, did not have leave to appeal.

The judgment was 212 pages long.

Constable Sethwala was killed after he had fled from his house when it was stoned.

The legal doctrine of common purpose was used in the '80s to gain multiple convictions in instances of mob killings. The concept is considered afresh in the Appeal Court judgment on the Uppington 26

Mr Justice Grosskopf said that in the appeal, the honesty of the State witnesses' identifications was not in question.

Dealing with Boy Japha, the Appeal Court found it could not be said the trial court erred when it rejected his alibi, and to find that he was present and had thrown stones at Constable Sethwala's house. To that extent, his appeal did not succeed.

Elizabeth Bosmaander had been identified by only one witness, who was at school with her and knew her well. The witness said she had paid attention to the stone-throwers so that she could identify them later.

To convict a person of murder it had to be proved that he had the intention to kill

The Appeal Court found the trial court was justified to reject the evidence of Bosmaander as not reasonably true. It was thus proved she had thrown stones at the house.

It was held that the trial court had not erred in accepting the identification of Jeffrey Sekiya and finding he was one of those who stoned the house.

The possibility of an honest misjudgment in the identification of Mr Swartbooi could not be excluded and his appeal succeeded.

For reasons similar to Se-

kiya, Neville Whitbooi's appeal failed on the alibi question.

In the case of Ivan Kazi, it was found that there was insufficient guarantee of the reliability of identification. His appeal succeeded.

On the question of the 16 who had received leave to appeal on the basis that they formed part of the crowd at the house and which threw stones, the judge said that to convict a person of murder it had to be proved that he had the intention to kill a person and, generally speaking, he had committed the act that had caused the person's death.

Mr Justice Grosskopf said,

As far as the evidence went that was the only time one of the attackers was on the property, said the judge.

The evidence created the possibility that the crowd in the street into which the man fled consisted of only some of those who had earlier been in front of his house.

The judge said that in the state of chaos that existed in Paballelo, it would have been unrealistic to presume that any crowd would consist for a long period of the same persons.

The crowd which killed the man was apparently a different one from that which had attacked the house. Even if it were possible to find that every member of the crowd present when he was actually killed had the intention to kill him, it would still not prove that the crowd which stoned the house had the same intention.

The judge said it followed that the intention of those accused could not be inferred on a general basis from their participation in the activities of the crowd which stoned the house.

An appellant could be convicted of murder only if it were proved against him as an individual that he had the necessary intention to kill.

There was a section of the crowd that wanted him killed but it could not be found that it was the intention of the whole crowd.

After Constable Sethwala was out of his house, David Lekhan-yane entered the property and threw a stone through the win-

In this case no one was injured during the stonethrowing.

The judge said that, in the court's view, there was no room for an inference merely from the stoning that any of the accused had the intention to kill.

Appellants who fell into this category were Kenneth Khuma lo, Eric Tros Gubula Abel Kuni, David Lekhan-yane, Myner Gudani Bova, Ziko Xabendim, Andrew Lekhan-yane, Rommie and Wellington Masiza, Barry Bekebeke, Japha, Bosmaander, Gideon Madlongwe, Albert Tywili, Sekiya, Sarel Jacobs and Whitbooi.

The conclusion that the relevant accused were wrongly convicted of murder did not mean they must go unpunished. The advocate for the appellants had conceded, rightly in the court's view, that the people who threw stones at the house were guilty of public violence.

The appeals of those who merely threw stones at the house had to succeed and their convictions changed from murder to public violence.

This conclusion was not necessarily applicable to Mokgatle, De Bruin and Yona.

For a person to be guilty of murder in terms of the principles of common purpose, it not only had to be shown that the accused had the intention to kill, but also that he had actively associated himself with the acts of the person or persons who actually caused the death.

That Mokgatle had the intention to kill appeared from the

fact that he had taken part in the attack, by stabbing the policeman when he was already defenceless and apparently lying seriously injured on the ground.

That Mokgatle did not withdraw from the attack could be deduced from the fact that, after it was over, he had walked back with Bekebeke and Yona and they had expressed pleasure at the death.

Even if the death had been caused by burning, Mokgatle was, while the body was burning, still actively associated with the common intent of the murder group, which included

ing that De Bruin knew without doubt that the policeman had been killed and set on fire and that she had enthusiastically approved of this.

Her conviction for murder could only stand on the basis of her conduct during the stonethrowing. Her conduct had gone further than those who had merely thrown stones. By her remarks she had clearly shown that she had the intention to kill him. In her case, the State had proved she had stoned the house in order to drive Constable Sethwala out so that he could be killed. But was she guilty of murder?

It had been conceded that she could have been found guilty on the basis of incitement. But she had not been charged with incitement, and incitement to murder was not a competent judgment on a charge of murder.

De Bruin could, thus, just as the others who only threw stones, be found guilty only of public violence.

The direct evidence showed that Yona actively took part in the stonethrowing and that shortly after the man was killed, he had shown his knowledge of it and expressed pleasure at it.

What he himself had actually done at the murder scene was not proved, but such proof was not necessary for a conviction. The court found Yona was rightly convicted of murder.

Mr Justice Grosskopf said of

'We will show you... let the dog come out, let us set the dog on fire alive'

Enoch Nompondwana He was rightly convicted of murder.

The judge said it should be remembered that De Bruin was on Constable Sethwala's erf before the stone throwing and had been chased away by him. She had said to him, in Afrikaans "We will show you".

Later she was one of the group that threw stones. While the stone-throwing was in progress she had said "Let the dog come out, let us set the dog on fire alive".

The appeal judges did not agree with the trial court's find-

In regard to what was a proper sentence, Mr Justice Grosskopf said there was insufficient reason to differentiate between the three. A sentence of 15 years would be appropriate in each case.

From a schedule presented to the court by the counsel, it appeared that Bekebeke and Yona had been in custody for five years and Mokgatle for three years and the necessary adjustments were made in the sentences substituted by the Appeal Court.

In regard to Matsiboba the court found that community service would be a totally inadequate punishment in the light of the seriousness of the crime. The trial court had not misdirected itself and the sentence imposed was not strikingly inappropriate. The appeal had to fail.

In regard to those convicted of public violence, the judge said there was no doubt that it was a serious form of public violence.

He took into account the appellants' personal circumstances, potential for future usefulness in the community, sentences already served and community service rendered.

Khuma lo, David Lekhan-yane, the Maszas Japha De Bruin and Tywili were all sentenced to two years, wholly suspended for five years on condition that they are not convicted of public violence during this period.

The remainder were sentenced to one year, suspended with reference to the appropriate sentence for De Bruin, the judge said she was relatively aged having been born in about 1935.

There had been the incident where she had argued with the constable when she had been on his erf. That was when she had made the remark to "show him". After he had been burnt to death she had walked past his house and cheered.

The judge said this showed her state of mind and attitude towards the policeman, which must have influenced her earlier action during the stone throwing. It was relevant in consideration of a sentence for public violence. She had no previous convictions.

An appropriate sentence would be five years' jail which, in view of the time she had been in prison, had to be scaled down to two years. This, in view of her age and clean record, had to be totally suspended, said the judge — Sapa.

Upington 'common purpose' murder judgment overturned

Reprieve for jubilant 14

By Jo-Anne Collinge and Esther Waugh

Star 30/1/79

The Appeal Court has set aside all 14 death sentences and overturned all but four out of 25 murder convictions handed down in the highly politicised Upington 26 murder trial

The sweeping reversal of the original outcome spelt immediate freedom for 11 of the 14 Death Row prisoners — including the only woman, Ewelina de Bruin, who was transferred from Pretoria Central Prison to Upington Prison late last year

Legal experts greeted the appeal judgment as a long overdue act of justice and a stinging indictment of the 1988 judgment and sentencing, which occurred a year later

The 10 reprieved men seemed dazed yesterday as they emerged from the Death Row cells where they have spent exactly two years and two days

They climbed slowly out of a white minibus at the prison gates, clutching their letters, books and photographs. Then they spotted their legal team — and jubilation erupted in the prison parking lot

penalty — 12 years in the case of Zonga Mokalle and 10 for Zolile Yona. In two further cases, leave to appeal against conviction for murder was refused. In the case of Justice Bekebeke, sentence was replaced with a 10-year jail term and Elisha Matshoba had his original term of eight years confirmed

The murder convictions were overturned largely on the Bench's finding that the crowd which had stoned the victim's house was not necessarily the same as the crowd which had later killed him

Therefore, those accused who had been identified during the stoning alone could not be seen as having the murderous intent of the second crowd

Upington 26 attorney Andy Durbach said "It's the kind of judgment one would have expected from the trial court"

She added that the thoroughness with which the result had been reversed was a loud indictment of the trial court

Lawyers for Human Rights national director Brian Currin commented "The end result is wonderful"

It shows that justice can be done in South Africa. and I think it goes a long way in

10/1/79



Nightmare

Andrew Lekhanyane said the judgment had "come out of the blue. To tell the Gospel truth, it was a nightmare on Death Row." Admitting that he was no legal expert, he added that he had felt throughout his trial "we were never given the benefit of the doubt."

A former mayor of the Upington township of Paballelo, Kenneth Khumalo, said the sudden freedom was "unreal" — especially after the frustration they had felt when the prisoners were not released by April 30 in terms of the Pretoria Minute.

Originally, 25 out of 26 on trial were convicted, in terms of the doctrine of common purpose, of the murder of municipal policeman Lucas Sethwala at Paballelo in November 1985.

The Appeal Court judgment yesterday made the following changes:

- In 18 cases, convictions for murder were overturned and public violence convictions substituted. Sentences of one or two years' jail, suspended for five years, were imposed.
- In three cases, both conviction and sentence for murder were set aside.
- In two cases, conviction on the murder charge was upheld, but a jail sentence was substituted for the death

credibility of our courts. But the Upington trial in its entirety was "a savage indictment" of the South African legal system.

The fact is that we've got the judgment of the first instance — 25 guilty of murder and 14 sentenced to death, refused leave to appeal and forced to spend two years on Death Row. At the end of it, 11 out of 14 walk free today, with one to two years' suspended sentences," Mr Curran said.

National Association of Democratic Lawyers publicity secretary Johnny de Lange said "Obviously one is delighted that they are all off Death Row — every one of them. But so often it seems the result of a case depends on the time it is being heard and the specific judge before whom it is being heard. The whole question of justice doesn't seem to be one that is equally applied."

Mr de Lange welcomed the fact that "the whole doctrine of common purpose is once again put in its proper perspective."

It was one of those common-law principles which had been extended beyond its usual limits during the 80s to help curb the kinds of uprisings then taking place



Freedom defence lawyer Stefan Raubenheimer congratulates Myner Gudiani Boyu, one of the 11 Upington 26 prisoners released from Death Row yesterday. Picture: Associated Press.

scar
30/5/91

BOTH the Democratic Party and the Conservative Party said yesterday that they would be raising more questions about the R5,3-million fees paid to four advocates in the KTC case

In particular, they said they would be focusing on the fees paid to a Pretoria advocate, Mr Louis Visser, SC, who has received more than R2 million from the state since 1986 for acting on behalf of the Minister of Law and Order, Mr Adriaan Vlok.

A CP spokesman said that on April 23 Mr Vlok had said Mr Visser had received R914 500 for professional

DP, CP query fees paid to advocates

fees in the KTC case and R91 702 for expenses, totalling R1 006 202

Yet, in his reply to a question on Tuesday, Mr Vlok said Mr Visser had received R1 810 956,39

This meant an R804 754 difference in the figures given, the spokesman said

The DP's caucus chairman, Mr Colin Eglin, said he would be focusing in particular on the accommodation, travelling and equipment expenses paid to the advocates

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3 advocates face inquiry after fees shock Bar Council

DRIES VAN HEERDEN

Weekend Argus Correspondent

JOHANNESBURG.— An official investigation is being launched into the conduct of three Pretoria advocates whose fees for appearing for the State in cases against CCB members have been slashed by more than 80 percent

The chairman of the Pretoria Bar Council, Mr Brian Southwood SC, confirmed yesterday that a formal inquiry will be held next Saturday.

The inquiry follows a Saturday Star investigation into the fees charged by the three advocates, Mr Willie Burger SC, Mr Piet Kemp and Mr Hennie Goosen.

Earlier this year they submitted a bill for R171 780 to the state attorney for their appearances in cases in the Pretoria Supreme Court.

At the time they acted for the Minister of Defence, General Magnus Malan, the Chief of the Defence Force, General Kat Liebenberg, and the acting commander of Special Forces, Colonel Malcolm Kinghorn, against claims by three former CCB members.

However, when the bill was as-

essed by the Registrar of the Court's taxing master it was reduced to R24 415

After the results of the newspaper investigation was brought to the attention of the Bar Council, Mr Southwood confirmed that he had obtained copies of the advocates' accounts and preliminary evidence suggesting the fees to be "so excessive that they can only be described as shocking"

"The Bar Council is extremely concerned about the fact that the instructing attorney (the state attorney) and the clients apparently accepted these fees as reasonable and effected payment of these fees to the counsel concerned," Mr Southwood said.

According to documents presented to the taxing master, advocate Mr Burger claimed R73 620 and Messrs Kemp and Goosen R49 080 each. However it was finally decided to deduct R147 365 from the combined bill allowing only R24 415 to be accounted for by the applicants.

Mr Burger and Mr Kemp were subjects of a Bar Council inquiry earlier this year after a public furore about fees they charged for representing the State during the Harms Commission hearings.

Assault victim asks to withdraw charge

By DAN DHLAMINI

AN assault case involving four alleged "kangaroo court judges" took a dramatic turn this week when the victim tried to withdraw the charge.

Appearing before Potchefstroom Magistrate EP du Toit this week were Jonas Njovani, 38, Stephen Klaasen, 36, Hosi Phatedi, 33, and Joel Tsimane, 25, all of Kanana squatter camp, near Ikageng.

The accused are alleged to have "sentenced" Manu Mogotsi to several lashes with a belt on May 6.

They have all pleaded not guilty.

Mogotsi asked the court to withdraw the charge because she had found a "hole" outside Potchefstroom and the result would be unable to continue with the case.

The magistrate adjourned the case until June 4, for further investigations to take place.

Prosecutor A du Toit however, told *City Press* she would ask the court to proceed with the case because she suspected that Mogotsi was "under severe pressure and intimidation to withdraw the charge".

Free — the granny who learned to read and write on Death Row

S/Times
2/16/91
253/257

A CERAMIC plaque reading "Wat's 'n huis sorder 'n moeder!" hangs on the clean scrubbed walls of "Ouma" Evelina de Bruin's modest home at Paballelo township near Uplington.

On Wednesday afternoon, after nearly three years on Death Row — sentenced to hang for a murder she swears she did not commit — the 55-year-old woman came home to resume her role as mother to her 10 children.

Her eldest child, schoolteacher Mkhusele "Welcome" Madlongolwane, drove over 1 000km from Windhoek to join the welcoming throng on the township's only tarred street. "The crowd was so tight there was not even room for a mouse on the street last night," Mr Madlongolwane said at his mother's house on Thursday morning.

"I have no words to describe how I feel. How can we not be happy? My mother has been given back her life."

Prayers

Subdued from the tranquility given her by a prison doctor to keep her "calm", and tired from staying awake all night celebrating her release, Mrs de Bruin spent her first morning of freedom in Paballelo — "the place of play" — restlessly packing her home.

She greeted an endless stream of well-wishers as she awaited the arrival from Pretoria of her husband, Gideon Madlongolwane, 63, who was also condemned to hang — and also freed with a suspended sentence.

"I never believed I was

Report EVELYN HOLTZHAUSEN
Pictures JUSTIN SHOLK

going to die," said the grandmother. "I was at home on the day the policeman was killed, doing my washing. I knew God would hear my prayers and I would be set free."

Mrs De Bruin and her husband were two of 14 people sentenced to death in May 1989 by Mr Justice Jan Basson for the murder, four years earlier, of Paballelo municipal policeman, Constable Lucas "Jetta" Tshenolo Sethwala, 23.

Tears

The controversial trial, in which 25 people were charged and convicted of murder, set legal history by deciding guilt on the assumption of "common purpose". Among those convicted were some who were not at the scene of the crime.

The appeal court judge,

Mr Justice EM Grosskopf, said the concurrence of the Mr Justice Smalesberg and Mr Justice Nienaber overturned 21 of the 25 murder convictions — acquitting three people and suspending 18 sentences.

Convictions for murder of two were upheld, but their death sentences were altered to terms of imprisonment. A further two had been refused leave to appeal.

Mrs De Bruin was transferred from Pretoria Central prison to Uplington late last year so she could be near her family.

She first heard about her freedom on the afternoon radio news at the jail on Wednesday.

"A few minutes after I heard the news on the radio the major smiled at me and told me to pack. I burst into tears," she said.

"This business, for me, was like a child being promised a sweet and handed a lemon instead. The taste has been bitter. But now it's over. I am sorry that Jetta's



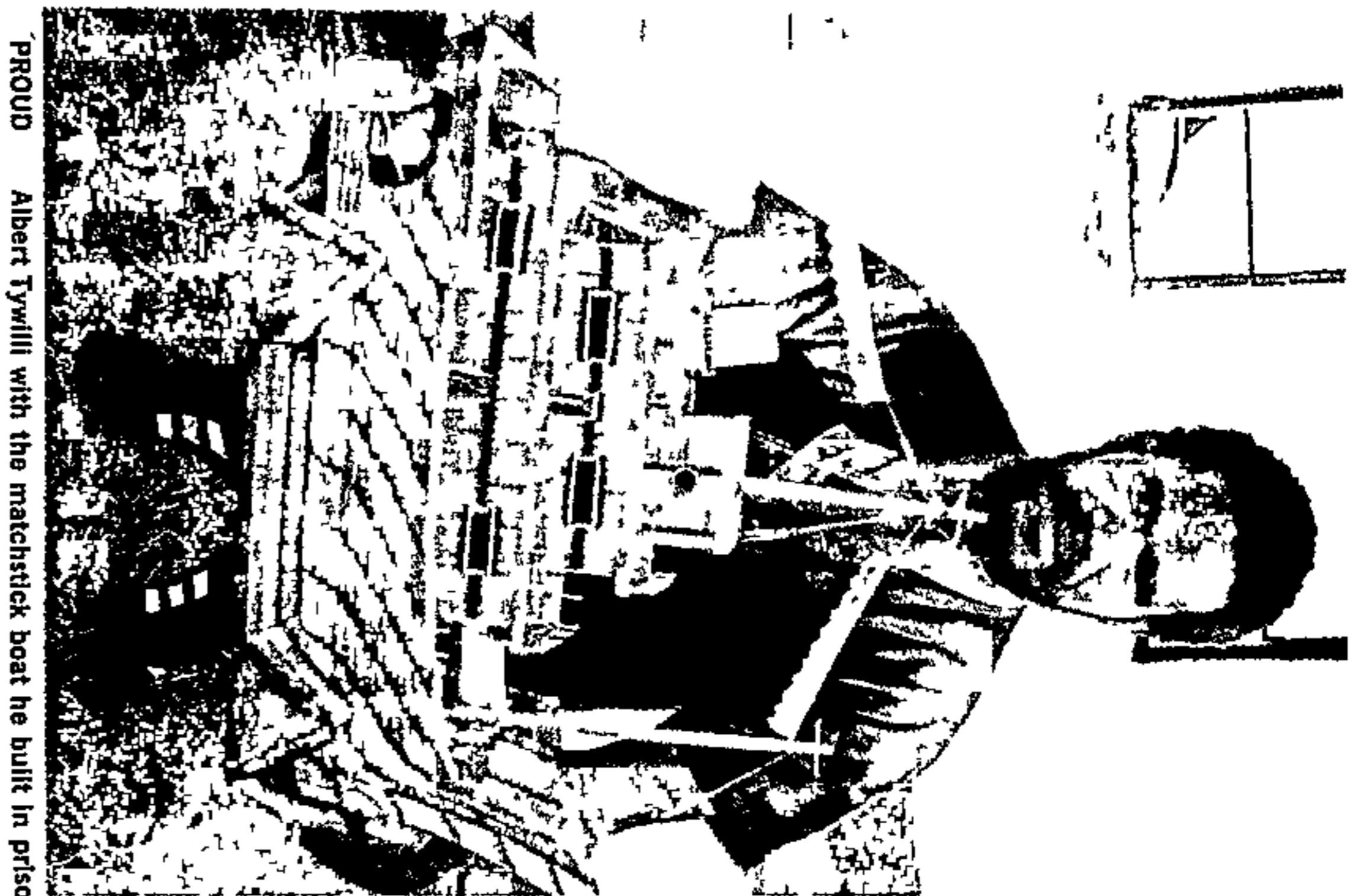
GRANNY'S HOME! Mhlanganisai gets a homecoming hug from his grandmother, Evelina de Bruin

mother has suffered the loss of her son. I am a mother and I wish no other mother's children harm. I never have and I never will," she said.

"I want to forget everything that has happened. I must now get on with my life."

Embrace

Mrs De Bruin praised warders in Pretoria Central, who taught her to read and write and to crochet while she was on Death Row. Warders also read her the hundreds of greeting cards she re-



PROUD Albert Tywill with the matchstick boat he built in prison

the township, dropping off other freed prisoners. "I really the convoy drew up to her gate and, with a city of 'Amandla', SARF pensioner Gideon Madlongolwane forced his way through the crowd and stepped into his home to give his wife their first real embrace since the trial began.

"There were no birds or sky in prison," he said. "Just four walls and my thoughts to keep me company. I believed I was going

Brother

The only people in Paballelo who were not celebrating were Moses Sethwala, brother of the murdered policeman, and his sister Magdeleen.

"I was not here when my brother was killed," said Mr Sethwala. "I came from Johannesburg, where I was work-

ing, three days after he was killed, to bury him and I stayed on to support my mother. All I know is that Jetta did not deserve to die like that.

"He was a good man," added his sister. "I have heard the celebration in the streets. I cannot be unhappy for those who are free. But I am still scared."

The murdered policeman's best friend, Albert Tywill, was one of those freed. He claimed not to have been in the area when Constable Sethwala

was killed, but said what he had heard young policeman voked his own death into a crowd wounding a child.

Admitting to being a member of the SA Communist Party, he said trial had initially him believe there was justice in South Africa.

With the success of appeal, however, he changed his mind. "There is justice said. 'But it seems it takes a long time'."

Free — the grandma who learned to read and write on Death Row

S/Times
2/16/91

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CERAMIC plaque reading: "Wat is 'n huis sonder 'n moeder!" hangs in the clean-scrubbed walls of "Ouma" Evelina de Bruin's modest home at Paballelo township near Uppington

On Wednesday afternoon, after nearly three years on Death Row — sentenced to hang for a murder she swears she did not commit — the 55-year-old woman came home to resume her role as mother to her 10 children

Her eldest child, schoolteacher Mkhuseh "Welcome" Madlongolwane, drove over 600km from Windhoek to join the welcoming throng on the township's only tarred street "The crowd was so tight there was not even room for a mouse on the street last night." Mr Madlongolwane said at his mother's house, on Thursday morning

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She greeted an endless stream of well-wishers as he awaited the arrival from Pretoria of her husband, Gideon Madlongolwane, 63, who was also condemned to hang — and so freed with a suspended sentence

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The Appeal Court judge,

and told me to pack I burst into tears," she said. "This business, for me, was like a child being promised a sweet and handed a lemon instead. The taste has been bitter. But now it's over."

"I am sorry that Jetta's mother has suffered the loss of her son. I am a mother and I wish no other mother's children harm. I never have and I never will," she said.

"I want to forget everything that has happened. I must now get on with my life."

Mrs De Bruin praised warders in Pretoria Central, who taught her to read and write and to crochet while she was on Death Row. Warders also read her the hundreds of greeting cards she re-

ceived from well-wishers worldwide. As she was speaking in her home at 290 King Street, the blare of hooters announced the arrival of her husband from Kimberley. He had flown there from Pretoria the previous night.

Embrace

Mrs De Bruin stood anxiously in the doorway while she waited for the convoy — paced by a cheering crowd carrying an ANC banner — to drive a "tap of honour" around

the township, dropping off other freed prisoners. Finally the convoy drew up to her gate and, with a cry of "Amandhla", SAR pensioner Gideon Madlongolwane forced his way through the crowd and stepped into his home to give his wife their first real embrace since the trial began.

Brother

The only people in Paballelo who were not celebrating were Moses Sethwala, brother of the murdered policeman, and his sister Magdeleen. "I was not here when my brother was killed," said Mr Sethwala. "I came from Johannesburg, where I was work-

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"A few minutes after I heard the news on the radio the major smiled at me

was killed, but said from what he had heard, the young policeman provoked his own death by firing into a crowd and wounding a child.

Admitting to being a member of the SA Communist Party, he said the trial had initially made him believe there was no justice in South African law.

With the success of the appeal, however, he had changed his mind. "There is justice," he said. "But it seems it just takes a long time."

Terre'Blanche trial mystery

By DAN DHLAMINI

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2/6/91

AFTER almost three months a decision is yet to be made on whether or not to prosecute AWB leader Eugene Terre'Blanche for allegedly assaulting a farm labourer.

This follows claims that the rightwing leader boasted that the case would never reach court.

The date for the decision was confirmed on Thursday by Transvaal Attorney General Don Brunette - two weeks after City Press began inquiring into the matter.

Terre'Blanche is alleged to have assaulted Klipplaatdrift farm hand, William Mashya, on March 9.

Brunette said the final decision will only be made public on Tuesday, June 4.

Last week, following fears expressed by Evelyn Mashya that her husband's case might not go to court, City Press faxed the A-G's office with our query. We were told Brunette would reply to us on Monday, May 27.

Two days later, on Wednesday, Brunette told City Press

that he had not received the Terre'Blanche docket. He referred us to Ventersdorp prosecutor J van Tonder.

Van Tonder, in turn, insisted that the docket was at the AG's office but, for some reason, declined to give us the date on which he had sent it.

Finally, on Thursday, Brunette said he had just received the docket which, he said, had been lying in advocate Venter's office. Venter had been out of town.

Soft-spoken Evelyn said that when her husband had told Terre'Blanche he was going to report him to the police, Terre'Blanche allegedly said the cops would do nothing to him.

She said the trouble started earlier this year when her husband declined Terre'Blanche's offer for the family's goat.

She said Terre'Blanche later allegedly accused Mashya of stock theft and beat him up. Then her spouse was jailed for three days and released without being charged.

"We are living in fear now," she said.



UNTOUCHABLE ... AWB strongman Eugene Terre'Blanche allegedly boasted that charges of assaulting a farm worker would not materialise. So far, he's right.

Squatters wait in fear

for land judgment

By MARTIN NISOELNGOE

CP 26/19

TOMORROW'S Pretoria Supreme Court judgment over the destitute Goedgevonden squatters could have a devastating effect on their lives

If Judge Goldstem rules in favour of the Minister of Agriculture and Development and seven farmers, the community would be forced out of their ancestral land for the second time

Parting remarks by the judge before retiring to his chambers on Thursday afternoon, left the community leaders and their legal representatives worried

The judge said "The court would have to rule against the Goedgevonden squatters - regardless of the suffering it would cause - if argument by counsel for government and seven farmers is legally correct

"There is no doubt that, if submissions by counsel for the government and the farmers are legally correct, I must grant that order regardless of how much grief will be caused"

The judge said he found the whole case "very distressing"

Goldstem is being asked by the government and seven farmers to order the squatters off the land

The former Goedgevonden occupants, forcibly removed to an arid farm in Bophuthatswana 13 years ago, came "home" on April 9, and are now isolated on the farm. After they were removed, the Government hired out their land to white farmers, who now want them out

On April 13 the community was granted temporary permission to stay by a senior Department of Agriculture and Development official

Counsel for the Government and the seven farmers, PC van der Byl, said PJ Hall was deprived of her land and the squatters had threatened to move on to other farms in the area which they claimed was theirs

LI Goldblatt, for the squatters, said the government was bound to its agreement to allow the people to stay



STICKING TO HER GUNS ... Humble Evelyn Mashya fears that AWB leader Eugene Terre'Blanche won't be charged for assaulting her husband.

TWO top CCB men request indemnity

w/m out 7/6 - 13/6/91

(252)

TWO senior members of the Civil Co-operation Bureau (CCB) have applied to be indemnified for violence committed while working for the military — and if their application is successful it could lead to new evidence emerging about murders and other crimes committed by the army hit squad

Lawyers for Calla Botha and “Slang” van Zyl, CCB agents alleged to have been involved in political killings and attempted assassinations, yesterday told *The Weekly Mail* that they had applied for their clients to be indemnified in terms of agreements thrashed out between the government and the African National Congress

The pair were worried about a high-powered investigation headed by the attorney general of the Western Cape into the activities of the CCB nationwide and have decided to apply for indemnity because they fear the probe may lead to them being prosecuted along with other high-ranking army officers

Attorney General Neil Rossouw yesterday declined to comment in detail on the implications of the CCB men’s move for his probe, saying the whole investigation is at “an extremely delicate stage”

It is believed the Cape probe will play a vital role in uncovering many of the mysteries that still surround the work of the CCB — and will inevitably lead to a clash between the attorney general and senior officers in the special forces of the South African Defence Force.

Rossouw declined to tell *The Weekly Mail* about the state of his investigations but other sources have indicated that charges against CCB members are expected to be laid within five weeks

Lawyers for Botha and Van Zyl confirm that members of the military unit are feeling the heat and are worried that the probe will lead to successful prosecutions against army officers involved in the CCB

Rossouw said that if he was not able to prosecute particular CCB members because they had obtained indemnity it may still be possible to call them to give evidence in court cases that arise from his investigation

The attorney general’s task force is investigating a wide range of leads that came out of the Harms Commission of Inquiry into the activities of the CCB

Rossouw recently told reporters his team would look into a range of crimes

Two Civil Co-operation Bureau agents have applied for indemnity just weeks before a high-powered probe into the army’s dirty-tricks department delivers its findings

By EDDIE KOCH

— sabotage, theft, terrorism and murders including the assassination of David Webster — that may be linked to the army’s dirty tricks department.

Asked whether the team was looking specifically into the murder of Webster and other political activists, Rossouw told reporters that every possible lead would be followed. “If we get the evidence, prosecutions will follow”

During the Harms Commission, CCB member Ferdi Barnard was cross-examined by lawyers for the David Webster Trust and Judge Louis Harms suggested in his report that, although the evidence was inconclusive, military involvement in Webster’s murder could not be ruled out.

During the inquiry advocates acting for victims of political violence argued that a number of CCB members be investigated and prosecuted for attempted murder or conspiracy to murder arising out of actions taken against Cape Town lawyer Dullah Omar, Johannesburg journalist Gavin Evans, Durban attorney KE Mhlaba and Roland White of the Urban Foundation



General Eddie Webb

The lawyers argued there was evidence to implicate General Eddie Webb, “chairman” of the CCB, and Colonel Joe Verster, managing director of the unit. They added that Staal Burger, head of the CCB’s internal operations team, as well as his team members Botha, Van Zyl and Barnard be investigated with a view to prosecution.

They said charges of sabotage and terrorism should be slapped on Van Zyl, Botha and agent Izgak Hardien in connection with the bombing of the Athlone Centre, which housed anti-apartheid groups in Cape Town. Webb and Verster may have been accomplices in the planning of this incident and a range of other attacks.

If Botha and Van Zyl are indemnified it is possible they will land up in the dock, not to face charges for crimes they have been linked to, but to give evidence against officers higher up in the chain of command that ran the army’s shadowy counter-insurgency unit

Bypassing the courts

Star 3/6/91

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JUSTICE without a judge? Without a good battle in open court, a measure of dirty laundry and a lofty verdict from above? If this be justice, how can it be seen to be done?

Despite powerful demands for democratic control in many areas of public life, South African notions of justice have remained largely traditional and elitist. Only recently has the ground begun to shift away from practices suggesting that justice vests solely in the wisdom of robed judges.

Evidence of this is the sudden growth spurt in alternative dispute resolution (ADR) services, catering to demands from the factory floor to the boardroom, and the township streets to offices of senior civil servants.

Available on a private full-fee basis or, in some cases, on a generously sponsored basis, ADR services — such as mediation and arbitration — rest on the idea that feuding parties can take direct responsibility for the process of settling disputes and finally for the outcome.

Ground-breaking ADR work was done in the field of labour relations by the Independent Mediation Service of South Africa (IMSSA), established in the mid-'80s.

IMSSA board chairman Paul Pretorius describes the service, which currently handles about 1 000 cases of arbitration and mediation annually, as a response to the surge in collective bargaining between unions and employers. IMSSA aims to "provide a resource to parties involved in collective bargaining".

IMSSA operates in areas where the options to successful ADR stretch well beyond resorting to the court as a battlefield. Industrial action,

The growth in alternative dispute-resolution indicates a shift away from practices suggesting that justice vests solely in the wisdom of robed judges. JO-ANNE COLLINGE reports

with associated costs to both workers and management, is often the real alternative.

Recently, IMSSA has ventured into community mediation, including the Tokoza and Phola Park peace initiative involving the ANC, PAC, Inkatha and the local civic and residents' associations.

Tokoza, the scene of devastating bloodshed last year, has been without electricity for months due to the service fee boycott. "The parties reached agreement on a number of issues relating to the service boycott, political tolerance, the education crisis and relations between residents of Phola Park and the hostels in Tokoza," the IMSSA's latest review records.

Among the newer initiatives, pitched at the upper end of the socio-economic scale, is the Alternative Dispute Resolution Centre (ADRC) established in central Johannesburg by the law firm Webber Wentzel.

The ADRC believes that, even for big business and Government institutions — able to afford high legal fees — the courts should be the avenue of last resort in settling disputes.

Members of the ADRC argue that, as matters stand, only about 10 percent of civil disputes end up in court. Most are settled before that stage — frequently literally on the threshold of the courtroom, and often, Tim Trollip of Webber Wentzel comments, "on a kind of Heath Robinson basis".

Settlements are much more satisfying when they are taken out of the adversarial context of the courtroom, argues Mr Trollip, when the parties have been geared not to winning a victory, but to solving a problem.

"The 'ownership' of the process is also important. People like to be part of solving their own problems," he asserts. In court they are compelled to hand over the solutions to lawyers.

Savings on legal fees are held out as a particular incentive to ADR, and Mr Trollip states that ADR bills are typically lower than bills for litigation.

While fees for mediators and arbitrators run at anything between R50 and R400 an hour — a range which closely approximates attorneys' fees — generally ADR takes less time, less paperwork and less research than litigation.

Asked why lawyers should promote the cheaper option, Mr Trollip admits to self-interest. Trends abroad show that ADR is the way of the future, he argues. "If you don't move with the times, you get left behind."

What the parties to civil disputes certainly win by resorting to ADR is privacy. The ADRC points out that confidentiality is a condition of the feuding parties getting together to iron things out. Nothing that is disclosed as a result of ADR efforts may be used in court if the settlement process breaks down.

Another widely acknowledged benefit is client satisfaction. "If parties themselves can control the process, it follows that they will probably derive a higher degree of satisfaction with the outcome," comments Mr Pretorius. Furthermore, litigation is based on past feuds and differences and can do little to contribute to a healthier future relationship between parties.

ADR is not similarly limited. For this reason, says William Lane, a key figure in the embryonic ADR Association of South Africa (Adrasa), "ADR is particularly suited to cases where there is an ongoing relationship between the parties — as between a producer and distributor or an insurer and the insured."

It is a similar vision of constructive justice that has moved the Centre for Applied Legal Studies at Wits University and the Johannesburg branch of the National Association of Democratic Lawyers to found the Community Dispute Resolution Resource Committee.

CDRRC representative Steven Goldblatt describes the initiative as an attempt to ensure that there are "permanent mechanisms available in communities to intervene in individual disputes".

The CDRRC will assist communities to set up structures and train personnel skilled in mediation and arbitration. It will also make lawyers available to support community initiatives.

The CDRRC, like the controversial "people's courts", is a response to the alienation of many township people from the formal institutions of justice. It aims to reintroduce into communities notions of justice that enjoy the confidence of the people. □

Public defender system to be launched soon

Star 4/6/91
By Shirley Woodgate

The launch of South Africa's first public defender system is imminent, promising to slash the costs of defending thousands of accused in the lower income bracket, said Legal Aid Board director Dr Nic Pretorius.

The major difference between the current system where the board foots the bill for referring indigent people to attorneys in private practice, is that the board itself will employ suitably qualified public defenders to represent the accused in court.

"The scheme has been extensively used overseas, specifically in the United States where expenses have been slashed by up to three times in certain states

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"We aim to start by employing 10 public defenders in Johannesburg, probably on July 1, and if it is feasible and successful, we will recommend the system's extension to towns and rural areas in the rest of the country," Dr Pretorius said in an interview.

The expansion of the scheme depended largely on the availability of funds.

"The exercise tends to be rather expensive but we believe the Government has a duty to assist, as it has already done for the Legal Aid Board," he added.

Original plans were formulated by a pilot committee which included Lawyers for Human Rights, the Legal Aid Board, the General Bar Council and the Department of Justice.

Bill aims to cut costs, time

Political Staff Star 4/6/91

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Cutting legal costs, speeding up certain civil cases and increasing the accessibility to the courts are the broad objectives of a Bill presented to Parliament yesterday

The Short Process Courts and Mediation in Certain Civil Cases Bill, tabled earlier in the session, has been returned to Parliament by the Joint Committee on Justice, with several technical amendments

The Bill provides for the ap-

pointment of "mediators" by the Minister of Justice to hear certain civil cases, and the establishment of "short process courts" to adjudicate disputes

The order of a short process court and a mediator will be final, with no appeal procedure, but there is a provision for certain grounds of review.

Legal representation will be allowed during both the mediation proceedings and the proceedings of the short process court

Bill passed to speed up legal disputes

CT 4/6/91

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Political Staff

PROVISION for speedier settlement of legal disputes through mediators and alternative "short process" courts has been made in a new bill tabled in Parliament yesterday.

The Department of Justice said in a memorandum, attached to the Short Process Courts and Mediation in Certain Civil Cases Bill, that the measure was aimed at cost-saving and expeditious adjudication of certain civil actions. "It is aimed at increasing accessibility to the courts," the memorandum said.

In terms of the bill, the Minister of Justice will be empowered to appoint one or more mediators from names submitted by the Association of Law Societies, the General Bar Council and the Department of Justice.

The parties will then be required to appear before a mediator in chambers.

UK jurist praises 'change' in SA

Cr4/6/91

Own Correspondent (25)

LONDON — International jurist Mr Geoffrey Bindman said yesterday that he found the change in judicial attitudes in South Africa "startling" — for the better.

Mr Bindman, a harsh critic of South African legal injustices, was commenting on the Appellate Division of the Supreme Court's decision to throw out the original "common purpose" verdict in the Uppington 25 convictions. He said the dramatic reversal of 21 of the murder convictions created hope for the South African legal system.

"The appeal judges seem to be doing their best to inject a new consciousness of human-rights values into the South African legal system and to distance it from a discredited political system."

The distinguished British civil-rights lawyer said this development was "encouraging" and in tune with the ANC's aspirations for a democratic constitution with a bill of rights.

Key race-reform Bills held back over 'hitch'

Political Staff

THE government has temporarily withdrawn two key reform Bills

The Minister of Home Affairs, Mr Gene Louw, announced today that the Population Registration Act Repeal Bill and the Further Abolition of Racially Based Measures Bill had been withdrawn

But a spokesman for him said the legislation would be debated and vot-

ed on by parliament in the present session

"There is no chance they won't go through," ministry spokesman Mr Jack van der Merwe said "It's just a slight technical hitch. They will be dealt with this session."

However, he would not disclose what caused the delay Mr Louw would explain in parliament today during the Home Affairs vote

ARCUS 4/6/91
The elimination of the Population Registration Act, which categorises people by their skin colour, was one of three pillars of apartheid President De Klerk said would go this session.

The Racial Measures Bill strips a number of laws of racial references. These include the Workmen's Compensation Act, Births, Marriages and Deaths Registration Act, Identification Act and Marriage Act.

Revenue's long lasso will pull tax evaders into line

Blom 4/6/91

GILLIAN HAYNE

TAX evaders and those slow to hand over their income tax to Revenue will be pulled into line with the introduction of VAT.

Inland Revenue chief director Trevor van Heerden said that, through information gleaned from companies' VAT registration forms, Revenue would be able to link companies' VAT liability with their income tax liability.

Dreisenstock and Associates director Tony Dreisenstock said "If a company has paid too much VAT and is entitled to a refund, but has not submitted its VAT return, or if Revenue discovers a shortfall in the company's other tax payments, it will be able to set one off against the other without warning or even notifying the company."

However, the company would have to be a constant defaulter for Revenue to take such drastic action.

In addition, Revenue could insist that the defaulters make a security deposit upfront to cover future liabilities. This, too, could be used to offset other tax liabilities.

Van Heerden said the new computer system installed for VAT would make Revenue collections much more efficient — in linking companies' different tax liabilities

and also in monitoring their VAT positions.

The VAT system, created, installed and tested by outside consultants, was already up and running. An audit programme was in place and would run a full spectrum of tests to ensure each company was fulfilling its VAT obligations.

"Inspectorate visits to companies will normally take place only if the computer identifies unusual behaviour during its audit test. We will, therefore, be using our 800-strong inspectorate much more efficiently, allowing them to concentrate on companies where known discrepancies and problems exist," Van Heerden said.

He said companies could request an information visit from Revenue to study their computer system and controls. Should Revenue find the controls adequate, future inspections were unlikely.

He added that although penalties for not complying with VAT requirements were stiff, Revenue would not take a hard line until everyone knew how the system worked.

"We will encourage and advise rather than penalise," he said.

John Grittens, Chairman of the Regional Services Council, briefed the n today's budget meeting.

Bill aims at faster end to disputes

(252) Political Staff (191)

CAPE TOWN — Provision for speedier settlement of legal disputes through mediators and alternative "short process" courts is made in a Bill tabled in Parliament yesterday.

The Department of Justice said in a memorandum, attached to the Short Process Courts and Mediation in Certain Civil Cases Bill, that the measure was aimed at cost-saving, expeditious adjudication and increased accessibility to courts.

In terms of the Bill, the Minister of Justice will be empowered to appoint mediators in an area from names submitted by the Association of Law Societies, the General Bar Council and the Department of Justice.

After a notice has been issued subjecting a dispute to mediation, the parties will be required to appear before a mediator in chambers.

"After the interview with the parties the mediator shall issue an order which shall later form part of the record of the resulting action in the court concerned." Blom 4/6/91



- (a) as a result of economic restrictions the backlog cannot be covered with one increase. In comparison with the amount paid to Whites the gap narrowed from 1 April 1991 with regard to Coloureds and Indians with 4,8% and with regard to Black persons with 13,6% and
- (b) adjustments are made annually depending on the availability of funds,
- (2) no

INTERPELLATION

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

Charter of human rights

- *1 Mr A GERBER asked the Minister of Education and Culture
- (1) Whether his Department will seek to promote a charter of human rights for a new education and constitutional dispensation, if not, why not,
- (2) whether he will make a statement on the matter?

B1132E INT

*The MINISTER OF EDUCATION AND CULTURE Mr Speaker, the protection of rights naturally lies in the field of politics and statesmanship and not in the field of education. Education merely carries the responsibility of formulating those education rights which ought to be included in a new constitutional dispensation. It is not education that must devise the method of protection.

I am therefore not expressing an opinion on a bill of rights as a method of protecting rights, but what my department is striving for is those education rights which matter. They include the right to parental say, the right to education in one's own language in one's own community, education which is loyal to an own ethos, including religion and education which upholds and expands culture. My department is definitely striving towards realising these precious and irrevocable rights. In fact, like all other educa-

tion departments and bodies, my department also commented, on request, on a possible draft bill of rights and indicated the importance of these fundamental education rights. The hon member for Brits knows that the whole matter of the protection of rights is under consideration at present and I am therefore not going to go into detail in this regard.

The Government, however, has already laid down clear guidelines for a new dispensation. The hon the State President stated unequivocally in February 1991 that in a new education dispensation those who wanted the right to their own type of education with equal State support will have it.

He also mentioned each community's right to an own community life. The right of the child to be educated in its own language has been referred to many times, as has the right to the maintenance of culture in the schools and the continuation of education with an own ethos for those who want that.

These rights must therefore be guaranteed in this country with regard to the education of every child for those who prefer this. The constitutional system in any country must be of such a nature that it takes into account these basic education needs. The successful education systems in the world are those systems which are reconcilable with the constitutional system concerned, because then there is no friction.

An education system is therefore unsuccessful when there is no harmony between the constitutional system and its education system. We must avoid such a lack of harmony in a future system at all costs.

*Mr A GERBER Mr Speaker, I accept that the hon the Minister accepts the principle of a bill of rights in a new constitutional dispensation. That is NP policy and falls into the pattern of thought of the NP.

The hon the Minister would agree with me that such a bill of rights would have specific implications for education. I want to ask him a few questions in this regard this afternoon. Does he endorse section 2 of the proposed charter which makes provision for so-called affirmative action? Does he endorse that with regard to education? Is he amenable to the idea that Whites are discriminated against in a new education system,

even if it is only on a temporary basis? Is it the hon the Minister's standpoint that the Black part of his new nation, the so-called aggrieved parties, will be given a head start in terms of funds and facilities on the Whites so that the so-called injustice of the past can be put right on this basis? It is very important that the hon the Minister give us a clear and straightforward answer to this.

There is an ever-increasing insistence on affirmative action with regard to education. The Black masses, so it is claimed, must be privileged at the expense of the White minority until they have reached the same standard of development as the Whites. Is that what the hon the Minister has in mind with the NP's bill of rights?

I want to ask a second question. What is the hon the Minister's standpoint with regard to section 10 of that proposed charter? In it it is stated that each one has the right to freely exercise choices with regard to education and training. If that section were adopted, it would put an end to differentiation in education, and not only differentiation on the basis of race, but also on the basis of peoples, culture and language. We want to know from the hon the Minister whether he endorses that section and whether he accepts it. [Interjections]

A third question is whether the hon the Minister endorses section 17 of the proposed charter. This section maintains the right to dissociation with the understanding that if such dissociation should mean discrimination on the grounds of race, colour, religion, language or culture, no State funds would be made available for such a group of people. [Interjections] The question now is what the hon the Minister's standpoint is in this regard. Does he endorse the standpoint that if people should differentiate in a new education system on the grounds of religious convictions, language or culture, no State funds would be made available for such a school? Is the hon the Minister going to strive towards having such a provision in a new constitutional dispensation?

Mr R M BURROWS Mr Speaker, when I read this question and thought about who was asking it and who would be answering it, I must say, I found it difficult to choose between the hon member for Brits and the hon the Minister when it came to defending human rights in South Africa, to be perfectly honest. [Interjections] The one is for White rights and the other one,

well, I am not quite sure what he is for at the present time. [Interjections]

However, let us make the position of the DP quite clear. We stand for a Bill of Human Rights to be included in the new constitution. [Interjections] If we take the proposed Bill of Rights of the SA Law Commission into account, we can pick up various points. Article 10 proclaims the right to freedom of choice with regard to education and training, and we believe that that is absolutely necessary, as is the right to associate freely with other groups and individuals, as well as the right of individuals and groups to dissociate themselves from other individuals and groups, provided that if such dissociation constitutes discrimination on the grounds of race, colour, religion, language or culture, no public or State funds shall be granted directly or indirectly to promote the interests of such person or group.

The key question in this regard is: What promotes discrimination? It has been accepted internationally and in United Nations charters that it is not discriminatory if a school exists to promote a language group. It is discriminatory if that school says that only people of a certain language group may enter. That is discriminatory.

The CP must therefore make up their minds. It is no problem at all if they want Calvinist, Afrikaans schools, but it is discriminatory if they wish to include in the entrance qualifications of a school that only White, Calvinist Afrikaners may enter. They should not get State funds for that. [Interjections] [Time expired]

*The MINISTER OF EDUCATION AND CULTURE Mr Speaker, the question which the hon member for Brits asked was whether I accepted the principle of a bill of rights. The answer to that is a simple "yes". I want to say a second thing to the hon member. The bill of rights to which he refers, is not a Government document. Of course there has not yet been any statement to the effect that the bill of rights to which he referred is a document which the Government completely accepts.

The hon member asked whether I was in favour of discrimination against Whites. He then referred mainly to finance. I want to tell the hon member that I am not in favour of discrimination against anyone at all. I am not in favour of

discrimination in education against Whites, Blacks, Coloureds or Indians

The hon member for Pinetown made an important point about the concept of "discrimination" and the interpretation of that concept. As the hon member for Pinetown indicated, there is undoubtedly a difference between discrimination with regard to skin colour and differentiation with regard to the mother tongue. It is internationally regarded as non-discriminatory when a specific language group maintains its own language. I am therefore not in favour of discrimination against any of the groups.

The hon member spoke about affirmative action. We could debate at length about affirmative action. Once again the issue would be what the meaning of that affirmative action was and what interpretation we gave to it. The hon member did not give me his specific interpretation of the phrase "affirmative action", and I will therefore not say any more about that. [Time expired]

*Dr F H PAUW Mr Speaker, the Education Renewal Strategy Document has been made available today and an important point is that the uniform structure of education is going to enjoy preference. In contrast to what the hon the Minister has just said about distinctive education as a right, distinctive education is reduced to a so-called "possibility" in this document.

In a new South Africa which is a unitary state with general citizenship, we will have a government in which the majority is going to dominate. That is what the NP envisages. The NP now says that it is going to protect the rights and interests of minorities, also in education. It does not say exactly how, but it refers to a bill of rights. That is the NP's guarantee of minority protection. Earlier the NP wanted to use the own affairs concept for this, but in the hands of the NP own affairs were no guarantee of the rights of Whites. The NP failed in this regard.

Now a bill of rights is being proposed as a protection for Whites and as a mechanism of protecting their rights and education. In the hands of the NP and those of a Black majority government, a bill of rights would offer no protection for Whites. According to NP policy, Whites are not going to be recognised as Whites in a new constitutional and educational dispensation. The proposed bill of rights of the SA Law Commission provides that there may be no

discrimination on the grounds of race, unless discrimination takes place in the form of affirmative action. [Time expired]

*Mr A GERBER Mr Speaker, the hon the Minister has not really answered the question which I asked, but I want to ask a further question of the hon the Minister. Does he envisage a bill of rights similar to that of the USA?

I want to mention to the hon the Minister two examples which took place in American schools. A school boy and his mother who were atheists, objected to the school's regulation that there should be a reading from the Bible and that the Lord's Prayer should be used. The Supreme Court agreed with the boy and ruled that a reading from the Scriptures and prayers in a school were unconstitutional.

A second example is that an anthology of poems in which a smutty poem appears in sexually explicit language, was discovered in the library of a school. The court ruled that this piece of pornography may not be removed from the library, because such action would infringe on the pupils' right to read. How is the hon the Minister going to prevent such events in a new South Africa with a bill of rights? [Interjections] How will he manage that?

*The MINISTER OF EDUCATION AND CULTURE Mr Speaker, the future bill of rights will not determine everything in this country or the way in which the country is governed.

I want to say at once that as I see it there will be a government in the future—regardless of how it is constituted—and there will be a bill of rights which will ensure that individual rights and also group rights are protected. There will also be a judiciary which will act as arbiter if a difference in interpretation should arise. But I want to state this categorically now. We said very clearly and unequivocally that in a new constitutional dispensation there would be no discrimination in education on the grounds of race or colour. Let us therefore say this to one another. It is not the bill of rights which must protect or not protect. This Government accepts that if one had an education system in the future in which one could say that a person may only be admitted to a school if he was White, that would constitute discrimination.

What is going to happen, however, is that there will be an opportunity to say that on the grounds of common values such a group, within an own community life, may create its own school.

*Mr S C JACOBS Name a court ruling in the world to that effect!

*Mr SPEAKER Order!

*The MINISTER May I offer the hon member who is shouting so loudly a comb? [Interjections] Perhaps that would keep him busy. [Interjections]

*Mr SPEAKER Order!

*The MINISTER The fact of the matter is that it is possible and it is also internationally acceptable that there are specific educational points of departure which will stand the test of time and against which one can test these values. I want to ask hon members whether they are in favour of Christian values as a norm. Are they in favour of mother tongue education? [Time expired] Debate concluded.

QUESTIONS

†Indicates translated version

For written reply

General Affairs

Cahora Bassa: capital amounts invested

349 Mr L F STOFBERG asked the Minister of Mineral and Energy Affairs †

- (1) What capital amounts had been invested in the Cahora Bassa hydro-electric scheme or made available for this purpose by (a) the South African Government and (b) Eskom as at the latest specified date for which information is available,
- (2) whether he will furnish information on capital amounts invested by other South African financial institutions in this scheme, if not, why not, if so, (a) what are the relevant details and (b) in respect of what date is this information furnished,
- (3) (a) how much electric power have South African consumers received from this scheme to date and (b) in respect of what date is this information furnished?

B933E

The MINISTER OF MINERAL AND ENERGY AFFAIRS

(1) (a) The South African Government has invested R35 million in the Cahora Bassa hydro-electric scheme according to the agreement with Portugal in 1969.

(b) Eskom acts as agent to the South African Government on the Cahora Bassa hydro-electric scheme. According to the agreement between Eskom and the South African Government no capital was invested by Eskom in the Cahora Bassa hydro-electric scheme. The South African Government has, however, paid over R143 million to Eskom for the capital costs of the erection of the transmission line between Pafuri and the Apollo Power Conversion Station, and for the erection and equipment of the Apollo Station.

(2) (a) The IDC made export credit loans available to Portugal to the amount of R41 million (capital) in support of contracts with South African companies who participated in the construction of the Cahora Bassa hydro-electric scheme. These loans have been repaid in full.

(b) 1969 to 1976

(3) (a) 37,47 million Gigawatt-hour
(b) 1977 to date

Toll-road companies, guarantees against losses
388 Mr H J COETZEE asked the Minister of Transport †

- (1) Whether any provision has been made for guarantees to toll-road companies in order to cover them against possible projected losses, if not, why not, if so, for what guarantees,
- (2) whether such guarantees have been given to any toll-road companies, if so, what are the relevant details?

B1020E

The MINISTER OF TRANSPORT

(1) No, not since 1 April 1991. There is no requirement to provide such guarantees.

'Vague' repeal bill withdrawn

Political Staff 015/12/91

THE government yesterday withdrew the Population Registration Act Repeal Bill, and will introduce a new bill today, following outside pressure, specifically from the United States

A new bill repealing the Act, and several other racially-based measures, will be tabled today

Home Affairs Minister Mr Gene Louw said the bill was being withdrawn and replaced because of the "vagueness of the wording" of the proposed transitional measure

Representations from various sources, including Foreign Affairs Minister Mr Pik Botha and Democratic Party leader Dr Zach de Beer, had been received, he said

It is understood that the bill was withdrawn after intense US pressure. As it stood, the bill would not comply with the conditions laid down for the lifting of the Comprehensive Anti-Apartheid Act.

The new bill would be referred to the Standing Committee

Deputy minister jailed for murder

South 6/6-12/6/91

From Cyril Madlala
Durban

THE trial of deputy minister of the Interior in the Kwazulu government, Samuel Bhekizizwe Jamile failed to answer the question around the role of members of the Kwazulu police in the killings

Jamile was last week sentenced to life imprisonment for killing Mr Joseph Khumalo and attempting to kill his girlfriend, Ms Thokozile Shabalala, in 1989

Jamile's co accused, Mziqo Hlophe, 20, was jailed for an effective 22 years for his part in the killing of prominent Clermont businessman Mr Zazi Khuzwayo, in 1987, and for killing a taxi operator Mr Nicholas Mkhize, in 1988

Both Jamile and Hlophe had been accused five murders and seven attempted murders, but the state failed to prove their guilt in respect of most of the charges

Killings

The common factor in all the killings was the involvement of three members of the Kwazulu police, named only as Vusi, Vela and Sotsha, who have since disappeared

The state closed its case without them

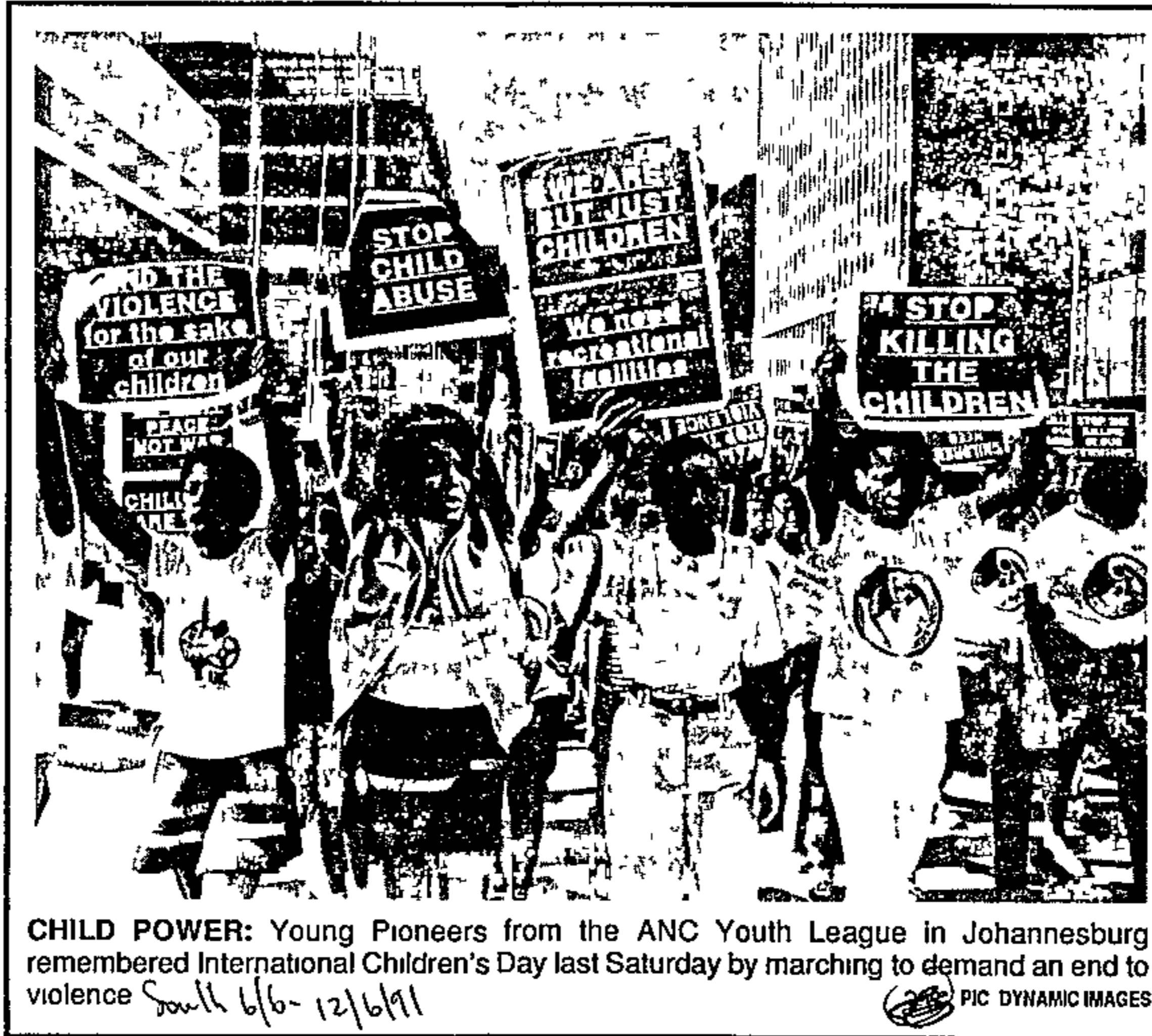
The state alleged that Vusi and Vela were with Jamile when Khumalo and Shabalala were taken from the room they rented from Jamile and driven to a bush at Mamba Valley in Inanda where Khumalo was killed

Shabalala's throat was cut and she was left for dead

Hlophe was convicted on the strength of what he had told people outside the courtroom at the Supreme Court in Maritzburg, where the trial took place

He denied that he had shot Khuzwayo, but claimed he had accompanied members of the Kwazulu police who killed Khuzwayo

Jamile, who pleaded not guilty the trial, denied that he knew the policemen, and could not remember their being posted to guard his premises



CHILD POWER: Young Pioneers from the ANC Youth League in Johannesburg remembered International Children's Day last Saturday by marching to demand an end to violence South 6/6-12/6/91

Another clouded area was the relationship between Jamile and Hlophe. The stark contrast in their stature, personality and dignity was dominant in court — a common criminal next to a government deputy minister who is also national president of a traditional healers' association and a large property owner

The unlikely pair was involved in killings that had Clermont residents living in fear for five years

From the evidence, the only hint of their association came from the fact that Jamile was an Inkatha leader and Hlophe a supporter

Pleading in mitigation, his counsel said Hlophe had been orphaned at

13, involved in the Khuzwayo killing at 16 and killed Mkhize at 17

Between those crimes, he was also in and out of jail for housebreaking and robbery and assault with intent to do grievous bodily harm

That such a character murdered people is not altogether astounding

Jamile, formerly a teacher in Maranndhl, apparently prospered in his healing business, ending up with two multi shops

He ran his affairs from an office in Durban and at one stage had nine properties in Clermont

He rose quickly in the Inkatha ranks, becoming a central committee member and member of the Kwazulu Legislative Assembly before his appointment as deputy minister of the Interior in 1989

Among the perks of his position, he had at his disposal two brand new chauffeur-driven Mercedes Benzes

Besides the policemen who guarded his premises, he was also given a personal bodyguard

Then came the marathon trial. It ruined him financially

After paying R200 000 to lawyers and ceding his properties as security for more payment — no buyer would touch his properties — Jamile eventually ended up with a pro Deo counsel. And now he is in jail

People's court took after (252)

'poor policing'

SOUTH 6/6-12/6/91
MAGISTRATES hearing 'people's court' cases in recent weeks have accepted that "anti crime committees" were established because of insufficient police protection

In several cases charges have been withdrawn or suspended sentences were imposed on people involved in incidents of assault relating to people's court activities — all of which happened in Missionvale, a township in the largely coloured northern areas

Charges against three people for their alleged involvement with people's courts were withdrawn in the regional court on Monday

In withdrawing charges of assault against Mr Michael September, Mr Isaac Japhia and Mr George Jacobs, the prosecutor said the state had no case against them

Suspended

In another case last week, two men were given suspended sentences for an assault on an alleged drug dealer in Missionvale.

Douglas Jantjies and Gusten Johannes Thomas were sentenced to six months suspended for three years. Four others charged with them were acquitted

In passing sentence on Jantjies and Thomas, regional court president Mr G Steyn said the court accepted that Missionvale residents had complained to police, but as far as they were concerned nothing had been done

Mr Ronnie Pillay, who was defence advocate in both cases, said during argument for mitigation in one of the cases that the head of police in the area understood the community's problems and the committee was an accepted concept in the area

Pillay also noted the people had acted in the interests of the broader community — PEN

Indemnity for Death Row prisoners?

South 616-12/6/71
THE 10 remaining political prisoners on Death Row are pinning their hopes for freedom on indemnity applications to be heard in the next few weeks.

Members of the "Uprising 25" were the latest group to be released from Pretoria Central Prison when the Bloemfontein Appeal Court last week overturned their convictions and murder sentences.

The remaining political prisoners, several of whom are members of Umkhonto weSizwe, have had their applications for release turned down by the government.

Their cases have now been referred to a indemnity committee which is expected to review their positions in

the next few weeks

It is understood that the group, who believe that the ANC should be doing much more to secure their release, are considering embarking on hunger strike if they are not freed soon

The ANC could not be reached for comment

Political prisoners on Death Row include

Mthetheleli Mncube (MK), Mzondeleli Nondula (MK), Jerry Molobeng, Israel Machasa, Johannes Mono, Mkhusele Mdepha, Peter Mandyoli, Mzimeni Danster, Monwabisi Khundulu (all three members of Cradock Youth Congress), Mbokeli Mavela and Oupa Seheri (MK)

252



Individual intent reaffirmed as key to murder trials

LEGAL EXPERTS HAVE described last week's landmark "Uppington 25" Appeal Court judgment as an example of how the controversial "common purpose" doctrine should have been applied in the first place. University of the Witwatersrand law professor Denis Davis has described the judgment as the "death-knell" for the way the doctrine was applied in the past

"The way the doctrine was applied is a legacy of an era when an attempt was made to criminalise the opposition of communities to apartheid . . .

"The judgment doesn't overturn the common purpose doctrine. What it does, however, is qualify it by saying that one has to look at the individual and not the group," said Davis

In terms of the doctrine, any person who is part of a mob which becomes intent on killing is equally guilty of murder, even though that person may not have struck the fatal blow

The 25 were convicted in May 1989 for the murder of municipal policeman Lucas "Jetta" Sethwala, who was stoned to death and set alight after a protest meeting at the local soccer stadium

In overturning the sentences and convictions of the "Uppington 25" the Appeal Court found that even though many of the accused had stoned the house of Sethwala, it could not be proved that they had the individual intention to commit murder.

The court found that the "common purpose" doctrine had been incorrectly applied and it could rather be said that many of the accused were guilty of public violence. Mr Justice E M Grosskopf overturned 21 of the 25 murder convictions, acquitting three of the accused and imposing suspended sentences on 18

The murder convictions of two were upheld, but their death sentences were altered to terms of imprisonment. This week lawyers were making arrangements for them to be transferred to prisons closer to their homes

Lawyer Andy Durbach, who represented the accused in the marathon trial which lasted three years, said this week that it was her opinion that the common purpose doctrine had been too loosely applied

"What last week's Appeal Court judgment means is that one has to take each fish out of the net and prove that there was individual intention to commit murder," said Durbach

Peace group aims for quick results

TIM COHEN

THE committee established to bring together SA leaders to discuss violence and intimidation aimed to complete its work in weeks rather than months, committee member Louw Alberts said yesterday.

Eleven church and business leaders have been appointed to the group as facilitators to hold discussions with political groups and interested parties.

The group includes Archbishop Desmond Tutu, the Rev Frank Chikane, Bobby Godsell and John Hall, all of whom will be acting in their personal capacities.

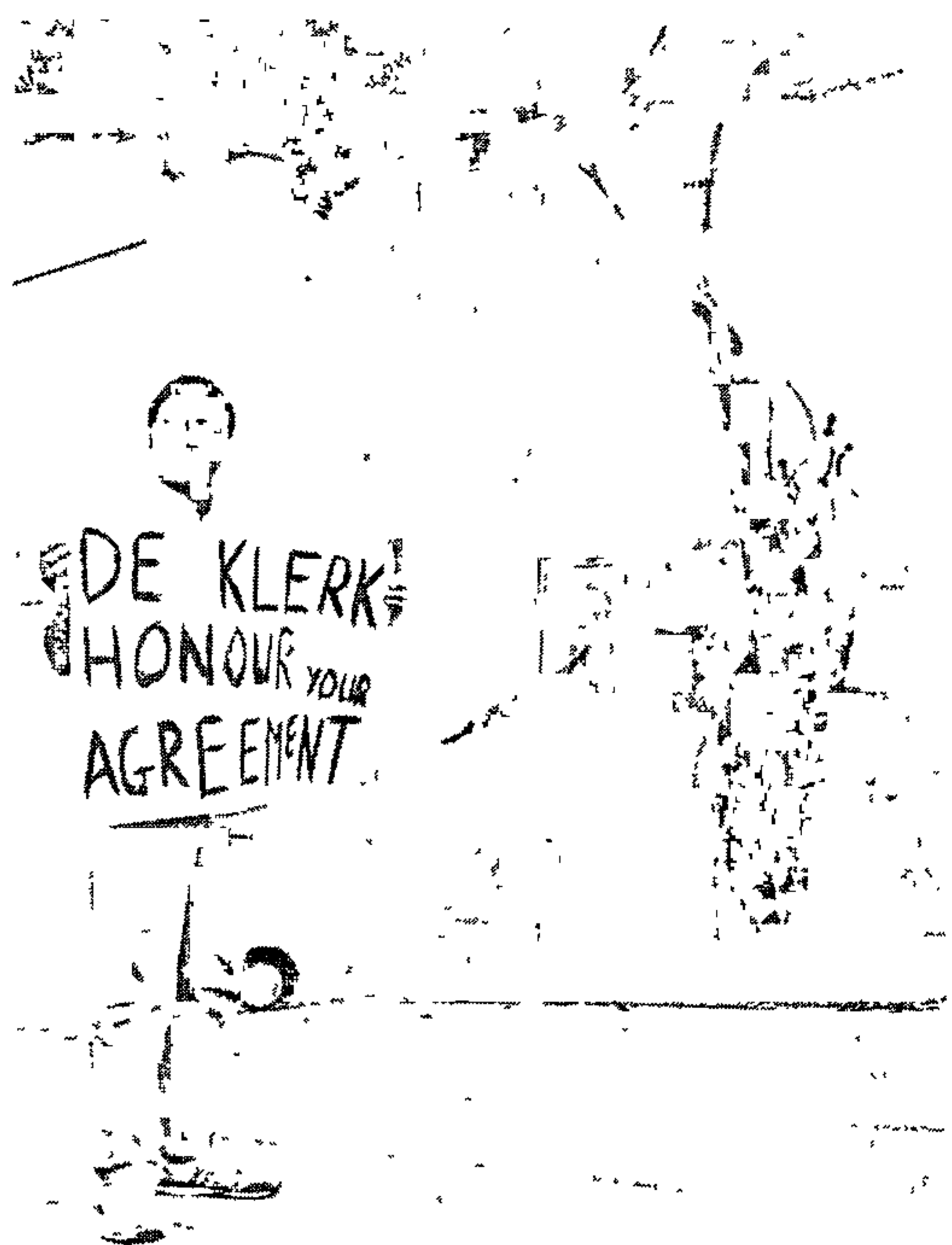
There is one outstanding post on the group, which has been reserved for someone from business, probably black and possibly a woman.

Alberts declined to comment on the group's plans because of the sensitivity of the issue, but said it would act as a low-profile catalyst to bring leaders together to discuss violence.

Although Alberts was mandated by the government-initiated conference to form the group, the group has decided that it should have a rotating chairman. *B1 Day 6/6/91*

Whether the leaders will be brought together with the intention of holding another peace summit, similar to that hosted by government recently, is not clear.

Alberts has said previously that the leaders would be brought together to create a "mechanism" of some kind, still to be decided on, to deal with violence.



At a picket outside Wits University yesterday, held in solidarity with hunger-striking prisoners, protesters burnt a banner saying "Destroy the myth of De Klerk's new SA".

Picture ROBERT BOTHA

Lawyers slate Coetsee claims on prisoners

JUSTICE Minister Kobie Coetsee yesterday came under fire from lawyers who strongly disputed his statement that all political prisoners had been released.

Lawyers for Human Rights (LHR) national director Brian Currin said in a statement the minister's inference that all prisoners who committed murder, rape or robbery were common law criminals and not political prisoners, was simplistic, misleading and counter productive.

"As an organisation we are presently preparing representations to the Indemnity Committee on behalf of prisoners serving sentences for politically motivated murder. Must we assume, from the Minister's statement, that their cases have already been decided and that we are merely going through the motions?" Currin asked.

Hunger strike committee lawyer Willie Hofmeyr said Coetsee's private views on whether certain prisoners were political prisoners were irrelevant as indemnity committees had been set up to decide on disputed cases.

Hofmeyr said three prisoners — Isaac Mabaso, Johnson Lubisi and Douglas Tyutyu — were convicted and sentenced under

the Internal Security Act and yet remained in prison. "All three were members of the military wing of the ANC and were acting on orders at the time (of their offences)".

Richard Spoor of the National Association of Democratic Lawyers (Nadel) said Coetsee's "insinuation" cast doubt on government's commitment to release political prisoners.

Human rights campaigner Max Coleman said there were 31 prisoners on hunger strike — 14 of those on the 36th day of their strike. He said he was extremely disturbed by Coetsee's comments.

No comment could be obtained from the Justice Department but a Correctional Services spokesman said there were 37 prisoners on hunger strike.

Meanwhile, six prisoners at Barberton Hospital suspended a hunger strike after the ANC recommended they do so as their cause had been joined by the entire region, the Human Rights Commission said.

And an indefinite boycott of white-owned businesses in about 30 eastern Transvaal towns began yesterday.

WILSON ZWANE

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Respect for law *Argus 6/6/91* 'profession ²⁵² must take lead'

The Argus Correspondent
JOHANNESBURG — The legal profession represents "enclaves of privilege in a wasteland of misery", a Supreme Court judge said during a seminar on the future of the profession

Mr Justice Johan Kriegler, of the Transvaal Provincial Division and at present acting judge of the Appellate Division, was one of the speakers yesterday at the seminar organised by the Johannesburg Attorneys' Association

The seminar was characterised by outspoken criticisms of the legal profession from within and searching questions — and concrete suggestions — on what should be done to address many shortcomings in the legal system

Regarding a debate on whether attorneys should be allowed to appear in the Su-

preme Court, Mr Justice Kriegler said he was torn between depression and fury that the topic was still being discussed when violence threatened to become endemic, the birth rate was spiralling and the environment threatened more and more

There was no future for anyone unless the legal profession took the lead in inculcating into society a culture of respect for the law. And no one need throw up their hands in horror at people's courts as a suppurating sore in black society because that society had been abandoned by the law

Yet all people came from traditions which respected doing things the right way. People who did not respect the law because the law was not worthy of respect could not survive, he said

Professor Albie Sachs, a member of the ANC constitu-

tional and legal committee, spoke in his private capacity. He said as a young advocate he had been "nursed" by other lawyers and he urged the legal profession to do the same for those who were struggling against "glass barriers"

He said the legal profession was out of character with the rest of society because it was mainly white, male and urban. Without some form of affirmative action, this would not change

Asked about the ANC's view of the future, Professor Sachs said it would be a disaster if the new South Africa picked up old authoritarianism. If the ANC became the next government or part of a ruling coalition, and strayed from the path of human rights, he urged the legal profession "to tug at our coat-tails and get us back on track"

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Judge 'furious and depressed' over lawyers

Star 6/6/91 (252)

By Cathy Stagg

The legal profession represents "enclaves of privilege in a wasteland of misery", a Supreme Court judge said yesterday during a seminar on the future of the legal profession.

Mr Justice Johan Kriegler, of the Transvaal Provincial Division and at present acting judge of the Appellate Division, was one of the speakers at the seminar, organised by the Johannesburg Attorneys Association.

The well-attended gathering in the Carlton Hotel was characterised by outspoken criticism of the legal profession by its own members as well as searching questions and concrete suggestions on what should be done to address the shortcomings of the present legal system.

Regarding a debate on whether attorneys should be allowed to appear in the Supreme Courts, Judge Kriegler said he was torn between depression and fury that the topic was still being discussed when violence threatened to become endemic and the birth rate was spiralling.

No one need be horrified by people's courts in black society, he said,

because that society had been abandoned by the law.

Professor Albie Sachs, a member of the ANC constitutional and legal committee, said that as a young advocate he had been "nursed" by other lawyers, and he urged the legal profession to do the same for those who were struggling against "glass barriers".

He said the legal profession was out of character with the rest of society because it was predominantly white, male and urban. Without some form of affirmative action, this would not change.

If the ANC became the next government or part of a ruling coalition, and strayed from the path of human rights, he would urge the legal profession to get the ANC back on track.

George Bizos, SC, said the "outrageous" fees charged by advocates who represented the Government were a form of corruption.

The advocates, the Government and the attorneys who charged the fees were all to blame.

Attorney Henry Vorster said even senior advocates complained that going to the Supreme Court was like going to a casino because the result could go either way and principles of law were not being applied.

Assault case against AWB men dropped

Sowetan 6/6/91 (252) (31/1/91)

THE case against 14 Afrikaner Weerstandsbeweging men alleged to have assaulted black children in Louis Trichardt last November has been withdrawn and the men released.

In a dramatic turn-about in a case that raised much anger in the black community and led to a consumer boycott of the town, magistrate Mr WJ Fourie last week ordered that charges against the men be dropped.

The men, whose first appearance in court in December was attended by AWB leader Mr Eugene TerreBlanche and Conservative Party MPs, had made six appearances before the withdrawal order.

Their attorney, Mr Olaf de Meyer, had argued that the case be dropped because it was dragging on too long while the Attorney-

By MATHATHA
TSEDU

General was deciding whether to proceed with charges.

Fourie had made a ruling that a postponement in March would be the last one.

Senior prosecutor Mr HJ Viljoen said yesterday that the withdrawal was "provisional".

He said the case might be reopened when the Attorney-General reached a decision.

The men - Mr Lucas Beyers (31), Mr Barend Jordaan (24), Mr Jeff Scullard (38), Mr Willem Schaap (31), Mr Christoffel Wolfaardt (45), Mr Gerhardus van der Linde (25), Mr Barend Terblanche (48), Mr Stefanus Jacobs (40), Mr Jan Beyers (no age given), Mr Phillip Terblanche (43), Mr Albertus Pretorius (20), Mr Johan Nagel (23), Mr Ignatius Terblanche and Mr Johan Frederik Kruger (27) -

were accused of assaulting Sunday school children who were picnicking in a park in Louis Trichardt.

Five-year-old children were beaten with sjamboks, fan belts, sticks and bitten by dogs.

Public *Sowetan* worker

THE National Union of Public Workers holds its first national congress from tomorrow.

The theme of the conference will be held at the Roman Catholic Centre in Saratoga Street, Doornburg, Johannesburg, is "NUPSW challenges".

Azapo president Mr Nefolovhodwe will be the guest of honour. Other guests will come from 100 other unions in Africa.

The congress will look at the role of NUPSW the biggest union in the public sector and to redouble the fight against privatisation of the public sector particularly health care.

No win, no pay plan gets law societies' go-ahead

W/Mail 716-13/6/91

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DLA

LAW & THE COURTS

Carmel Rickard

IT HAS taken years of deliberation, but the Association of Law Societies (ALS) has now agreed in principle that its members may accept "contingency fee" work — cases in which attorneys charge costs only if they win.

ALS officials say the move is prompted by concern to improve access to the courts for people who would otherwise not be able to afford civil action.

However, the new rules must still be passed by the provincial law societies and many lawyers consulted this week still do not know the details. Judging from the response once they were informed, it seems the new rules may run into some opposition.

Opponents form two camps: some feel the new ALS-approved system is bureaucratic and clumsy, interfering with the free market system, others feel illiterate and unsophisticated clients are still inadequately protected against unscrupulous lawyers, who may charge unfairly high legal fees should they win.

The draft rules approved by the ALS provide that payment by the client shall be contingent upon the client's claim or counterclaim for damages being successful. If the action does not succeed, the client does not have to pay.

Attorneys are not obliged to accept work on the basis of this "special fee arrangement", but if they agree, the rules say an attorney must arrange with the client about paying sundry costs ("disbursements") incurred bringing the matter to court. For example, it is recommended that where the client would qualify, the Legal Aid Board be approached with a request to guarantee the payment of disbursements other than advocate's fees.

The ALS and the Bar Council have agreed that advocates asked to appear in contingency fee cases should apply to the council to accept the brief on that basis.

The ALS also requires that attorneys must record in writing the contract they have made with a client and counsel, giving details such as the method to be used in calculating counsel's charges and who is responsible for disbursements.

A copy of this document has to be lodged with the relevant law society within 10 days of being signed, and the attorneys involved must advise the opposing party that it is a contingency fee case.

A crucial provision is the amount which may be charged by the attorney. The draft rules state the total may not be more than the total of "party and party costs" plus a surcharge of 100 percent, with the proviso that costs may not be more than the damages actually recovered by the client.

If the award does not cover all the legal costs, disbursements other than counsel's fees must be paid first and the balance shared between the attorney and advocate "on a *pro rata* basis".

The two most controversial of the ALS rules are the paperwork, and the amount of costs which the attorney may charge.

Several attorneys said the red tape provision would ensure they did not accept contingency fee work.

"It's the kind of time consuming bureaucracy we don't need," commented one

Others were concerned that the fees which could be deducted were "party and party" costs, not the higher costs of "attorney and client". They predicted that clients, knowing they did not have to pay fees themselves, would continually phone and ask for consultations about their case, but that these costs ("attorney and client costs") could not be recovered.

On the other hand, some felt it was not reasonable to authorise attorneys to charge up to double their normal fees.

Chairman of the Natal Bar Council Malcolm Wallis, SC, said if the aim of a contingency fee system were to provide a public service, there should be an upper limit on the legal costs which clients would have to pay, otherwise it could happen that clients were left with nothing.

However several attorneys said they felt the provision for a 100 percent surcharge (ie twice what they would otherwise be entitled to charge) was "reasonable" — or even too little — as lawyers were entitled to adequate compensation for the risk involved.

They urged that instead of laying down figures, the ALS should leave it to the discretion of attorneys who would know if a client complained to the law society that this would be investigated by assessors appointed by the society.

It is widely acknowledged that many attorneys already do contingency fee work and that the ALS rules will simply codify this practice.

However, some lawyers currently doing "no win, no pay work", say it will no longer be worth their while to take such cases if the ALS rules on paperwork and fees are approved. If enough lawyers take a similar position, the ALS intention of improving access to the courts, will be thwarted.

Harms ⁽²⁵²⁾ lawyers must ^{CTT/b/a} pay back

PRETORIA. — The Bar Council here has ordered six Pretoria advocates to repay "substantial" amounts of money they received to represent the ministers of Law and Order and of Defence, as well as the police, at Harms Commission hearings.

The disclosure follows reports of a letter, sent by the Bar Council to Justice Minister Mr Kobbie Coetsee, in which it was alleged the police disregarded the advice of the state attorney in deciding to use two separate legal teams.

Yesterday, Bar Council chairman Mr Brian Southwood said Mr Coetsee had asked the council to inform him about steps taken with regard to fees charged by members of the Pretoria Bar.

The six advocates' fees ran into millions, with Mr Louis Visser, SC, and Mr Sam Maritz, SC, reaping almost R500 000 each. — Sapa

immediate comm

Pay-back order for six Harms⁽²⁵²⁾ lawyers

The Argus Correspondent

JOHANNESBURG — The Pretoria Bar Council has ordered six Pretoria advocates to repay "substantial" amounts of money they were given to represent the Minister of Law and Order, the Minister of Defence and the police at the Harms Commission's hearings.

The disclosure follows reports of a letter sent by the Bar Council to the Minister of Justice, Mr Kobie Coetsee, in which it is alleged that the police had disregarded the advice of the State Attorney in deciding to use two separate legal teams at the commission's hearings.

The chairman of the Bar Council, Mr Brian Southwood, said today that Mr Coetsee had asked the council to inform him about steps taken over fees charged by members of the Pretoria Bar

ARGUS 7/6/91
The Minister appeared to be under the impression that the Bar Council had taken no action. I wrote him a letter setting out what steps had in fact been taken," Mr Southwood said.

The six advocates are Mr Louis Visser, SC, and his junior Mr Dennie du Preez, who appeared for the Minister of Law and Order, Mr Sam Maritz, SC, and Mr Piet Kemp, who represented individual policemen, and Mr Willie Burger, SC, and a junior, who appeared for the Minister of Defence.

Their total fees ran into millions, with Mr Visser and Mr Maritz reaping almost R500 000 each in appearance fees and so-called "severance fees".

Mr Southwood said while the full Bar Council, including the deputy president of the Transvaal Law Society, Mr A C Hutchinson, had found the advocates' monthly fees to be reasonable, they had

been ordered to pay back other fees.

These were severance fees which were not agreed upon before the commission started, but negotiated after the commission finished its work.

Mr Southwood could not disclose the exact amounts paid back to the instructing attorneys or clients, but said they were "substantial".

Mr Visser and Mr Maritz each got R66 000 a month, Mr Kemp R44 000 a month and Mr du Preez R33 000 a month.

The use of two legal teams eventually cost the police more than R1,5 million.

Mr Justice Harms was also opposed to the use of two legal teams.

A spokesman for the Ministry of Law and Order, Captain Hendrik Opperman, said the police legal department would comment later.

6 advocates must repay slice of fees

252
S/aw
7/6/91

Pretoria Correspondent

The Pretoria Bar Council has ordered six Pretoria advocates to repay "substantial" amounts of money they received to represent the Minister of Law and Order, the Minister of Defence and the police at the Harms Commission's hearings

The disclosure follows reports of a letter sent by the Bar Council to the Minister of Justice, Kobie Coetsee, in which it is alleged that the police had disregarded the advice of the State Attorney in deciding to use two separate legal teams at the commission's hearings

The chairman of the Bar Council, Mr Brian Southwood, said today Mr Coetsee had been informed about steps taken with regard to fees

The six advocates are Mr Louis Visser, SC, and his junior Mr Dennie du Preez, who appeared for the Minister of Law and Order, Mr Sam Maritz, SC, and Mr Piet Kemp, who represented individual policemen, and Mr Willie Burger, SC, and a junior, who appeared for the Minister of Defence

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Mr Southwood said while the full Bar Council had found the advocates' monthly fees to be reasonable, they had been ordered to pay back other fees

These were severance fees which were not agreed upon before the commission started, but negotiated after the commission's conclusion

The fees to be repaid were "substantial"

Mr Visser and Mr Maritz each received R66 000 a month, Mr Kemp R44 000 a month and Mr du Preez R33 000 a month

The use of two legal teams eventually cost the police more than R1,5 million

Mr Justice Harms was also opposed to the use of two legal teams, and testified at the subsequent Bar Council hearing that he was under the impression that Messrs Visser and Du Preez had "created work for themselves"

Mr Kemp will be subject to another Bar Council hearing on Saturday for what the council said appeared to be "excessive" and "shocking" fees charged for another case

Mr Kemp, together with Mr Willie Burger, SC, appeared for the Minister of Defence to contest an application by members of the Civil Co-operation Bureau (CCB) for benefits allegedly due to them according to their employment contracts

The police legal department would comment later

Jo'burg Bar Council 'fully supports Bill'

THE chairman of the Johannesburg Bar Council, John Myburgh SC, reacting to Mr Justice Kriegler's comments, said it was not correct that the bar wanted to hold on to unopposed motion court work

"The Government asked us to comment on a move to transfer this work to the registrar of the court. That means it will not be heard by a judge and no advocate will have to appear. The bar is 100 percent behind the proposed Bill." (252) (248)

Chairman of the Johannesburg Attorneys' Association, Philip Botha, said there were 16 official speakers, plus people who spoke from the floor.

"There was a great deal of controversial, provocative comment. I am sure Judge Kriegler expressed an honest viewpoint. We do not necessarily agree with all the viewpoints expressed but will consider them all. Star 8/6/91.

"The Transvaal Law Society is having a circle conference next week and the matters raised will be dealt with, we are not sitting back," he said

The Association of Law Societies of South Africa yesterday reacted sharply to Mr Justice Kriegler's insinuation that they were "enclaves of privilege in a wasteland of misery"

ALS acting-president Mervyn Smith issued a statement saying Mr Justice Kriegler should not take out the poverty and misery existing in the country on attorneys. Attorneys were concerned about the high costs of litigation and lack of access to the courts.

The lack of appearance rights by attorneys was one of the causes of the high costs of litigation. "South Africa is one of the few countries in the Western world where attorneys do not have Supreme Court appearance rights." If attorneys were permitted to appear in the Supreme Court, they could do *pro deo* work — and had offered to — Sapa

HOUSE OF ASSEMBLY

urgency, requested the Department to investigate the matter

Considerable progress has already been made with this investigation and a report will soon be made available to me. The following proposals regarding all breeds of dogs are presently under consideration

- Amendments to the Protection of Animals Act, 1962 (Act 71 of 1962), to regulate all aspects pertaining to dog-fights extensively. This involves, *inter alia*, an increase in the prescribed penalties and also making it applicable to spectators at those fights
- The creation of mechanisms to control the importation of dogs
- Ways in which proper dog-ownership and control over dogs in general can be brought about
- Ways in which the problem of over-population of dogs can be addressed
- The possibility of revising and consolidating the dog ordinances in the various provinces
- The extension of the criminal and civil liability of dog-owners for damage or injuries caused by their dogs

At this stage I would like to mention the fact that, since different rights of various groups of people ought to be taken into consideration, the Department has consulted various interested parties or organisations, such as the Kennel Union of South Africa, the American Pit Bull Club of South Africa and the Pit Bull Federation of South Africa

- (5) A statement is not necessary

Cape Town magistrate's court: unhygienic conditions

353 Mr J H MOMBERG asked the Minister of Justice

- (1) Whether he or his Department has received any complaints and/or representations concerning alleged unhygienic conditions at the magistrates' courts in Cape Town, if so, (a) what are these conditions

QUESTIONS

†Indicates translated version

For written reply

General Affairs

Certain person mauled by pit bull terriers

333 Mr D J DALLING asked the Minister of Justice

- (1) Whether he or his Department has been informed of an incident in which a certain person, whose name has been furnished to the Minister's Department for the purpose of his reply, was mauled by pit bull terriers, if not, why not, if so, what is the name of this person,
- (2) whether any action has been taken regarding this case, if so, what action,
- (3) whether he or his Department has received any representations regarding the banning of (a) pit bull terriers and (b) any other domestic animals during the past five years, if so, what are the relevant details,
- (4) whether he intends banning the possession of (a) pit bull terriers and (b) any other domestic animals, if not, why not, if so, when,
- (5) whether he will make a statement on the matter?

B871E

The MINISTER OF JUSTICE

- (1) I took cognisance of newspaper reports in this regard. The name of the person concerned is Wilfred Joseph Fulker
- (2) No, as far as could be ascertained no criminal charges have been laid
- (3) and (4) No. I have, however, taken cognisance of the occurrence of illegal dogfights and attacks on people involving, *inter alia*, pit bull terriers. I am deeply concerned at and totally disapprove of these incidents and have, as a matter of

and (b) when were they brought to his attention, **252**

(2) whether any steps have been and/or will be taken in regard to these conditions, if so, (a) what steps and (b) when?

THE MINISTER OF JUSTICE

B947E

- (1) Yes The Magistrate, Cape Town, received complaints from his personnel
- (a) The conditions complained of were the occurrence of fleas and rats Cockroaches also frequently occur
- (b) The Magistrate was aware of the situation and dealt with the matter locally The matter came to my attention on 19 February 1991 as a result of a report in the newspaper "Die Burger"
- (2) Yes
- (a) The Magistrate, Cape Town, made arrangements during the summer of 1990 with the Regional Representative Public Works and Land Affairs, Cape Town, to bring the plague under control The latter Department contracted a private pest control firm to eliminate the rodents and insects
- (b) Since October 1990 the pest control is done quarterly

VAT returns: investigation

362 Mr A P OOSTHUIZEN asked the Minister of Finance †

Whether he or his Department has conducted an investigation into the estimated return that Value-Added Tax (VAT) will produce over a period of 12 months, if not, why not, if so, what will the return be at the different percentages that were used for the purpose of the calculations?

B967E

THE MINISTER OF FINANCE

Yes The national accounts of the South African Reserve Bank were used as the basis of all calculations regarding value-added tax On the basis of the Bill (ie prior to the exemption in respect of municipal rates) it was estimated that the revenue yield (at a 12%

vile in the 1989-90 and 1990-91 tax years, respectively?

THE MINISTER OF FINANCE

The relevant information is only available in respect of financial years and not in tax years



	1989/90 financial year	1990/91 financial year
(a) Bloemfontein	207 992 308	227 033 751
(b) Welkom	248 634 877	249 257 737
(c) Odendaalsrus	2 372 640	2 466 658
(d) Virginia	3 943 369	3 964 049
(e) Sasolburg	7 942 388	8 950 339
(f) Kroonstad	35 460 057	35 890 913
(g) Bethlehem	22 876 404	19 462 093
(h) Harrismith	8 666 689	8 588 766
(i) Bothaville	3 741 450	4 021 488

Certain magisterial districts taxpayers/ tax collected

372 Mr J J WALSH asked the Minister of Finance

What was (a) the number of taxpayers according to race, and (b) the personal income tax collected, in the (i) Bloemfontein, (ii) Welkom, (iii) Kroonstad, (iv) Sasolburg and (v) Virginia magisterial districts in the 1988-89 and 1989-90 tax years, respectively, in each of the following income categories, viz (aa) R12 001 to R20 000, (bb) R20 001 to R30 000, (cc) R30 001 to R40 000, (dd) R40 001 to R50 000, (ee) R50 001 to R60 000, (ff) R60 001 to R80 000, (gg) R80 001 to R100 000 and (hh) R100 001 and more?

THE MINISTER OF FINANCE



A meaningful breakdown of tax collected in magisterial districts cannot be furnished Some 75% of individual tax is collected by way of Pay-As-You-Earn (PAYE), and many employers make their PAYE payment in areas other than those in which their workers are employed Statistics are accordingly furnished on the basis of assessments issued to taxpayers resident in the relevant magisterial districts

Taxable income group	(i) Bloemfontein		(ii) Welkom	
	Number	Tax	Number	Tax
12 001 - 20 000	4 086	5 630 667	1 663	1 972 732(a)
20 001 - 30 000	5 466	20 580 114	3 647	12 359 520
30 001 - 40 000	4 858	33 679 538	4 677	33 002 790
40 001 - 50 000	2 609	28 229 967	3 242	34 629 754
50 001 - 60 000	1 506	22 393 456	1 556	22 995 704
60 001 - 80 000	1 148	23 359 547	1 351	27 675 780
80 001 - 100 000	429	12 325 216	394	11 505 859
100 001 +	679	43 139 695	451	26 625 430

Taxable income group	1988-89		1989-90	
	Number	Tax	Number	Tax
12 001 - 20 000	2 062	2 519 821	611	755 805(a)
20 001 - 30 000	2 515	10 034 669	1 297	4 485 197
30 001 - 40 000	3 141	22 256 469	2 645	19 100 517
40 001 - 50 000	2 260	24 760 593	2 525	27 418 759
50 001 - 60 000	1 376	20 463 459	1 900	28 312 226
60 001 - 80 000	1 071	22 170 454	1 653	33 770 216
80 001 - 100 000	333	9 728 207	488	14 425 812
100 001 +	363	23 145 713	422	24 694 263

(iii) Kroonstad

Taxable income group	1988-89		1989-90	
	Number	Tax R	Number	Tax R
12 001 - 20 000	1 377	1 886 909	486	616 442(a)
20 001 - 30 000	1 777	6 330 935	1 452	4 949 101
30 001 - 40 000	1 138	7 782 623	1 340	9 232 138
40 001 - 50 000	634	6 827 256	713	7 568 810
50 001 - 60 000	282	4 145 430	379	5 542 290
60 001 - 80 000	230	4 675 757	249	5 043 778
80 001 - 100 000	101	2 895 009	88	2 601 321
100 001 +	152	10 068 668	141	8 944 787

(iv) Sasolburg

Taxable income group	1988-89		1989-90	
	Number	Tax R	Number	Tax R
12 001 - 20 000	1 362	1 619 327	255	322 010(a)
20 001 - 30 000	1 523	5 729 899	853	2 895 607
30 001 - 40 000	2 221	15 810 918	1 430	10 540 563
40 001 - 50 000	1 482	15 898 758	1 916	20 778 413
50 001 - 60 000	567	8 359 866	1 148	16 914 612
60 001 - 80 000	338	6 692 057	656	13 245 442
80 001 - 100 000	97	2 811 492	128	3 716 931
100 001 +	71	3 818 593	87	4 283 011

(v) Virginia

Taxable income group	1988-89		1989-90	
	Number	Tax R	Number	Tax R
12 001 - 20 000	628	657 729	180	199 247(a)
20 001 - 30 000	777	3 027 835	301	1 062 616
30 001 - 40 000	1 145	8 039 085	896	6 469 061
40 001 - 50 000	841	9 166 766	930	10 061 886
50 001 - 60 000	367	5 421 425	657	9 784 054
60 001 - 80 000	268	5 439 560	437	8 819 867
80 001 - 100 000	66	1 937 977	117	3 435 097
100 001 +	56	3 364 574	78	3 771 162

NOTES

(a) Statistics in respect of taxpayers earning less than the applicable Standard Income Tax on Employees (SITE) limit are not available and therefore not reflected in these figures

(b) Statistics are no longer compiled under race groups

Personal income tax collected - details

379 Mr J J WALSH asked the Minister of Finance

The MINISTER OF FINANCE

A meaningful breakdown of tax collected in magisterial districts cannot be furnished. Some 75% of individual tax is collected by way of

Pay-As-You Earn (PAYE), and many employers make their PAYE payments in areas other than those in which their workers are employed. Statistics are accordingly furnished on the basis of assessments issued.

Sectors	Personal Income Tax Assessed				
	(a)	(b)	(c)	(d)	(e)
Agriculture	394 320 303	86 991 612	16 755 806	2 082 443	665 785
Mining	499 076 947	128 687 365	700 417	75 395 018	3 922 178
*Construction/Manufacturing	1 695 237 099	73 814 715	7 931 802	6 588 776	41 627 631
Commerce	1 001 633 341	77 034 535	32 205 878	14 192 405	2 820 787
Government Services	1 494 457 802	96 886 587	52 160 559	8 223 887	4 219 871
Transport	352 461 354	25 250 160	14 141 409	938 617	979 619
Banks and Financial Services	352 849 800	20 267 637	9 788 946	2 531 460	659 975

*No distinction between these two sectors can be made

Key to Districts

	(a)	(b)	(c)	(d)	(e)
Republic of South Africa					
(b) Orange Free State					
(c) Bloemfontein					
(d) Welkom					
(e) Sasolburg					
(b)(i) Cape Province	2 961 285 497	3 757 836 179			
Natal	1 285 579 929	1 642 796 784			
Transvaal	8 211 827 470	10 546 134 800			
Orange Free State	514 131 634	604 300 278			
(ii) Lebowa	4 756 160	4 858 508			
Gazankulu	2 165 545	2 799 309			
KwaZulu	11 221 619	12 625 505			
Owagwa	6 244 511	5 178 779			
KaNgwane	3 051 977	1 974 095			
KwaNdebele	594 119	1 122 065			

NOTE: Statistics in respect of taxpayers earning less than the applicable Standard Income Tax on Employees (SITE) limit are not available and therefore not reflected in the above figures

GST: amounts collected

380 Mr J J WALSH asked the Minister of Finance

(a) What was the total amount of general sales tax collected in South Africa during the 1988-89 and 1989-90 financial years, respectively, and (b) what was the amount collected in each of the (i) provinces and (ii) self-governing territories in each of these years?

The MINISTER OF FINANCE	1988/89		1989/90	
	financial year	R	financial year	R
(a) Total	12 972 824 530	16 551 068 041		

(a) How many (i) male and (ii) female justices of the peace of each race group are there in each province and (b) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(a) (i) and (ii) The records of the Department does not distinguish between male and female or race groups in respect of persons appointed as justices of the peace. Details in this regard are therefore not readily available. The number of justices of the peace appointed for each province are as follows:

252
The Cape of Good Hope 1 514
Transvaal 1 149
Orange Free State 378
Natal 324

(b) This information is furnished as at 27 May 1991

Personal income tax

417 Mr J J WALSH asked the Minister of Finance +

What was (a) the number of taxpayers according to race who were liable for personal income tax and (b) the personal income tax

Orange Free State
1988-89

Taxable income group	Number	Tax R	Number	Tax R
0 - 12 000	4 375	1 564 435(a)	1 965	887 459(a)
12 001 - 20 000	14 305	18 318 300	5 222	6 206 410(a)
20 001 - 30 000	17 904	66 681 902	11 503	38 437 627
30 001 - 40 000	16 933	117 815 688	15 014	106 024 208
40 001 - 50 000	10 519	113 158 452	12 314	132 023 783
50 001 - 60 000	5 399	79 319 784	7 266	107 256 732
60 001 - 80 000	4 085	82 485 389	5 565	112 839 406
80 001 - 100 000	1 477	41 661 523	1 624	47 149 334
100 001 +	2 086	130 840 788	1 717	100 791 316

NOTES

(a) Statistics in respect of taxpayers earning less than the applicable Standard Income Tax on Employees (SITE) limit are not available and therefore not reflected in these figures

(b) Statistics are no longer compiled under race groups

Phuthaditjhaba/Industriqwa amount spent

418 Mr J J WALSH asked the Minister of Development Ard

What total amount was spent on industrial infrastructure in (a) Phuthaditjhaba and (b) Industriqwa in each financial year from 1978-79 up to and including 1989-90?

B1069E

The MINISTER OF DEVELOPMENT AID

(a) Phuthaditjhaba

HOUSE OF ASSEMBLY

Financial year	Amount spent on industrial infra-structure
(i) 1978-79	R 115 000
(ii) 1979-80	R 474 000
(iii) 1980-81	R 961 000
(iv) 1981-82	R 1 189 000
(v) 1982-83	R 1 480 000
(vi) 1983-84	R 22 456 000 (1)
(vii) 1984-85	R 9 451 000
(viii) 1985-86	R 12 751 000
(ix) 1986-87	R 15 444 000
(x) 1987-88	R 14 769 000
(xi) 1988-89	R 10 529 000
(xii) 1989-90	R 5 720 000

act collected per income category in the Orange Free State in the 1988-89 financial years, respectively?

The MINISTER OF FINANCE

A meaningful breakdown of tax collected in provinces cannot be furnished. Some 75% of individual tax is collected by way of Pay-As-You-Earn (PAYE), and many employees make their PAYE payments in provinces other than those in which their workers are employed. Statistics are accordingly furnished on the basis of assessments issued to taxpayers resident in the relevant province.

(b) Industriqwa

Financial year	Amount spent on industrial infra-structure
(i) 1978-79	Nil
(ii) 1979-80	Nil
(iii) 1980-81	Nil
(iv) 1981-82	Nil
(v) 1982-83	Nil
(vi) 1983-84	Nil
(vii) 1984-85	Nil
(viii) 1985-86	Nil
(ix) 1986-87	R 30 000
(x) 1987-88	R 3 298 000
(xi) 1988-89	R 6 691 000
(xii) 1989-90	R 15 246 000

(1) Includes an amount of R17,43 million which was a transfer from the then Corporation for Economic Development Ltd to the Qwaqwa Development Corporation Ltd

The above-mentioned figures and explanations were furnished by the Qwaqwa Development Corporation Ltd

Own Affairs

Per capita expenditure

82 Mr J H MOMBORG asked the Minister of Education and Culture
What was his Department's per capita expenditure on education in respect of (a) the Republic, (b) the Orange Free State and (c) Natal during the latest specified 12-month period for which figures are available?

B1103E

The MINISTER OF EDUCATION AND CULTURE

(a) R3 960
(b) R3 919
(c) R4 042

Information as per SANEP system for 1990/91 financial year

*Capital works excluded

Amount spent on management training

83 Mr J H MOMBORG asked the Minister of Education and Culture
What (a) amounts and (b) percentage of the education budget of his Department was spent on management training during the latest specified 12-month period for which figures are available?

B1106E

The MINISTER OF EDUCATION AND CULTURE

(a) and (b) Information is not available, as it is not possible to separate the amount expended on management training from the total costs of in-service training

OFS total number of classrooms

86 Mr R M BURROWS asked the Minister of Education and Culture
What is the total number of classrooms in schools in the Orange Free State falling under his Department?

B1115E

The MINISTER OF EDUCATION AND CULTURE

2 856

Appointment of lay assessors hailed 252

Star 11/6/91

The appointment of lay assessors to sit in certain cases in magistrates' courts would allow more community involvement in the legal process, Deputy Minister of Justice Danie Schutte said in Parliament yesterday.

Introducing the second reading debate on the Magistrates' Courts Amendment Bill, he said the proposed appointment of assessors by legal officials, and not the Minister of Justice, would save time and administrative costs.

The moves had been introduced after recommendations by the Hoexter Commission of

Inquiry into the legal system

Tony Leon (DP Houghton) said the introduction of lay assessors for magistrates' court trials was a fundamental and positive change in the legal order.

"Our criminal-justice system is clearly in need of fundamental reform," Mr Leon said.

The Bill was starting to address the critical shortfalls "evident in our skewed system of justice"

It was an imaginative response to a "serious crisis of legitimacy and expectation"

The use of lay assessors was unique. The onus was on organisations such as the Black Lawyers Association, National Association of Democratic Lawyers, Lawyers for Human Rights and other interests groups to ensure the success of the system.

"They must use their resources and clout to ensure that individuals who serve as assessors are encouraged and praised, not disparaged, alienated, denigrated, and branded as sellouts and collaborators or tarred with other spurious epithets" — Sapa

SOVETANK Wednesday, June 12/1991

New legal system proposed

Soavelan

12/6/91

AS2

A BILL before Parliament would create a hybrid of the lay magistracy and jury systems.

By ISMAIL LAGARDIEN
Political Correspondent

The Bill proposes the introduction of lay assessors for magistrate's courts

criminal officers and prosecutors for the system in sufficient numbers, this Bill provides a significant halfway house," Leon said.

Jury

Democratic Party MP Mr. Tony Leon voiced limited approval for the Magistrate's Courts Amendment Bill.

"There have been significant calls for such a system, particularly the return of trial by jury in South Africa," he said.

Since neither the Government nor our legal profession can in the short term produce black judiciary, respect for South Af-

rican courts. This was rooted in the fact that the overwhelming majority of people who passed through the criminal courts were black and were prosecuted and judged by predominantly white officials.

To restore respect for courts, Leon said, the Government should abort "racially discriminatory and politically oppressive measures in the field of substantive law."

Leon, a former lecturer in constitutional law at the University of the Witwatersrand, said he admired the Bill for its "imaginative response to the serious crises of legitimacy and expectation"

Trial by jury had existed in South Africa for more than a 100 years before it was abolished in the late 60s.

The Freedom Charter of 1955 implies a preference for trial by jury with the proclamation that "The courts shall be representative of the people," said Leon



TONY LEON

Magistrate: send in Inkatha

Own Correspondent

Star 12/6/91

MESSINA — A Messina magistrate has caused a rumpus in a local township by saying he will call on Inkatha to restore order there

C J Bester made the remark when he dismissed an application by 11 unrepresented youths for bail

Although his remarks were later described as "a joke", the local branch of the ANC is taking them seriously

Mr Bester said the youths, most of whom are minors, were responsible for fomenting trouble in Nancefield township, which is holding a consumer boycott of white-owned shops

The magistrate said he would get 50 Inkatha members armed with knobkerries to "knock sense into the

252
youths' heads" because they were wasting time toyi-toying in the township

State prosecutor M Skinner said the remark was made as a joke during "a moment of preaching"

She said Mr Bester was "just telling them that they should stop the trouble in Nancefield and go to school"

Messina ANC chairman Jack Mokobi said the remark came amid widespread rumours that "strangers have been seen in town provoking people"

Mr Mokobi said strangers carrying beer had been noticed yesterday in Nancefield

They could not speak any of the three local languages and had asked where they could buy certain things

Contact Vane
497-2264

'Commission confused over indemnity deal'

It appeared that the Human Rights Commission (HRC) was confused regarding which prisoners qualified for indemnity in terms of the Government's agreement with the ANC, the Ministry of Justice told The Star in a statement last night

Responding to HRC claims that the Government had made "false or misleading" statements on the number of politi-

cal prisoners still in jail, the Ministry said it deplored the fact that the HRC saw fit to comment on matters and numbers still under discussion, thus attempting to cast aspersions on Government statements

The HRC said it believed there were 972 "political prisoners" in jail, while the Department of Correctional Services only admitted to a figure of 284

The Ministry said 1 036 prisoners had already been released and those who had not been freed were "contentious cases which may have far-reaching effects in view of the gravity of the crimes, such as murder and robbery"

Some prisoners were only "trying their luck" and their offences clearly did not have any political motivation

The Ministry said the

Department of Correctional Services had set up an audit committee, with, among other parties, the HRC, to discuss discrepancies regarding the number of prisoners perceived to qualify for release

It was satisfied that nothing had emanated from those discussions to disprove the department's assessment of the numbers of political prisoners — Staff Reporter

Cape Gate order 'was to prevent illegal acts'

By SHARON SOROUR
Labour Reporter

CAPE Gate, Fence and Wire Works in Parow has "denied in the strongest possible terms" it brought a Supreme Court interdict against hundreds of employees on a wage strike as a tactic to undermine the industrial action

The company said the order was applied for and granted to prevent the employees "perpetrating unlawful or illegal acts" during the strike, which began on June 4

The company's statement followed a report in The Argus in which Metal and Electrical Workers' Union (Mewusa) spokesman Mr Ben Petersen slammed the company for "trying to have workers jailed" by alleging strikers assaulted casual workers this week.

The company's statement said "The order was applied for and granted to prevent employees on strike from perpetrating unlawful and illegal acts during the currency of the strike. The management of Cape Gate deny in the strongest possible terms that the order was sought or granted on the basis of untrue or half-true allegations (as alleged by Mr Petersen), or that it was applied for in an attempt to undermine the strike or with a view to jail employees on strike

"The management of Cape Gate deny having invoked the assistance of the police to arrest strikers outside the factory or elsewhere and is not aware of any arrest being made"

On the background to the dispute, the statement said an offer was made to increase the hourly wage rate, which was increased by 18 percent with effect from July 1, by another 10 percent for May and June 1991

This was coupled with an offer to increase the hourly wage rate, which was being negotiated at industrial council level, by 1 percent from June 1, 1991 until June 30, 1992. The offer was rejected by the union

It said striking employees, through picketing and other means, prevented anyone from entering or leaving the company's premises from June 4 to June 6

It said employees who chose to work were intimidated and threatened with unlawful action — which included threats of serious assault

"A number of employees were assaulted by employees on strike and had to have medical attention"

It was against this background that the company applied to the Supreme Court for an urgent interdict on June 6. A temporary order was issued, which applied until a restraint order, returnable on July 17, was issued on June 7

The order was served on June 10 and copies were made available to striking employees

Wolpe granted indemnity

Star 13/6/91

330 252

Internationally acclaimed anti-apartheid academic Harold Wolpe (65), who escaped South Africa in the early 1960s while being sought on sabotage charges, was granted unconditional indemnity by the Government yesterday

The ANC welcomed the announcement, and immediately called on the Government to grant unconditional indemnity to the estimated 39 000 exiles still outside the country

Mr Wolpe, a known ANC and SA Communist Party member at the time of his escape, was one of five people, including two rightwingers, granted indemnity in notices gazetted in Pretoria

According to the Government Gazette, Mr Wolpe's unconditional indemnity was granted in respect of sabotage committed between June 27 1962 and July 11 1963

"We welcome him back with open arms," ANC spokesman Gill Marcus said last night

"We now expect the Government to grant similar indemnities to all exiles still outside South Africa," she added

An ANC spokesman at the London office of the organisation said in a telephone interview that Mr Wolpe was already back in South Africa

According to the

Others indemnified

Dr Dumo Baqwa and Bokwe Mafuna, in respect of failing to comply with written notices issued in 1973 in terms of the Suppression of Communism Act of 1950

● Muhammed Cloete, in respect of events on which six charges of contravening the Police Act were founded

Two rightwingers were also indemnified

● Cornelius Venter, indemnified in respect of firing shots at and wounding bus passengers, driving a vehicle from which someone fired shots, assaulting and shooting at people, and observing the Swart-ruggens Commando with intent to steal arms and ammunition

● Theunis Minnaar, in respect of assisting Orde Boerevolk leader Piet Rudolph while a fugitive, and of causing an explosion in Rustenburg

The notices, in terms of the Indemnity Act of 1990, were signed by President de Klerk and Justice Minister Kobie Coetsee — Sapa

spokesman he is lecturing at the University of the Western Cape

Ms Marcus confirmed that Mr Wolpe had ac-

cepted a lecturing post at UWC and had been expected back in the country "at about this time"

UWC rector Professor Jakes Gerwel could not be reached at his home last night.

Mr Wolpe escaped from South Africa in the early 1960s, around the time of the Rivonia trial, via Botswana, with two other leading ANC activists, Ms Marcus said

ANC deputy president Nelson Mandela, ANC internal leader Walter Sisulu and six other senior members of the organisation were sentenced to life imprisonment at the Rivonia trial

During his years in exile, Mr Wolpe became a senior lecturer at Essex University in England

"He is an internationally acclaimed academic on South Africa, the struggle and the way forward," Ms Marcus said

In Britain Mr Wolpe was also actively involved with the Research on Education in South Africa organisation

"Harold is married with three children, who I am sure will be returning to South Africa with him," Ms Marcus added

Mr Wolpe is the author of a number of books and academic papers, dealing primarily with South Africa — Sapa

Law Society seeks to bar 3

The Argus Correspondent

PRETORIA — In a series of separate urgent applications brought in the Pretoria Supreme Court, the Transvaal Law Society has contended that three of its members are not "fit to continue practise as attorneys"

In the applications placed before Mr Justice de Klerk, the Law Society submitted facts it claimed constituted "such a deviation from the standards of professional conduct" that the three men were not fit to continue practising

The case against Johannesburg attorney Mr Leopold Brian Cohen was postponed to August 8

In an affidavit Law Society Presi-

dent Dr Antonie Gildenhuys said the society had received information that Mr Cohen had abandoned his practice and fled the country

Action against a second attorney Mr Francis Rakgwaki Magolego of Dennilton was postponed to June 25 by agreement

In terms of the draft court order, Mr Magolego must furnish the Law Society with an auditors report of his trust account. The third attorney, Mr Joseph Themba Gumbi of Diepkloof, Johannesburg, was told to show cause on August 15 why he too should not be barred from practising after showing a shortfall in his trust account of R1 413 in February last year



HRC hits back at department

THEO RAWANA

THE Human Rights Commission (HRC) said yesterday it found the Justice Department's response to its proposals for political prisoner release most disappointing and even petulant. *Blum 13/6/91*

The department, in response to the HRC report that there were still 972 political prisoners in SA jails, had said the commission was "creating its own scenarios" regardless of the fact that the ANC and government had written agreements on who should be regarded as a political prisoner.

The HRC said yesterday it had entered into a prisoner auditing exercise with the Department of Correctional Services in the spirit of ensuring that no one who was possibly a candidate for release in terms of the Pretoria Minute should be overlooked.

"We are satisfied that the audit has been and continues to be a valuable exercise, and we are also satisfied that our statistics are accurate," the HRC said.

It added. "We are most unhappy, however, to be accused of creating scenarios. Our only scenario, in terms of making judgments on who qualifies for release, is the Pretoria Minute and its acceptance of the report of the working group."

The department had failed to respond to proposals to do away with its "bureaucratic" logjam

Office

APARTHEID BAROMETER

POLITICAL PRISONERS

THE Human Rights Commission has identified a total of 972 prisoners "regarded by us as political prisoners in terms of the Pretoria Minute", still imprisoned on June 3 1991.

These include 284 political prisoners (24 classified as security prisoners, 80 security-related, 161 unrest-related and 19 death row prisoners) whom an Audit Committee—consisting of the HRC, Lawyers for Human Rights, the Political Prisoners Release Programme and the Department of Correctional Services—have agreed are candidates for release in terms of the Pretoria Minute. *w/ Mail 14/6-20/6/91*

According to the Ministry of Justice 1 036 prisoners have been released since the Pretoria Minute was signed and 284 are still being held.

HUNGER STRIKERS

THREE prisoners defined as "political" by the HRC were still on hunger strike yesterday, according to the organisation. Nathaniel Mbatha from Potchefstroom Prison, who was sentenced to eight years imprisonment for public violence last March, is on the 19th day of his hunger strike and is currently in hospital. ANC member Elias Shongwe (20), from Diepkloof Prison, was sentenced to 10 years imprisonment for murder in November 1988. He is on the 28th day of his hunger strike and is currently being held at Baragwanath Hospital. George Mbanjane, an ANC member awaiting trial on charges of murder, attempted murder and contravening the Arms and Ammunition Act (arising from the death of a policeman in Soweto, and from a hand grenade attack on a police vehicle), is being held at Baragwanath Hospital and has completed 12 days of his hunger strike. *w/ Mail 14/6-20/6/91*

According to the Mafikeng Anti-Repression Forum a "mass hunger strike of over 150 political prisoners held at Bophuthatswana Central Prison at Rooigrond", begins tomorrow.

JUSTICE FIGURES

w/ Mail 14/6-20/6/91
THE Minister of Justice and Correctional Services, Kobie Coetsee, released the following figures in parliament recently: **(252)**

● 20 lawsuits were brought against him in 1990 in his capacity as Minister of Justice—three for malicious prosecution, 15 for unlawful arrest or detention and two for defamation. Eight of these were settled out of court, two involved successful suits, two were withdrawn and eight claims are pending.

A MID a spate of prosecutions for "people's court" activities in Port Elizabeth, behind-the-scenes attempts have been launched in a bid to bridge the gap between police and anti-crime committees

The cases all originate in Missionvale, one of Port Elizabeth's largely-coloured Northern Areas, and have been marked by a surprising under-standing shown by magistrates for residents' complaints that they took the law into their own hands because the police weren't doing their job. At the same time, high-ranking police officers have had meetings with political, civic and community organisations to explore ways of creating an "anti-crime forum" where residents in high-crime areas may be drawn in to assist police in crime control. The initiative faltered, however, because of the African National Congress' refusal to attend a second meeting due to differences it had with the government over national constitutional negotiations.

Street committees get go-ahead to fight crime

W/Meal 14/6/91

Despite the court cases, Missionvale residents vowed to continue patrolling their areas and resume meeting out physical punishment, because, they said, policing was still inadequate.

Some residents, who did not wish to be named, said police last weekend again failed to respond to calls to follow-up reports of crime.

Last Saturday police were summoned to a stabbing but did not arrive. In another incident, a man allegedly assaulted a woman. This man is a plaintiff against the committee in one of the court cases.

"When police arrived they in turn as-saulted the man and then let him go," said one resident.

Police and street committees in Port Elizabeth have met in a bid to form an anti-crime forum.

BY SHADLEY NASH

Residents said numerous other cases, including housebreaking and as-saults, were reported to police with little or no follow-up.

The Missionvale anti-crime committee was set up last year, in what resi-dents said was a direct response to "the lack of adequate policing" in the traditionally high-crime area.

Residents said on numerous occa-sions when matters were reported to police stations they were either turned

away with comments like "go tell the comrades" or got no response at all.

Committee members were arrested for their activities, and several cases have come to court in recent weeks.

Although people have been sentenced for assaulting alleged criminals, mag-istrates showed understanding for their motivations.

In handing down suspended sentenc-es to two committee members, region-al court president G Steyn said the court was aware that many cases from the area were "never satisfactorily concluded

"They appear repeatedly, but wit-nesses and even the investigating offi-cer simply do not turn up at court and

the cases are withdrawn. It is quite possible that residents do, in fact, feel desperate," he said.

Steyn also noted the anti-crime com-mittee did not "appear to have an ideo-logical base".

In March, a meeting was held to dis-cuss the possible formation of an anti-crime forum.

Participants at the meeting included the Deputy Minister of Law and Or-der, Johan Scheepers, representatives of various chambers of commerce, re-gional executive members of the ANC and a wide range of other groups.

According to minutes of the meeting obtained by Pen, Scheepers accepted the role street and area committees could play in the fight against crime.

"The deputy minister is of the opin-ion that it is a good proposal to see to what extent new street and new area committees can be encouraged to form crime prevention committees," said the minutes.

Judge's criticisms of legal profession hit a nerve

w/ Mail 14/6 - 20/6/91 -

LAW & THE COURTS

Carmel Rickard

JUGULAR-JABBING criticism of the legal profession by the outspoken Mr Justice Kriegler has provoked defensive response from many lawyers.

But with widespread outrage at the fees charged by some members of the profession contributing to a generally poor public image, the judge will find support for his views.

While lawyers argue over whether his comments were justified, they must remember that in the opinion of many people, even the Department of Justice appears to be responding with more vigour to the challenges of preparing for transition than the traditionally organised profession.

Judge Kriegler made his controversial remarks at a meeting called by the Johannesburg Attorneys Association and the Law Society of the Transvaal. The seminar, entitled *The Future of the Legal Profession*, was addressed by, among others, Albie Sachs, Judge Trengove, and representatives of the Transvaal Law Society, the Department of Justice and the Black Lawyers Association.

Mr Justice Kriegler spoke during the last session, following discussion on what the profession should be doing to prepare itself for a radically changed future South Africa.

In his speech the judge heaped coals, with vividly phrased criticism still causing passionate debate: were his remarks justified, was he aiming his lance at the profession as a whole, or at the side-bar alone?

One participant said his comments were relevant to the profession as a whole rather than to the discussion at that particular seminar where lawyers were seriously trying to get to grips with the demands and challenges posed by transition; also his criticisms

did not sufficiently take into account the enormous contribution made by organisations with a large attorney composition such as the Legal Resources Centres, the National Association of Democratic Lawyers, the Black Lawyers Association and Lawyers for Human Rights.

He said the judge, having lost none of his considerable skills as an advocate, was defending his arm of the profession against the side-bar.

Unfortunately for those who believe the judge was over the top in his expressions of disgust, the seminar followed widely publicised reports of Harms Commission advocates being paid huge amounts of money.

Following a bar council investigation into fees paid to counsel for the state, six Pretoria advocates were told to repay a large slice. But their six-figure fees have fuelled public disquiet about legal charges — and about the priorities of members of the profession.

By comparison the recent record of the Department of Justice is well ahead in its response to society's pressing needs for an affordable, accessible, speedy legal system.

Defending the profession against the judge's attack, acting president of the Association of Law Societies Mervyn Smith said attorneys were "the backbone of the community and give freely of their time and efforts in every single sphere of activity".

Listing contributions by attorneys, he said they were taking the lead in alternative forms of dispute resolution, and that many

presided over small claims court free of charge. He also mentioned the legal aid cases and civil and criminal cases where attorneys appear at lowered tariffs.

But Democratic Party MP Peter Gastrow, party spokesman on justice and a lawyer with a keen interest in the profession and its response to current challenges, is less convinced that attorneys — and advocates — are doing enough.

He paid tribute to attorneys who ran the small claims court, to individuals who made other contributions which increased the accessibility of the courts, and to organisations like the LRCs. But he was sceptical about the role played by the profession as a whole.

"The amount of *pro deo* work done by some public spirited lawyers is not the central issue. The issue is whether the legal profession as a whole is taking enough initiative in meeting the needs of a fast-changing and soon to be transformed society."

Gastrow claims the Department of Justice has overtaken the profession in spearheading law reform. He said it was not enough during times of change merely to hold good views and propagate sound principles.

They had to be translated into visible campaigns, otherwise the perception would continue that lawyers were sitting back unlike other professions which were "scrambling to become part of the debate about how to adapt to the changing times".

"This is the public perception. It is a pity because there are many key people with bright ideas, but the profession does not seem able to channel them into initiatives which would help change the public view.

"That is why it is going through tough times. If it were not for organisations like the LRCs, the public image of lawyers would be in really serious trouble."

Strydom's appeal heard

Sowetan 14/6/91

THE application by mass murderer, Barend Strydom, for indemnity was heard in camera by a full Bench of the Indemnity Commission in Bloemfontein yesterday

Strydom was represented in the application, but was not present himself. The outcome of the application will

be announced at a later stage by State President FW de Klerk, or Minister of Justice, Mr Kobie Coetsee

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The application was heard by Appeal Court judge Mr Justice Steyn, who sat with Mr Justice R N Leon and Mr Justice R A Solomon - Sapa

Probe into court kerrie threat

By MATHATHA
TSEDU

THE remark by a Messina magistrate that he would call in 50 Zulus to restore order with kerries is being investigated by the Minister of Justice, *Sowetan* learnt yesterday.

Reacting to a report which appeared in *Sowetan* on Wednesday, magistrate Mr CJ Bester, said yesterday the matter had been "blown out of proportion".

He refused to discuss the matter further and said he had never mentioned Inkatha by name.

Inkatha

"I have got nothing to say to you or anyone else. The matter is now in the hands of the Minister of Justice," he said.

But people in court at the time said Bester had said he would call in Inkatha to deal with youths who were fomenting trouble in the township.

The remark came as he turned down an application for bail by 11 youths, most of whom are under age.

Furore

The youths face charges of public violence arising from a consumer boycott of white-owned shops in the town.

The remark sparked a furore among activists in the area. They have accused Bester of intimidation.

Meanwhile, community leaders at Nancefield township, detained in connection with the boycott, are being held under Section 50 of the Internal Security Act, according to their attorney, Mr Saad Cachalia.

New Bill aims to ²⁵² protect witnesses

THE Criminal Law Amendment Bill, which provides for the detention of witnesses in protective custody, was tabled in parliament today. *Agas 14/6/91*

A memorandum attached to the Bill said "recent events" had confirmed the need for protective custody for witnesses.

The proposed protective custody could also be applicable to their family, household and dependents if their safety was threatened.

The Bill empowers the Minister of Correctional Services to establish any place as a prison to facilitate the administration of the provisions.

The Bill also provides that a witness under the age 18 may give evidence through an intermediary.

The court is empowered to direct that this evidence be given in another room provided the witness and the intermediary are visible and can be heard by the court. This provision is a consequence of the report of the SA Law Commission on the protection of children who testify in a law court. — Sapa

Application by Aansoek van	Place of meeting Plek van byeenkoms	Date and time Datum en tyd
Rudolph Jacobus van Huyssteen (ID 510402-5028080), of the farm/van die plaas Brakfontein, P O Box/Posbus 136, Davel, 2320	Magistrate's Office/Kantoor van die Landdros, Ermelo	23 July/Julie 1991 at/om 09 00

(14 June 1991/14 Junie 1991)

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**NOTICE 523 OF 1991
DEPARTMENT OF JUSTICE**

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General: Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. 501 of 6 March 1991, subscribed to the principles of peaceful solutions and development, and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full, in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No 74 of 1982), as the case may be.

**KENNISGEWING 523 VAN 1991
DEPARTEMENT VAN JUSTISIE**

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENSKENNISGEWING VERSTREK HET

Die Direkteur-generaal: Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No 501 van 6 Maart 1991, onderskryf het; en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrekket het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No. 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), na gelang van die geval.

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Appalaraju	Jaiandra Rajugopal	1947-07-07
Appalaraju	Tramadvara	1950-03-15
April-Ntshingila	Constantine Ntsokolo	1959-10-23
Bali	Luvuyo Faniso	1963-05-05
Beck	Derrick Keith	1951-11-10
Bennie	Mombulelo	1973-03-02
Bhembhe	Jeremiah Mphekwa	1961-04-01
Bopela	Thula Osborne	1944-01-02
Buthelezi	Jeffrey Mbuyi	1963-12-05
Chilwane	Lazarus	1954-09-26
Dailane	Solomon Phala	1970-08-16
Daki	Madoda Keith	1958-08-20
Dikala	Nkala Patrick	1970-09-09
Dimba	Francis Themba	1953-09-28
Ditabe	Lydia Tlalane	1968-05-03
Dladla	Bongumosa Siboniso	1960-04-28
Dlamini	Agnes Combo	1941-01-12

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Funani.....	Dolores Nokulunga.....	1957-08-29
	Gasa.....	Judith.....	1973-12-03
	Gcina.....	Mkhululi.....	1958-06-22
	Gumede.....	Steven Dumisani Nunu.....	1968-10-23
	Gwama.....	Xolani.....	1963-03-06
	Habile.....	Ndoda.....	1939-08-03
	Hani.....	Jeffrey Fundile.....	1959-08-18
	Hloyi.....	Kholisile.....	1964-06-30
	Hokwana.....	John Kedibose.....	1954-01-15
	Jiyane.....	Sibusiso Iazi.....	1972-06-19
	Jumba.....	Melikaya Landimvele.....	1966-06-16
	Katane.....	Stephen Sello.....	1961-07-31
	Katsa.....	Thamsanqa Patrick.....	1953-12-28
	Khayiyana.....	Charles Mandla.....	1967-06-07
	Khumalo.....	Lindiwe Bernice.....	1962-03-31
	Khuzwayo.....	Jamila.....	1966-09-30
	Lebona.....	Azani.....	1944-07-15
	Lekgetho.....	Hendrick Tshire.....	1954-07-13
	Libalele.....	Richard.....	1954-03-13
	Liebenberg.....	Anton William.....	1960-07-12
	Likhojana.....	Nkosana Peter.....	1956-06-19
	Lobese.....	Andile.....	1948-06-27
	Love.....	Janet Yetta.....	1957-12-21
	Lupuzi.....	Michael Monwabisi.....	1952-12-17
	Mablala.....	Nala Moses.....	1973-05-08
	Maboja.....	Simon Paseka.....	1969-04-04
	Mabona.....	Stanley Dudu Eric.....	1965-06-09
	Mabua.....	Tomas Seagodimo.....	1966-04-03
	Madwara.....	Mandla Reginald.....	1960-06-29
	Magagula.....	Henry Bazamos.....	1968-01-28
	Mahlabela.....	Jabulane Koos.....	1972-08-08
	Majola.....	Themban Richard.....	1961-04-24
	Makaula.....	Fikile Armstron.....	1960-06-01
	Makhanya.....	Rowena Lozizwe.....	—
	Malebana-Metsing.....	Peter Ishmael Rocky.....	1949-08-23
	Mametse.....	Sello.....	1961-03-01
	Mampye.....	Nicodemus.....	1966-10-22
	Manong.....	Stanley Mongizi.....	1954-05-15
	Masango.....	Ronnie Buyaphi.....	1962-07-23
	Maseko.....	Phumzile Vuyiswa.....	1971-04-26
	Mashiqana.....	Raymond Snyoho.....	—
	Mashigo.....	Isaac Molefe.....	1952-08-22
	Masisi.....	Mochubeloa Jacob.....	1939-05-07
	Masondo.....	Vusumuzi Ramakala Mxolisi.....	1957-12-21
	Mathebe.....	Piet.....	1961-01-16
	Matlou.....	Vincent.....	1951-09-14
	Mauko.....	Hamilton Mandla.....	1969-06-29
	Mayongo.....	Mawethu.....	1964-08-09
	Mazomba.....	Petros Mafa.....	1969-10-12
	Mbatha.....	Rockey Khaya.....	1958-05-28
	Mdlalose.....	Bhekizizwe.....	1954-09-26
	Mfarana.....	Mlungisi Morgan.....	1954-09-28

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Mhlaba	Mhlaba	1956-06-16
Mkhwanazi	Maria Malifu	1959-02-09
Mkraume	Daniel	1922-07-09
Mlambo	Benjamin Menzi	1960-08-21
Mngabi	Jabulani Harold	1968-11-11
Mngomezulu	Sipho Louis	1948-06-18
Modise	Prince Mokoena	1960-09-20
Moedi	Tshepo Thiza	1967-07-28
Moeti	Tonka Patrick	1955-07-20
Mogano	Stephen	1946-03-26
Mohlala	Asaph Mabote	1954-11-26
Mokube	Godfrey Velaphi	1947-02-12
Morgan	Grace	1967-01-15
Motsisi	Tumelo Moathlodi.	1962-08-04
Motsisi	Yvonne Malekhotla	1963-09-28
Mqadi	Thulani Gwajo	1970-01-10
Mraqisa	Beauty Nonkululeko	1966-03-21
Msezane	Samuel	1927-12-17
Msibi	Michael	1910-10-20
Mtewa	Herbert Vusumzi	1952-02-14
Mthembu	Phillip Jabulani	1963-03-21
Mtimkulu	Phemba Archibald.	1961-08-11
Mtshali	Joseph	1938-09-20
Mwala	Richard.....	1939-10-30
Mwandla	Theresa..	1952-08-14
Mzizi..	Thokozile Charmaine..	1955-11-05
Nala.....	Armstrong Thulani	1962-06-20
Nannan	Nadine Natasha	1963-05-09
Ncqobo.	Steven Maswazi..	1968-12-26
Ndlungwane	Sandile Shepherd	1962-10-30
Ndzanqa	Cecil Luthuli	1961-06-04
Ngcubu.....	Mthetheleli	1965-06-28
Ngibi	Yoliswa Nomsa	1960-01-01
Ngobese.	Motswakae Percival	1970-09-06
Ngubame	Bhekisisa	1968-04-21
Ngwenyama	Daniel Matthews.	1945-04-16
Nhlapo.	Ndileleni Johannes	1961-03-04
Njokweni	Michael Ntsikelelo	1957-11-30
Nkati.	Mathew Mzxwakhe	1963-02-02
Nkosi.	Cynthia Pumla	1971-01-04
Norwka..	Bongani Solomon	1961-01-24
Nthongoa	Tox.	1935-03-31
Ntuli	Peter Victor Sibusiso	1953-05-10
Nxumalo	Madubula James	1943-07-07
Palagangwe	Oshebile Anthony	1971-02-02
Pase	Zahbisile Philip	1957-09-12
Phalo	Ernest	1967-02-24
Phiri	Joseph Mandla (Sonny)	1955-09-08
Pule	Elizabeth Motshabi	1958-06-05
Radebe	Robert Mnyatheli	1959-04-20
Radebe	Vasco Mlamuli	1963-06-10
Ramokgopa	Selaelo Irene	1958-09-01
Rankin nee Svakane	Joyce Nomafa	1943-06-24

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Ranku	Madumetja Lucas Lucky	1941-11-17
Rantao	Johannes	1959-05-05
Richardson	Joseph	1948-07-08
Samuels	Alun Patrick	1962-07-04
Seathlolo	Aaron Bennett Sereo	1957-05-31
Sebolayi	Molly Botsang	1952-05-18
Sedibe	Aubrey Pheelelo	—
Sekhuthe	Patrick Moses Nicholas	1955-12-26
Shisana	Olive	1951-11-27
Sibeko	Temba Joseph	1940-08-12
Sibisi	Bonginkosi John	1949-01-17
Skenjana	Leo Malungisa	1966-01-10
Skenjana	Andy Makuzandile	1971-10-17
Stuurman	Sacks	1960-09-11
Themba	Thoka	1962-06-17
Theto	Maneng Wilford	1967-06-17
Tombisa	Jamiel Jacques	1948-03-18
Toni	Kumbuza	1951-03-23
Tswana	Lutando Simphiwe	1957-04-25
Velaphi	Mandla Jacob	1969-04-30
Williams	Glenville Robert	1951-03-19
Zitha	Petros Mandla	1967-09-08
Zungu	Bongymusa	1971-05-15

(14 June 1991)/(14 Junie 1991)

NOTICE 524 OF 1991**DEPARTMENT OF TRANSPORT****AIR SERVICES ACT, 1949 (ACT No 51 OF 1949),
AS AMENDED**

Pursuant to the provisions of section 5 (a) and (b) of Act No 51 of 1949 and regulation 5 of the Civil Air Services Regulations, 1964, it is hereby notified for general information that the applications, details of which appear in the Schedules hereto, will be heard by the National Transport Commission

Representations in accordance with section 6 (1) of Act No 51 of 1949, in support of, or in opposition to, an application, should reach the Director-General: Transport (Directorate Civil Aviation), Private Bag X193, Pretoria, 0001, and the applicant within 21 days of the date of publication hereof stating whether the party or parties making such representation intend to be present or represented at the hearing.

The Commission will cause notice of the time, date and place of the hearing to be given in writing to the applicant and all parties who have made representations as aforesaid and who desire to be present or represented at the hearing

SCHEDULE A**SCHEDULE OF APPLICATIONS FOR THE GRANT
OF LICENCES**

(A) Name and address of applicant (B) Name under which the air service is to be operated (C) Particulars of air service (i) Area to be served (ii) Route(s) to be served (iii) Base(s) (iv) Types and classes of traffic to be conveyed. (v) Frequency and time tables to which

KENNISGEWING 524 VAN 1991**DEPARTEMENT VAN VERVOER****WET OP LUGDIENSTE, 1949 (WET No. 51 VAN
1949), SOOS GEWYSIG**

Hierby word ingevolge die bepalings van artikel 5 (a) en (b) van Wet No. 51 van 1949 en regulasie 5 van die Regulasies vir Burgerlugdienste, 1964, vir algemene inligting bekend gemaak dat die Nasionale Vervoer-kommissie die aansoeke waarvan besonderhede in die Bylaes hieronder verskyn, sal aanhoor.

Vertoe ingevolge artikel 6 (1) van Wet No. 51 van 1949 ter ondersteuning of bestryding van 'n aansoek moet die Direkteur-generaal. Vervoer (Direktoraat Burgerlugvaart), Privaatsak X193, Pretoria, 0001, en die aansoeker binne 21 dae na die datum van publikasie hiervan bereik en daarin moet gemeld word of die persoon of persone wat aldus vertoe rig, van plan is om die verrigtings by te woon of om daar verteenwoordig te word

Die Kommissie sal reel dat kennis van die datum, tyd en plek van die verrigtings skriftelik gegee word aan die aansoeker en al die persone wat aldus verteenwoordig of teenwoordig te wees.

BYLAE A**LYS VAN AANSOEKE OM DIE TOESTAAN VAN
LISENSIES**

(A) Naam en adres van applikant (B) Naam waaronder die lugdiens geëksploiteer gaan word. (C) Besonderhede van lugdiens (i) Gebiede wat bedien gaan word. (ii) Roete (s) wat bedien gaan word. (iii) Basis(se) (iv) Soort verkeer wat vervoer gaan word (v)

Application by Aansoek van	Place of meeting Plek van byeenkoms	Date and time Datum en tyd
Johannes Hermanus and/en Johanna Elizabeth Mana Jordaan (ID 400103 5024 003 and/en 441012 0073 009), of the farm/van die plaas Goedgedag, Viljoenskroon, 9520	Magistrate's Office/Kantoor van die Landdros, Viljoenskroon	3 July/Julie 1991 at/om 10 00

(14 June 1991)/(14 Junie 1991)

NOTICE 527 OF 1991**DEPARTMENT OF JUSTICE**

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No. R 936 OF 24 APRIL 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF THE SAID GOVERNMENT NOTICE

The Director-General: Justice hereby makes known for general information in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. R. 936 of 24 April 1991 subscribed to the principles of peaceful solutions and development; and

(b) who have furnished the information referred to in paragraph (b) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice to each such person in respect of any act referred to in paragraph (c) of the said Government Notice. A list of the specific acts in respect of which indemnity has been acquired by each such person is available for inspection at the Office of the Director-General: Justice.

KENNISGEWING 527 VAN 1991**DEPARTEMENT VAN JUSTISIE**

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENSKENNISGEWING No. R. 936 VAN 24 APRIL 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GENOEMDE GOEWERMENSKENNISGEWING VERSTREK HET

Die Direkteur-generaal: Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No. R. 936 van 24 April 1991 onderskryf het; en

(b) wat die inligting bedoel in paragraaf (b) van genoemde Goewermentskennisgewing volledig verstrekket het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing aan elke sodanige persoon ten opsigte van enige handeling bedoel in paragraaf (c) van genoemde Goewermentskennisgewing. 'n Lys van die spesifieke handeling ten opsigte waarvan vrywaring deur elke sodanige persoon verwerf is, is vir inspeksie beskikbaar in die Kantoor van die Direkteur-generaal Justisie

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Abdullah	Rasheeda	1942-09-02
Adendorf	Brian	1972-10-01
Adendorf	Goliath	1971-01-14
Alexander	Jackson	1973-11-17
Anthony	Tony	1967-07-18
Archer	Arthur	1960-10-14
Barker	Craig Duncan	1969-08-10
Bekker	Pieter Paulus Petrus	1955-02-20
Bilito	Evelyn	1940-02-16
Binneman	Hendrik Francois	1948-08-10
Boi	Albert	1965-08-18
Botshine	Vuyani	1974-08-25
Botyeni	Khokho Rally	1962-04-02
Chabane	George Sabata	1970-07-14

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Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Crowford-Brown	Sarah ..	1969-02-01
Dludla	Sifiso Goodwill..	1972-11-29
Dopo	Boniswa Eunice ..	1964-06-12
Dopolo	Wiseman.	1956-01-05
Drammat	Shannaz.	1949-04-03
Dyanty	Phindile	1966-12-27
Fortuin	Willamina	1928-02-08
Fortuin	Samuel David.	1927-04-18
Fraser	Glynn Llewellyn.	1968-09-25
Fuma	Gladys ..	1958-01-04
Gennette	Sirfred Abe	1975-06-27
Ginya	Xolani	1975-08-06
Gosani	Gloria	1957-05-05
Gwala	Thembekile Antony	1962-03-18
Jama	Funzelepi Victor	1965-12-25
Josias	Ester Michele ..	1971-03-31
Joubert	Terence John	1968-07-28
Kasrils	Ronald	1938-11-15
Katsio	Simon	1974-09-14
Klaase	Andrew	1971-12-22
Kock	Vigil Hamilton	1959-09-03
Kruser	Colleen Lynn	1959-04-16
Litshetu	Mbuzeli	1973-08-24
Longwe	Pearl	1965-09-04
Love	Janet Yetta	1957-12-21
Lowe	Fowzia	1935-11-24
Lugg	Hugh Murdoch.	1958-07-13
Mabula	Joseph	1970-03-03
Madikwa	Rayi.	—
Madlala	Buyani Jamaica Jeremiah.	1965-07-17
Mafuna	Sebongile	1971-06-12
Magogoshe	Wiseman	1955-06-26
Mahlaba	Petros.	1969-12-10
Mahlasela	Mike Molesi	1974-04-25
Mailane	Nelson Mosivoa	1969-09-18
Makhanda	Siphiwo	1967-02-16
Makeleni	Richard	1952-01-01
Makoboka	Sydwell	1965-02-04
Makwala	Christopher Salo	1967-05-19
Malityi	Zola.	1975-07-03
Maliza	Vuyani	1969-05-19
Malyleka	Peter Holmes	1939-05-01
Mathebe	Piet.	1961-01-16
Mazibuko	Samuel	1970-03-01
Mdaka	Nombulelo Gertrude	1952-01-21
Meihlo	Gibson Msebenza	1956-06-06
Menziwa	Zolani	1976-10-06
Mgadi	Welcome	1972-08-22

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Mhlaba	Jacob Thandi	1970-05-01
Mkwanazi	Grace Nangazi	1942-12-02
Modise	Lorraine Thabo	1967-05-20
Molefe	Radithoto Simon	1970-12-13
Molekane	Sydney Rapulane	1972-07-27
Mokgonyana	Phuti	1962-06-27
Mokube	Godfrey Velapi	1947-02-12
Mthembu	Doctor Enoch	1970-03-15
Mtshengu	Aubrey Malixole	1959-03-06
Mtyida	Arcibald	1959-01-01
Nala	Ernest	1961-04-25
Ngobeni	John Khombomuni	1957-08-08
Ngubeni	Sello Tiger Albert	1970-07-12
Nhlabathi	Elijah	1955-05-14
Nkwandla	Nomonde	1963-01-03
Nkwini	Nghedo Ben	1957-08-08
Nkwini	Theron Ndunwazi	1969-10-10
Nyamza	Irene	1933-03-03
Nyongwana	Ntombizodwa Anenstina	1933-07-07
Pitso	Posi Moses	1970-07-29
Ralele	Lerakane Lucky George	1970-06-27
Ramadite	Ernest	1964-10-19
Ramotsehoa	Phuti Nathnael	1967-09-12
Rungu	Peter Zinekile	1968-01-10
Seattle	Kodna Jacob	1970-06-27
Scott	Halimien	1956-09-18
Shenxane	Lawrence Mapopa	1965-09-04
Sizani	Zinakile	1957-08-15
Smith	Solomon Keke	1969-02-02
Stofile	Margaret Sizakhele	1943-09-15
Stopforth	Darryl Garth	1965-05-16
Stuurman	Peter	1959-09-10
Titana	Ellen	1933-10-10
Tihobo	Pakiso Hermans	1970-04-18
Tshabalala	Diamond	1970-05-23
Tshabalala	Matthews	1970-04-21
Tshabalala	Moeketsi Amos	1970-09-28
Tshabalala	Oupa Samuel	1971-05-24
Tumani	Zolile	1972-12-31
Tyawuna	Nimrod	1962-03
Van Rensburg	Leon	1945-11-23
Van Wyk	George	1961-03-25
Van Zyl	Cornelius Gerhardus	1961-05-22
Veenendaal	Leonard Michael	1966-04-09
Vingi	Fikile	1953-06-13
Vinjiwe	Thando	1967-03-27
Wana	Simon	1975-04-06
Wulana	Mabandla Alfred	1967-12-23
Zihlangu	Dorothy	1925-12-20
Zihlangu	Nondumzile	1949-09-29
Zulu	Regina	1934-04-12

Any registered employers' organisation which objects to the application is invited to lodge its objection in writing with me, c/o the Department of Manpower, 123A Manpower Building, 215 Schoeman Street, Pretoria (postal address Private Bag X117, Pretoria, 0001), within one month of the date of publication of this notice.



TABLE

Name of employers' organisation Association of Personnel Service Organisations of South Africa

Date on which application was lodged 7 March 1991.

Interests and area in respect of which application is made All companies and firms actively engaged in business as private employment offices or labour brokers in the Republic of South Africa. For the purposes hereof—

“private employment office” means any business carried on for gain in which situations are found for workseekers or in which workseekers are found for employers or in which advice is given in regard to the procurement of employers, as the case may be, but excludes any nursing agency as defined in section 1 of the Nursing Act, 1978,

“labour broker” means any person who conducts or carries on a labour broker's office;

“labour broker's office” means any business whereby a labour broker for reward provides a client with persons to render service to or perform work for the client or procures such persons for him, for which service or work such persons are remunerated by the labour broker

Postal address of applicant P O. Box 91296, Auckland Park, 2006

Office address of applicant. Fifth Floor, Curatio, 3 Annet Road, Braamfontein, Johannesburg.

Attention is drawn to the following requirements of section 4 of the Act

(a) The representativeness of any employers' organisation which objects to the application shall in terms of section 4 (4) be determined on the facts as they existed at the date on which the application was lodged and, as far as membership is concerned, only members who were in good standing in terms of section 1 (2) of the Act as at the aforesaid date shall be taken into consideration

(b) The procedure laid down in section 4 (2) must be followed in connection with any objection lodged

D. W. JAMES,
Industrial Registrar
(14 June 1991)

NOTICE 513 OF 1991

DEPARTMENT OF JUSTICE

Special courts for Blacks were abolished during 1986 by the Special Courts for Blacks Abolition Act, 1986 (Act No. 34 of 1986). There is, however, still a single separate court which has been kept in existence for this population group in respect of divorce actions. In terms of section 10 of the Black Administration Act,

Enige geregistreeerde werkgewersorganisasie wat teen die aansoek beswaar maak, word versoek om binne een maand na die datum van publikasie van hierdie kennisgewing sy beswaar skriftelik by my in te dien, p/a die Departement van Mannekrag, Mannekraggebou 123A, Schoemanstraat 215, Pretoria (posadres: Privaatsak X117, Pretoria, 0001)

TABEL

Naam van werkgewersorganisasie Vereniging van Personeeldiensorganisasies van Suid-Afrika

Datum waarop aansoek ingedien is 7 Maart 1991

Belange en gebied ten opsigte waarvan aansoek gedoen word Alle maatskappye en firmas aktief betrokke by besigheid as private werkverskaffingskantore of arbeidsmakelaars in die Republiek van Suid-Afrika

Vir die doeleindes hiervan beteken—

“private werkverskaffingskantoor” enige besigheid gedoen met 'n winsoogmerk waarin betrekings verkry word vir werksoekers of waarin werksoekers verkry word vir werkgewers of waarin advies gegee word aangaande die verkryging van werkgewers, na gelang van die geval, maar omvat dit nie enige verplegingsagentskap soos omskryf in artikel 1 van die Wet op Verpleging, 1978, nie,

“arbeidsmakelaar” iemand wat 'n arbeidsmakelaarskantoor bestuur of bedryf,

“arbeidsmakerlaarskantoor” 'n besigheid waardeur 'n arbeidsmakelaar teen vergoeding persone aan 'n klient verskaf vir die lewering van diens aan of die veringting van werk vir die klient, of sodanige persone vir hom verkry, vir welke diens of werk sodanige persone deur die arbeidsmakelaar beloon word.

Posadres van applikant Posbus 91296, Auckland Park, 2006

Kantooradres van applikant Vyfde Verdieping, Curatio, Annetweg 3, Braamfontein, Johannesburg

Die aandag word gevestig op onderstaande vereistes van artikel 4 van die Wet.

(a) Die mate waarin 'n beswaarmakende werkgewersorganisasie verteenwoordigend is, word ingevolge artikel 4 (4) bepaal volgens die feite soos hulle bestaan het op die datum waarop die aansoek ingedien is, en wat die lidmaatskap betref, word alleen lede wat ingevolge artikel 1 (2) van Wet op voormelde datum volwaardige lede was, in aanmerking geneem.

(b) Die prosedure voorgeskryf by artikel 4 (2) moet gevolg word in verband met 'n beswaar wat ingedien word

D. W. JAMES,
Nywerheidsregistrateur
(14 Junie 1991)

KENNISGEWING 513 VAN 1991

DEPARTEMENT VAN JUSTISIE

Spesiale howe vir Swartmense is gedurende 1986 deur middel van die Wet op die Afskaffing van Spesiale Howe vir Swartes, 1986 (Wet No 34 van 1986), afgeskaf. 'n Enkele afsonderlike beregtingsforum ten opsigte van egskedingsgedinge word egter steeds vir hierdie bevolkingsgroep in stand gehou. Ingevolge

1927, Amendment Act, 1929 (Act No 9 of 1929), the State President may by proclamation in the *Gazette* institute divorce courts which have jurisdiction to hear and determine suits of nullity, divorce and separation in respect of marriages between Blacks and to decide any question arising therefrom. These courts enjoy concurrent jurisdiction with the Supreme Court of South Africa, consequently Blacks have a choice as to the court they wish to make use of. At present these courts are used extensively, which is an indication that they fulfil a real need. In the light of the present constitutional developments in South Africa, it is untenable to maintain a separate forum exclusively for a specific population group, and the opinion is held that all divorce actions ought to be tried in the same forum. It is recommended that such a rationalization process ought to take place in such a way that those features of the present Black divorce courts which ensure increased accessibility, are maintained as far as possible. These features include an elementary and inexpensive procedure, speedy adjudication and the appearance of attorneys in such courts. Such an adjustment will by its very nature bring about changes to the divorce procedure in the Supreme Court.

The Bill set out in the Annexure hereto envisages giving effect to the proposed measures, and it is hereby published for general information and comment. Any comments or representations by interested parties should be submitted in writing with the Director-General Justice, Private Bag X81, Pretoria, 0001, **not later than 31 July 1991.**

The following explanation regarding the proposed amendments is furnished

Clause 1

In the light of the proposed establishment of separate Divorce Courts and the abolition of Black divorce courts, the definition of "court" in section 1 of the Divorce Act, 1979 (Act No. 70 of 1979), is being adjusted accordingly

Clause 2

Provision is being made for the constitution of specialist courts (divorce courts) which will try only divorce actions and which will function within the existing structure of the Supreme Court

Clause 3

Clause 3 provides for the Minister of Justice to make rules which will be applicable in respect of divorce courts. It is envisaged that such rules will as far as possible embrace those features which at present enhance the accessibility of the existing Black divorce courts. The Rules Board for Courts of Law will be able to advise the Minister regarding the rules that are to be made. In addition it is provided that attorneys will have the right of appearance in divorce courts. The fact that attorneys may at present

artikel 10 van die Swart Administrasie Wet, 1927, Wysigingswet, 1929 (Wet No 9 van 1929), kan die Staatspresident by proklamasie in die *Staatskoerant* egskedingshowe instel, wat bevoeg is en regs mag het om regsgedinge insake nietigheid, egskeding en skeding ten opsigte van huwelike tussen Swartmense te verhoor, en om enige vraag wat daaruit voortspruit te beslis. Die jurisdiksie van hierdie howe is konkurrent aan dié van die Hooggeregshof van Suid-Afrika, en Swartmense het dus 'n keuse ten opsigte van die forum waarna hulle hul wil wend. Dié howe word tans ten volle benut, wat aanduidend daarvan is dat hulle in 'n daadwerklike behoefte voorsien. Gesien die huidige staatkundige ontwikkelings in Suid-Afrika, is dit onwenslik dat 'n afsonderlike beregtingsforum vir 'n bepaalde bevolkingsgroep in stand gehou word, en die mening word dus gehuldig dat alle egskedingsgedinge in dieselfde forum bereg behoort te word. Dit word voorgestel dat so 'n proses van rasionalisasie op so 'n wyse behoort te geskied dat daardie eienskappe van die huidige Swart egskedingshowe wat verhoogde toeganklikheid in die hand werk, sover moontlik behoue moet bly. Dié eienskappe sluit in 'n eenvoudige en goedkoop prosedure, spoedige beregting en die verskyning van prokureurs in sodanige howe. So 'n aanpassing sal dus noodwendig 'n gewysigde egskedingsprosedure in die Hooggeregshof teweegbring.

Die Wetsontwerp wat in die Bylae hieronder verskyn, beoog om vir die voorgestelde maatreels voorsiening te maak, en dit word hierby vir algemene inligting en kommentaar gepubliseer. Enige kommentaar of vertoe daaromtrent deur belanghebbendes moet **nie later nie as 31 Julie 1991** skriftelik by die Direkteur-generaal Justisie, Privaatsak X81, Pretoria, 0001, ingedien word.

Die volgende verduideliking kan ten aansien van die voorgestelde wysigings verskaf word:

Klousule 1

In die lig van die voorgestelde instelling van afsonderlike Egskedingshowe en die afskaffing van Swart egskedingshowe, word die woordskrywing van "hof" in artikel 1 van die Wet op Egskeding, 1979 (Wet No 70 van 1979), dienoreenkomstig aangepas.

Klousule 2

Voorsiening word gemaak vir die totstandkoming van spesialishowe (egskedingshowe) wat slegs egskedingsgedinge sal bereg en wat binne die bestaande struktuur van die Hooggeregshof sal funksioneer.

Klousule 3

Klousule 3 maak voorsiening dat die Minister van Justisie reëls kan uitvaardig wat ten opsigte van egskedingshowe aanwending sal vind. Dit word beoog dat sodanige reëls sover moontlik daardie eienskappe wat tans die toeganklikheid van die bestaande Swart egskedingshowe in die hand werk, sal beliggaam. Die Reëlsraad vir Geregshowe sal die Minister van advies kan bedien ten opsigte van reëls wat aldus uitgevaardig staan te word. Daarbenewens word voorsiening gemaak dat prokureurs

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appear in the Black divorce courts contributes significantly to the cost-saving nature of these courts, and the opinion is held that the proposed extension of the right of appearance of attorneys will contribute largely in limiting the costs which accompany divorce proceedings

Clauses 4, 5 and 6

Clause 4 envisages the abolition of the existing Black divorce courts. Clauses 5 and 6 are self-explanatory and do not require further elucidation

SCHEDULE

REPUBLIC OF SOUTH AFRICA

DIVORCE AMENDMENT BILL

(As introduced)

(MINISTER OF JUSTICE)

[B -92 (GA)]

GENERAL EXPLANATORY NOTE

----- Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Divorce Act, 1979, so as to provide for the constitution of separate Divorce Courts within the structure of the Supreme Court of South Africa; to amend the Black Administration Act, 1927, Amendment Act, 1929, so as to abolish separate divorce courts for Blacks; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows

Amendment of section 1 of Act 70 of 1979, as amended by section 1 of Act 7 of 1989

1. Section 1 of the Divorce Act, 1979 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of "court" of the following definition:

" 'court' means a Divorce Court established under section 1A;"

Insertion of section 1A in Act 70 of 1979

2. The following section is hereby inserted in the principal Act after section 1

"Constitution of Divorce Courts

1A. (1) The judge-president of each provincial division of the Supreme Court of South Africa shall, subject to the Supreme Court Act, 1959 (Act No. 59 of 1959), from time to time constitute a court or

in egskedingshowe verskyningsbevoeg sal wees. Die feit dat prokureurs tans in die Swart egskedingshowe kan optree, dra beduidend by tot die kostebesparende aard van hierdie howe, en die mening word gehuldig dat die voorgestelde uitgebreide verskyningsbevoegdheid van prokureurs 'n waardevolle bydrae sal lewer ten einde die kostes wat met egskedingsgedinge gepaard gaan, te bekamp.

Klousule 4, 5 en 6

Klousule 4 behels die afskaffing van die bestaande Swart egskedingshowe. Klousules 5 en 6 is selfverklarend en behoeft nie verdere toeligting nie

BYLAE

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP EGSKEIDING

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W -92 (AS)]

ALGEMENE VERDUIDELIKENDE NOTA.

----- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan

WETSONTWERP

Tot wysiging van die Wet op Egskeiding, 1979, ten einde voorsiening te maak vir die samestelling van afsonderlike Egskeidingshowe binne die struktuur van die Hooggeregshof van Suid-Afrika; tot wysiging van die Swart Administrasiewet, 1927, Wysigingswet, 1929, ten einde afsonderlike egskedingshowe vir Swartes af te skaf; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg.

Wysiging van artikel 1 van Wet 70 van 1979, soos gewysig deur artikel 1 van Wet 7 van 1989

1. Artikel 1 van die Wet op Egskeiding, 1979 (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (1) die omskrywing van "hof" deur die volgende omskrywing te vervang

" 'hof' 'n Egskeidingshof saamgestel kragtens artikel 1A,"

Invoeging van artikel 1A in Wet 70 van 1979

2. Die volgende artikel word hierby in die Hoofwet na artikel 1 ingevoeg

"Samestelling van Egskeidingshowe

1A. (1) Die regter-president van elke provinsiale afdeling van die Hooggeregshof van Suid-Afrika moet, behoudens die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), van tyd tot

courts of that division and, if applicable, a court or courts of the local division within the area of jurisdiction of which the provincial division concerned exercises concurrent jurisdiction, to try divorce actions.

252 (2) Such a court shall be known as a Divorce Court and shall, subject to the provisions of this Act, for all purposes be deemed to be a court of the relevant provincial or local division of the Supreme Court, as the case may be

(3) No court other than a Divorce Court shall have jurisdiction to try a divorce action as a court of first instance."

Substitution of section 11 of Act 70 of 1979

3. The following section is hereby substituted for section 11 of the principal Act:

"Procedure, rules of court and legal representation

11 (1) Subject to the provisions of this Act, the rules made under section 43 of the Supreme Court Act, 1959 (Act No 59 of 1959), and under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), shall *mutatis mutandis* apply in relation to a court and proceedings in terms of this Act, except in so far as those rules are inconsistent with rules made under subsection (2) of this section

(2) The Minister of Justice may, notwithstanding the Rules Board for Courts of Law Act, 1985, from time to time make rules for the courts regulating—

- (i) the practice and procedure in the courts,
- (ii) the attendance of witnesses and the allowances to be paid to them,
- (iii) the fees which may be charged by advocates and attorneys, costs as between party and party and as between attorney and client, and the taxation of costs,
- (iv) the tariff of fees to be imposed and collected by officers of the courts;
- (v) the noting and continuation of appeals,
- (vi) the appointment of places for the holding of the courts;
- (vii) generally any other matter relating to the courts as the Minister may deem necessary for the purposes of this Act

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985, may advise the Minister regarding the making of rules under subsection (2).

tyd 'n hof of howe van daardie afdeling en, indien van toepassing, 'n hof of howe van die plaaslike afdeling in die regsgebied waarvan die betrokke provinsiale afdeling konkurrante jurisdiksie uitoefen, saamstel om egskedingsgedinge te verhoor.

(2) So 'n hof staan bekend as 'n Egskeidingshof en word, behoudens die bepalings van hierdie Wet, vir alle doeleindes geag 'n hof te wees van die betrokke provinsiale of plaaslike afdeling van die Hooggeregshof, na gelang van die geval.

(3) Geen ander hof as 'n Egskeidingshof het jurisdiksie om as 'n hof van eerste instansie 'n egskedingsgeding te verhoor nie."

Vervanging van artikel 11 van Wet 70 van 1979

3. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

"Prosedure, hofreëls en regsverteenvoording

11. (1) Behoudens die bepalings van hierdie Wet is die reëls uitgevaardig kragtens artikel 43 van die Wet op die Hooggeregshof, 1959 (Wet No 59 van 1959), en kragtens artikel 6 van die Wet op die Reelsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), *mutatis mutandis* van toepassing met betrekking tot 'n hof en verrigtinge ingevolge hierdie Wet, behalwe vir sover daardie reëls onbestaanbaar is met reëls uitgevaardig kragtens subartikel (2) van hierdie artikel.

(2) Die Minister van Justisie kan, ondanks die Wet op die Reelsraad vir Geregshowe, 1985, van tyd tot tyd reëls vir die howe uitvaardig tot reëling van—

- (i) die praktyk en prosedure in die howe;
- (ii) die verskyning van getuies en die toelaes wat aan hulle betaal moet word;
- (iii) die gelde wat deur advokate en prokureurs gevorder kan word, die koste tussen party en party en tussen prokureur en klient, en die taksasie van koste,
- (iv) die tarief van gelde wat beamptes van die howe moet opleë en invorder;
- (v) die aantekening en voortsetting van appèlle;
- (vi) die bepaling van die sittingsplekke van die howe;
- (vii) oor die algemeen enige ander aangeleentheid in verband met die howe wat die Minister vir die doeleindes van hierdie Wet nodig ag

(3) Die Reelsraad vir Geregshowe ingestel by artikel 2 van die Wet op die Reelsraad vir Geregshowe, 1985, kan die Minister adviseer aangaande die uitvaardiging van reëls kragtens subartikel (2).

(252) (4) Notwithstanding the provisions of any other law, any person who has been admitted to practise as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979), shall be entitled to appear for a party to a divorce action in the court of any division of the Supreme Court of South Africa where he has been enrolled as an attorney and to conduct litigation on behalf of such a party "

Repeal of section 10 of Act 9 of 1929, as amended by section 5 of Act 42 of 1942, section 27 of Act 56 of 1949, section 26 of Act 54 of 1952 and section 2 of Act 34 of 1986

4. Section 10 of the Black Administration Act, 1927, Amendment Act, 1929, is hereby repealed.

Pending proceedings

5. The provisions of this Act shall not affect any matter pending in any court of law at the commencement of this Act, and such a matter shall be disposed of in the court in question as if this Act had not been passed.

Short title and commencement

6. This Act shall be called the **Divorce Amendment Act, 1992**, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*

(14 June 1991)

NOTICE 514 OF 1991

DEPARTMENT OF MANPOWER

LABOUR RELATIONS ACT, 1956

CANCELLATION OF REGISTRATION OF A TRADE UNION

I, David William James, Industrial Registrar, hereby notify, in terms of section 14 (2) of the Labour Relations Act, 1956, that I have cancelled the registration of the Western Cape Administration Board Workers Union with effect from 5 June 1991.

D. W. JAMES,
Industrial Registrar

(14 June 1991)

(252)

NOTICE 515 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 of 18 DECEMBER 1990

The Director-General: Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates

(4) Ondanks die bepalings van enige ander wet is 'n persoon wat ingevolge die Wet op Prokureurs, 1979 (Wet No 53 van 1979), as prokureur toegelaat is, geregtig om in die hof van enige afdeling van die Hooggeregshof van Suid-Afrika waar hy as prokureur ingeskryf is, vir 'n party by 'n egskeidingsgeding te verskyn en om gedingvoering namens so 'n party te behartig "

Herroeping van artikel 10 van Wet 9 van 1929, soos gewysig deur artikel 5 van Wet 42 van 1942, artikel 27 van Wet 56 van 1949, artikel 26 van Wet 54 van 1952 en artikel 2 van Wet 34 van 1986

4. Artikel 10 van die Swart Administrasiewet, 1927, Wysigingswet, 1929, word hierby herroep

Aanhangige verrigtinge

5. Die bepalings van hierdie Wet raak nie 'n saak wat by die inwerkingtreding van hierdie Wet in enige geregshof aanhangig is nie, en so 'n saak moet in die betrokke hof afgehandel word asof hierdie Wet nie aangeneem is nie.

Kort titel en inwerkingtreding

6. Hierdie Wet heet die **Wysigingswet op Egskeiding, 1992**, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(14 Junie 1991)

KENNISGEWING 514 VAN 1991

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

INTREKKING VAN REGISTRASIE VAN 'N VAKVERENIGING

Ek, David William James, Nywerheidsregistrateur, maak hierby kragtens artikel 14 (2) van die Wet op Arbeidsverhoudinge, 1956, bekend dat ek die registrasie van die Western Cape Administration Board Workers Union met ingang van 5 Junie 1991 ingetrek het

D. W. JAMES,
Nywerheidsregistrateur

(14 Junie 1991)

KENNISGEWING 515 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal: Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring

to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons.

ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlatting van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone

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SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Bali	Luvuyo Faniso	1963-05-05
Banda	Francinah Motshidisi	1970-06-16
Bhembhe	Jeremiah Mphekwa	1961-04-01
Buthelezi	Jeffrey M	1963-12-05
Dimba	Francis Themba	1953-09-28
Ditabe	Lydia Tlalane	1968-05-03
Dlamini	Agnes Combo	1941-01-12
Dludla	Selby Bongumusa	1969-09-08
Eland	Daniel Ntondo	1965-10-17
Funani	Dolores Nokulunga	1957-08-29
Gasa	Judith	1973-12-03
Gcina	Mkhululi	1958-06-22
Goodwin	Lindwell Wandile	1951-11-05
Gwama	Xolani	1963-03-06
Hani	Fundile Jeffrey	1959-08-18
Jiyane	Sibusiso Iazi	1972-06-19
Katisa	Thamsanqa Patrick	1953-12-28
Katsala	Patience Nombuyiselo	1958-01-04
Khumalo	Solomon Basoba	1940-10-07
Khuzwayo	Jamila	1966-09-30
Kondile	Mthobeli	1955-06-06
Kunene	Sibusiso	1961-05-06
Kunene	Mzikayise Raphael	1963-10-10
Liebenberg	Anton William	1960-07-12
Mabaso	Cyril	1957-06-15
Mabona	Stanley Dudu Eric	1965-06-09
Mabua	Tomas Seaqodimo	1966-04-03
Mabunda	Wallet	1971-05-13
Magagula	Henry Bazamos	1968-01-28
Mahlalela	Jabulane Koos	1972-08-08
Majola	John Sgaqhana	1945-12-15
Majola	Themban Richard	1961-04-24
Makhanya	Rowena Lozizwe	—
Makhanya	Rinnie	1972-02-27
Malaka	Maureen	1961-08-30
Malebana-Metsing	Peter Ishmael Rocky	1949-08-23
Mametse	Sello	1961-03-01
Mampye	Nicodemus	1966-10-22
Manyoni	Samuel Kefiloe	1959-01-03
Maraume	Daniel	1922-07-09
Mashiqana	Raymond Siyoho	—
Masisi	Mochubeloa Jacob	1939-05-07
Masondo	Vusumuzi Ramakala Mxolisi	1957-12-21
Mathutha	Gertrude Deluwe	1930-08-26

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Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Mavundla	Charlton Muntu	1960-06-23
Mayende	Gili Peter	1960-12-22
Mbongwa	Mbulelo	1972-05-04
Methula	Jack Mfanasibili	1971-02-02
Mhlaba	Mhlaba	1956-06-16
Mhlabane	Grace Ntombe	1957-02-10
Mhlanga	Alfred Jeffrey	1965-02-23
Mkhwanazi	Muzi	1968-07-22
Mkhwanazi	Maria Malifu	1959-02-09
Mngadi	Jabulani Harold	1968-11-11
Mongomezulu	Sipho Louis	1948-06-18
Mnisi	Vivid	1964-02-16
Modie	Ingrid	1973-03-18
Moedi	Tshepo Thiza	1967-07-25
Moeti	Tonka Patrick	1955-07-20
Mogano	Stephen	1946-03-26
Mohlala	Asaph Makote	1954-11-26
Mokgoko	Joseph	1934-07-07
Mokhethi	Jabu Vuyiswa Eunice	1956-03-18
Mosia	Jacob David	1969
Motha	Sizwe Sphiwe Aubrey	1963-01-11
Motsisi	Lucas Abe	—
Mqadi	Thulani Gwajo	1970-01-10
Mraqisa	Beauty Nonkululeko	1966-03-21
Mtetwa	Herbert Vusumzi	1952-02-14
Mthembu	Jabulani Philip	1963-03-21
Mtimkulu	Phemba Archibald	1961-08-11
Mtolo	Spector Edmund	1957-05-31
Mtshali	Joseph	1938-03-20
Musi	Dorset Lebogang	1957-11-09
Mvumvu	Khayaletu Keiroad	1966-06-16
Mzolisi	Hermanus Trevor	1956-04-04
Nala	Armstrong Thulani	1962-06-20
Ncgobo	Steven Maswazi	1968-12-26
Ndlungwane	Sandile Shepherd	1962-10-30
Ndzanga	Cicil Luthuli	1961-06-04
Ndzanga	Maria Nomathamsanqa	1959-11-04
Ngobese	Motswakae Percival	1970-09-06
Ngubane	Bhekisisa	1968-04-21
Nhlapo	Monica Helen	1960-11-02
Njokweni	Michael Ntsikelelo	1957-11-30
Nkati	Mathew Mzwakhe	1963-02-02
Nkosi	Cynthia Pumla	1971-01-04
Nthongoa	Toy	1935-03-31
Ntombela	Raynold	1952-08-09
Ntoni	Buyisile Oliver	1952-01-26
Ntsibande	David Shadrack	1960-09-28
Nxumalo	Dumisani E	1967-12-22
Nyambi	Desmond Zekhele	1975-05-08
Pelle	Bethuel Mmutle	1954-10-01
Peter	Frances Patricia	1951-06-09
Phalo	Ernest	1967-02-24

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Pyatya	Attwell Msothoana.	1959-09-16
Radebe	Robert Mnzatheli.	1959-04-20
Radebe	Rufus	1964-06-23
Radebe	Vasco Mlamuli	1963-06-10
Ralitsela	Molilo Esau	1951-10-07
Rametsi	Francis Paul	1939-05-17
Ramokgopa	Selaelo Irene	1958-09-01
Ramokhele	Ramahlape Abel	1949-11-05
Seane	Kabelo Andrew	1954-11-27
Seathlolo	Aaron Bennett Sereo	1957-05-31
Sebolayi	Molly Botsang	1952-05-18
Sedibe	Aubrey P	—
Sekhuthu	Patrick Nicholas	1955-12-26
Seleoane	Thabang David	1955-11-09
Shoke	Solly Zacharia	1957-08-15
Stuurman	Sacks	1960-09-11
Themba	Thoka	1962-02-06
Thetho	Maneng Wilford	1967-06-17
Thulare	Difa Bernard	1932-02-02
Thulare	Godfrey Simbongile	1970-08-04
Velaphi	Mandla Jacob	1969-04-30
Zulu	Aussi	1961-12-03
Zungu	Bongumusa	1971-05-15

(14 June 1991)/(14 Junie 1991)

NOTICE 516 OF 1991**FINANCIAL SERVICES BOARD****THE JOHANNESBURG STOCK EXCHANGE****NOTICE REGARDING AMENDMENT OF RULES**

1 In terms of section 12 (6) of the Stock Exchanges Control Act, 1985 (Act No 1 of 1985), it is hereby notified that the Johannesburg Stock Exchange has applied to the Registrar of Stock Exchanges for approval to make amendments to its rules, as set forth in the Schedule hereto

2 In terms of section 12 (7) of the said Act all interested persons (other than members of the Stock Exchange) who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Stock Exchanges, Private Bag X238, Pretoria, 0001, within a period of 30 days from date of this notice

SCHEDULE*General explanatory notes*

- 1 Words in square brackets ([]) indicate omissions from existing rules
- 2 Words underlined with solid line (——) indicate insertions in existing rules

KENNISGEWING 516 VAN 1991**RAAD OP FINANSIËLE DIENSTE****DIE JOHANNESBURGSE EFFEKTEBEURS****KENNISGEWING BETREFFENDE WYSIGING VAN REELS**

1 Ingevolge artikel 12 (6) van die Wet op Beheer van Effektebeurse, 1985 (Wet No 1 van 1985), word hierby bekendgemaak dat die Johannesburgse Effektebeurs by die Registrateur van Effektebeurse aansoek gedoen het om goedkeuring om wysigings aan sy reels aan te bring, soos in die Bylae hiervan uiteengesit.

2. Ingevolge artikel 12 (7) van genoemde Wet word alle belanghebbendes (uitgesonder lede van die Effektebeurs) wat beswaar het teen die voorgestelde wysigings, hierby versoek om hul besware binne 'n tydperk van 30 dae vanaf die datum van hierdie kennisgewing by die Registrateur van Effektebeurse, Privaatsak X238, Pretoria, 0001, in te dien

BYLAE*Algemene verduidelikende notas*

- 1 Woorde tussen vierkantige hakies ([]) dui skrappings uit bestaande reels aan
2. Woorde met 'n volstreep daaronder (——) dui invoegings in bestaande reels aan

Strydom 252
23.14.19

indemnity?

BLOEMFONTEIN. — The application for indemnity by mass murderer Barend Strydom was heard in camera by a full bench of the Indemnity Commission here yesterday.

Strydom was represented in the application, but was not present himself.

The outcome of the application will be announced at a later stage by President F.W. de Klerk or Minister of Justice Mr. Kobie Coetsee.

The application was heard by Appeal Court judge Mr. Justice Steyn, who sat with Mr. Justice R.N. Leon and Mr. Justice R.A. Solomons. — Sapa

Indemnity given to Left and Right

Star 15/6/91 (252)
A LARGE group of left and rightwingers have been granted indemnity for acts that did not cause injury or death

In terms of a notice published in yesterday's Government Gazette, the group has been indemnified in terms of the category for indemnity announced on April 24

South African Communist Party central committee member Ronnie Kasrils and Janet Love, who were wanted in connection with "Operation Vula" — an alleged plot to overthrow the Government — have been indemnified

SACP spokesman Dr Essop Pahad said the party welcomed the development and looked forward to working with the indemnified people again

He called on the Gov-

OWN CORRESPONDENT

ernment to grant everyone full indemnity in the interest of free political activity

Also included in the list is Hugh Lugg, who was arrested at Broedersroom but not charged

Released

Three people who were arrested with him — Damian de Lange, Susan Westcott and Iain Robertson — were recently released as political prisoners

Rightwingers who have been indemnified include Arthur Archer, Craig Barker, Hendrik Binneman, Darryl Stopforth and Leonard Veenendaal

Afrikanerweerstandsbeweging spokesman Piet Rudolph said yes-

terday he and the movement's leader Eugene TerreBlanche were scheduled to have discussions later this month with Justice Minister Kobie Coetsee on right-wing political prisoners

A list detailing the acts for which the group has been indemnified is available at the office of the Director-General of the Department of Justice

Anger at delay of schoolboy inquest

By DAN DHLAMINI

Alfred 16/6/91
AN INQUEST into the alleged killing of a schoolboy by a Potchefstroom policeman was this week postponed to allow the policeman time to get a lawyer — the third postponement for the same reason
Magistrate P Myburgh

postponed the inquest into the death of Bhongi Nyokong, 17, until August 6 to give Senti Rampete more "time to seek legal representation"

Nyokong, a Std 9 pupil at Tlokwe Secondary school, was allegedly shot

(252)
dead by Rampete while hiding from the police under the bed of teacher Marcus Mosete, on February 23 last year

The inquest has so far attracted a huge crowd, apparently because the policeman is well known in the Transvaal

Bongi's grandfather,

Sam Nyokong, said the family would "be patient because we are convinced justice will be done"

"The policeman acted as the prosecutor, judge and executioner of my grandson — yet is still on active police duty and wears his service firearm," he said

By ELIAS MALULEKE

THE chief magistrate of Messina has denied that he threatened in court to "call Inkatha" to restore order to Messina's Nancefield township

Claiming to have been "quoted out of context", Christian Johannes Bester told City Press he said he would "bring 50 Zulus with sjamboks to discipline troublemakers"

Bester confirmed he had been "summoned by the Minister of Justice"

Magistrate denies 'Inkatha' threat

to answer for the remark.

The remark by Bester has caused fear among township residents.

The remark was allegedly made in court on Tuesday during an unsuccessful application for bail by 11 Messina youths charged with intimidation

Bester said his remark was an "off-the-cuff joke

directed at the youths

Local ANC branch chairman Jack Mokobi said the remark was "irresponsible in the extreme"

"Township residents are now living in fear of their lives, particularly as they believe rightwingers would use any means to break a current consumer boycott against white-owned businesses"

It is alleged Bester said he would "bring 50 members of Inkatha with kerries to knock sense into the youths' heads"

"I actually said I would 'bring 50 Zulus with sjamboks' to discipline them," Bester said.

City Press established that black members of Bester's department in general "do not consider him a racist"

"Life for us has improved considerably since he took over," one black staff member said.

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City Press 16/6/77

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CIPres 16/6/77
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"Township residents are now living in fear of their lives, particularly as they believe rightwingers would use any means to break a current consumer boycott against white-owned businesses."

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"Life for us has improved considerably since he took over," one black staff member said

No indemnity for alleged bombers

Sowetan 18/6/91

252

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THE refusal by the State President to grant indemnity to three men allegedly responsible for the Bloed Street bomb, yesterday resulted in a second postponement of the Pretoria Supreme Court trial.

Pro deo defence counsel for Mr Adrian Hendrickus Maritz (43) British citizen Mr Henry Guy Martin (49) and Mr Lodewyk Grobler van Schaikwyk (53) told Mr Justice Van der Walt they had only learned yesterday that the State President had refused to grant them indemnity.

This decision was unexpected and counsel said they were not prepared to proceed with the trial.

The case will now be heard on August 5.

Postponement

The judge requested an undertaking by counsel that at the next hearing there would be no further postponement requests from them.

Mr Paul Fick, for the State, said a second request for postponement "went against his grain" but he would concede to another date if the court so ordered.

The judge said it was only fair to allow counsel to prepare for defence.

The men face 11 charges of attempted murder, a charge of theft and malicious damage to property fol-

lowing the bomb blast outside a fast food outlet in Bloed Street, Pretoria on August 11 last year. Eleven people were injured.

They are also accused of murdering Mr Nicolas James Elvin Cruse, a consultant, who died after opening a parcel bomb in his Durban office on October 20

Other charges against them relate to unlawful possession of explosives, teargas, grenades and detonators
- *Sowetan Correspondent*

Kasrils to decide on coming out of hiding

Sowetan 18/6/91

Sowetan
Correspondent

SACP central committee member Mr Ronnie Kasrils, who has been indemnified for his role in "Operation Vula" - an alleged plot to overthrow the Government - is still to decide whether to come out of hiding.

SACP spokesman Mr Jeremy Cronin said yesterday Kasrils will decide on whether to come out of hiding after discussions with the senior leadership of the ANC and SACP.

In terms of a list, available at the office of the Director-General of the Department of Justice, Kasrils received indemnity for acts of terrorism committed before October 8 last year, the unlawful possession of arms and ammunition, the unlawful possession of explosives and the unlawful possession of a firearm.

A list of people indemnified was

published in the Government Gazette on Friday.

A police spokesman said on Friday crimes committed by Kasrils which did not lead to injury or death would not be further investigated but "regarding other cases which could possibly be proved, police do not want to comment on at this stage".

Terrorism

Ms Janet Love, who was also wanted in connection with "Operation Vula", was also indemnified for acts of terrorism before October 8, 1990 and the unlawful possession of arms and ammunition.

Mr Hugh Lugg, who was arrested with three other ANC mem-

bers at Broederstroom in 1988, was indemnified for terrorism in Broederstroom in May 1988.

Four rightwingers - Mr Arthur Archer, Mr Craig Barker, Mr Leonard Veenendaal and Mr Darryl Stopforth - were granted indemnity for causing explosions in Johannesburg in June last year, including the explosions at the Rosettenville synagogue and at the offices of the *Vrye Weekblad*.

Another rightwinger, Mr Hendrik Binneman, was indemnified for terrorism and malicious damage of property in Johannesburg in August last year.

Mr Leon van Rensburg was granted indemnity for the unlawful possession of arms and ammunition and the unlawful possession of explosives in Johannesburg on July 6, 1990.

State drops army case

252
Soweto
18/6/91

IN a move hailed as a great victory for conscientious objectors, the State yesterday declined to prosecute two men who had refused to do their military service.

The two are the Rev Alan Storey and Mr Wai Rontsch. The charges against them were withdrawn when they appeared in the Johannesburg Magistrate's Court yesterday morning.

Both men may still be called to do military service, but it is unlikely that the South African Defence Force would want to repeat the long legal process the two objectors had to undergo, according to the Conscientious Objectors Support Group.

Mr Storey (22), a probationer minister, refused to serve on the grounds of being a Christian pacifist while Rontsch (40), who was called to serve in the "Dad's Army", a citizen's reserve force, refused to obey his call-up on moral grounds.

(iv) 328 and (b) 21 May 1991

Harms Commission' amounts paid for transcription

408 Adv C D DE JAGER asked the Minister of Justice +

With reference to his reply to Question No 89 on 8 May 1991 and the amounts paid to Vlok Recordings for the transcription of the proceedings of the Harms Commission with regard to its investigation into certain alleged murders, (a) at what rate did Vlok Recordings tender for the work (i) per day for an operator,

(ii) per day or per month for the provision of recording machines and (iii) per folio for transcription and (b) how is the amount of R7 370,20 made up, regard being had to the basis of tender?

The MINISTER OF JUSTICE

(a) (i) R50 per day per operator

(ii) R25 per day or portion thereof plus R6 per cassette

(iii) R3,04 per page plus R1,66 per page additional in respect of a running transcript

(b) The amount is made up as follows

(i) Operator for the making of the recording 55 days at R50 per day R2 750,00

(ii) Hiring of Lanier recording machine and 10 microphones 55 days at R25 per day R1 375,00

(iii) Cassette tapes for recording 119 cassettes at R6 per cassette R714,00

(iv) Copy of transcriptions Pretoria and London proceedings (2 free copies supplied) 4 052 pages at 30 cents per page R1 215,60

(v) Additional copies of certain volumes 656 pages at 30 cent per page R196,80

(vi) Original typing, checking and binding of the report 170 pages at R5,00 per page R850,00

(vii) Six copies of the report 1 020 pages at 12 cents per page R122,40

(viii) Computer discs 6 discs at R2,75 each R16,50

(ix) Certified copies of volumes 26, 27, 28, 29 and 30 of the record for the Commercial Crime Unit, the South African Police and John Vorster Square 433 pages at 30 cent per page R129,90

R7 370,20

Education budget: details

422 Mr J H MOMBORG asked the Minister of Education and Training

(1) What (a) amount and (b) percentage of the education budget of his Department was spent in the Republic on (i) pre-primary, (ii) primary, (iii) secondary and (iv) tertiary education during the latest specified 12-month period for which figures are available,

(2) whether any part of his Department's education budget was spent on pre-primary, primary, secondary and tertiary education in (a) Qwaqwa and (b) Kwa-Zulu during the period referred to above, and (ii) what percentage of his Department's total expenditure on education for the period concerned did each such amount constitute,

(3) whether his Department has statistics on the amounts spent on pre-primary, pri-

primary, secondary and tertiary education by the (a) Qwaqwa and (b) KwaZulu Department of Education and Culture during the above period, if so, (i) what were the relevant amounts and (ii) what percentage of each of these Departments' total expenditure on education did each such amount constitute?

The MINISTER OF EDUCATION AND TRAINING

Since the Department's accounts for 1990/91 have not yet been finalised, accurate amounts for 1990/91 cannot be submitted at this stage. Information figures for the 1989/90 financial year are supplied

(1) (i) R695 936,30 ,04%

(ii) R970 395 069,95 49,61%

(iii) R590 184 613,99 30,17%

(iv) R281 015 748,53 14,37%

(2) No

(3) No

Management training: amount spent

423 Mr J H MOMBORG asked the Minister of Education and Training

What (a) amount and (b) percentage of the education budget of his Department was spent on management training during the latest specified 12-month period for which figures are available?

B1107E

The MINISTER OF EDUCATION AND TRAINING

(a) R4 380 188,16

(b) 0,22%

Note

The information is based on the estimated expenditure for the 1990/91 financial year

Cholera: cases/deaths

424 Mr M J ELLIS asked the Minister of National Health

How many (a) cases of and (b) deaths from cholera were reported in respect of each race group in each province in 1990?

B1108E

The MINISTER OF NATIONAL HEALTH

(a) Notified cases of cholera in 1990 RSA (as on 3 June 1991)

Province	Population Group	
	Indian Black Coloured White	
Cape Province	0	0
Natal	0	1
Orange Free State	0	0
Transvaal	0	0

(b) no deaths due to cholera were notified in 1990

Note

This case was not bacteriologically proven

Polomyelitis' cases/deaths

425 Mr M J ELLIS asked the Minister of National Health

(1) How many (a) cases of and (b) deaths from polomyelitis were reported in respect of each race group in each province in 1990,

(2) how many persons of each race group were immunised against polomyelitis in each province in 1989?

B1109E

The MINISTER OF NATIONAL HEALTH

(1) (a) Notified cases of polomyelitis in 1990 RSA (as on 3 June 1991)

Province	Population Group	
	Indian Black Coloured White	
Cape Province	0	0
Natal	0	0
Orange Free State	0	0
Transvaal	0	2

(b) no deaths due to polomyelitis were notified in 1990

(2) the total number of children less than one year of age who received a third dose of polomyelitis vaccine in the RSA, 1989

Province	Population Group	
	Indian Black Coloured White	
Cape Province	581	58 649
Natal	15 402	68 672

Rule of law being restored, says DP

Political Staff

(252) ARG 20/6/91

THE rule of law is being restored in South Africa, the Democratic Party declared yesterday during debate on major improvements to the draconian detention-without-trial provisions of the Internal Security Act

The maximum period of detention without trial has been reduced to 10 days unless a judge extends it. And for the first time a detainee may challenge his detention in court. Access to detainees has been substantially increased.

The changes have been brought about by the Internal Security and Intimidation Amendment Bill which amends the Internal Security Act.

The House of Assembly was hushed as Labour Party's Mr Luwellyn Landers read out the full list of the 73 people who had died in detention, including Steve Biko.

Mr Landers said "They paid the supreme sacrifice so that we could enjoy a free and just South Africa."

DP justice spokesman Mr Dave Dalling said the principle of habeas corpus had at last been restored to South African law.

"What is left of the original section 29 is but a pale shadow of the draconian measure we in opposition have so long abhorred."

Introducing the amended bill, Justice Minister Mr Kobie Coetsee said it repealed all provisions which might possibly inhibit free and normal political activity.

The changes introduced by the Joint Standing Committee on Justice were:

- The initial period of detention had been reduced from 14 days in the original bill to 10 days.
- Detainees had been given the immediate right to seek redress in the courts.
- If police wished to detain someone longer than 10 days a special application had to be made to a judge in chambers.
- All documents and written reasons for the application must be placed before the court and a full copy must be given to the detainee or his legal representative.
- The detainee must have the right to put his case for release to the judge.
- Immediately after being held the detainee must be visited by a district surgeon — and thereafter he must be visited at intervals of not more than five days by both a district surgeon and a magistrate.
- The detainee's family, his own doctor and his lawyer must be told of his detention and must be allowed to visit him. The right of access can be denied only by the Minister or the Commissioner of Police, and only if they believe it will hamper a police investigation.

Mr Coetsee noted also that the bill repealed preventive detention under section 28 of the Internal Security Act, section 50A (allowing 180 days detention) and section 55 (forbidding a person from propagating communism).

Mr Kobie Coetsee

Mr Dave Dalling

Sowetan 2016/91

'Courts should act' (252)

THERE is no justification for dumping innocent children, callers to the Sowetan/Radio Metro Talkback Show told host Tim Modise yesterday.

Most callers recommended that baby dumping, regardless of contributing factors, should be treated as a serious criminal offence and that mothers should face the full might of the law.

Patrick from Meadowlands said he understood that it was very difficult for a mother to raise a baby alone, but that there was no justification for turning the baby into a victim.



"It does not matter whether the father abandoned the woman before giving birth. The child cannot be the one who bears the brunt."

Although fathers are also to blame for not being responsible enough, this does not provide a justification for women to dump their babies, Siphon from KwaThema said.

On the side of women, Patricia from Orlando East dismissed abortion as a preventative measure and laid the blame square-

ly on the shoulders of "uncaring men".

However, Jacob from Naledi emphasised that women who dump their babies should face criminal charges.

"The mother should be punished by the State. The mother should take legal steps against her man, if he is not providing for the child."

"The child cannot be a victim, so if the mother dumps the poor baby, she should be jailed for that," Jacob said.

Nomzi of Sharpeville blamed women who slept around with many men. She said this could result in them not knowing who had fathered their children.

Irresponsible men were also to blame.

When psychologists take the stand

Star 20/6/91

2S2

ON MONDAY a Supreme Court judge said psychological evidence had taken up much time during an already lengthy trial.

The trial of Leon van Vuuren, who was jailed for 12 years for the murder of his wife Michelle, followed a continuing trend in trials of wealthy accused to try to avoid criminal responsibility for their actions by using psychological evidence. Most of it is not accepted by the courts.

The Van Vuuren case is the latest in a trend identified by the head of Sterkfontein Hospital's forensic unit, Dr Meryl Foster.

Earlier this year she submitted a report to the Department of Health and Welfare dealing with the amount of time spent in court by State psychiatrists.

Van Vuuren, who strangled his wife and then put her body into a bath of water, pleaded not guilty to murder on the grounds that he was not criminally responsible for his actions.

The court heard evidence from a psychologist in private practice who had previously worked in the Prisons Service. Johan Benade claimed that Van Vuuren did not know the difference between right and wrong when he strangled his wife.

Psychological evidence is being used constantly and to little avail by defence lawyers in South African courts, reports CATHY STAGG.

When Mr Justice I. Meyers summed up the evidence, he referred to the psychologist's report as very lengthy, while Dr Foster's evidence was "short, powerful and impressive". All her conclusions were found to be acceptable.

The judge found that Van Vuuren had had the direct intention to kill, convicted him of murder and sentenced him to 12 years' jail.

In her study of trials heard in the Rand Supreme Court between October 1989 and last September, Dr Foster concluded that there was a high percentage of cases where psychiatric evidence was presented. And State psychiatrists were used increasingly to present, screen or modify claims.

"On the whole, judges accepted the evidence of expert witnesses. Psychiatric reports are unchallenged and where the accused were found unfit to stand trial, the proceedings were discontinued.

"Of interest is the singular lack of success by private psychologists in persuading judges. A study of their activities in the lower courts is worth undertaking," she said.

the study group had any success with their claims, this is hardly an unexpected finding, Dr Foster said, adding that studies done in other countries showed that mentally ill patients were not more likely to be involved in crime than is the general population.

There was no reason to believe this would vary in South Africa, she said.

Only one accused was referred because of the bizarre nature of his crime. (He cut out his brother's heart and ate it after a sangoma told him this would prevent detection of his crime.) He was found not to be mentally ill.

The types of claims were: intoxication, 6, amnesia, 4, epilepsy/head injury, 3, low IQ, 4, automatism, 3, depression, 2, confused spells, 1, low self-esteem, 1, influenced, 1, hearing difficulty, 1, bizarre crime, 1.

Of this total of 27 claims, there were seven which were successful: toxins, 1, head injury, 1, low IQ, 2, amnesia, 1, and depression, 2.

One claim of intoxication led to referral and a finding of diminished responsibility, but on the grounds of a personality disorder.

Mentally ill patients are not more likely to be involved in crime than is the general population

Dr Foster said that of 249 cases, 25 had psychiatric or psychological testimony. No records could be found for 27 trials, so it was accepted that in 197 cases no psychiatric evidence was led.

The 197 cases were referred to as the control group, and the other cases as the study group.

On the findings regarding accused, Dr Foster said the most frequent age grouping, 20-29, was followed by the 30-39 group. This trend was seen universally among criminals.

In both groups, males far outnumbered females. Regarding race, Dr Foster said "Whites are vastly over-represented" in the study group. This probably reflects a better financial situation which led to them briefing counsel.

"Such counsel may be more sophisticated than pro defence counsel, and use psychiatric evidence as only one of several factors. It certainly does not imply that the whites in the study group suffered more mental disease.

"It is interesting to note that two of the three State President's patients were black. One may conclude that only the more severely disordered black offenders made use of psychiatric evidence. As blacks become more so, the use of psychiatric evidence will probably change."

CT 20/6/91
Steve Biko case is 'reopened'

PARLIAMENT. — The Steve Biko case had been reopened following a motion passed in the House of Delegates and had resulted in action against some doctors, the Minister of Justice, Mr Kobie Coetsee, said yesterday.

According to Sapa, the minister was replying to the debate on the Internal Security and Intimidation Amendment Bill. He said the attorney-general had studied the records of the Steve Biko case thoroughly to see if prosecution was possible.

"Justice does prevail no matter how long it takes," he said.

MPs in the House asked Mr Coetsee for further details but the minister did not clarify his statement.

'Advocates earn 29% more'

Own Correspondent

JOHANNESBURG — A survey in the latest issue of the attorneys' journal De Rebus indicates that advocates earned on average 29% more than attorneys last year, providing ammunition for the argument that attorneys should have Supreme Court appearance rights.

In addition, the Law Society of the Transvaal has released suggested parameters for advocates' fees which say top advocates should charge up to R36 000 for a week's work in court.

The survey produced by De Rebus indicates that advocates earned on average R129 400 last year compared to attorneys who earned on average R100 700.

The survey, which canvassed self-employed people in a large variety of professions, places advocates 17th on the list, earning about the same as plastic surgeons and auditors while attorneys are 35th on the list earning about as much as doctors in general practice.

According to the survey, the top earners are stockbrokers who earned R251 000 on average last year, followed by economists (R200 000) and pathologists (R182 000).

During the period 1984 to 1990, advocates increased their earnings by 14% while attorneys increased their earnings by 13%.

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Bill tabled to amend Internal Security Act

THE government yesterday tabled a bill to reduce detention without trial under the Internal Security Act from 90 days to 10

All but the Conservative Party supported the new Internal Security and Intimidation Amendment Bill

Speakers from the Democratic Party and the Labour Party expressed reservations about the necessity of retaining detention without trial at all

The Minister of Justice, Mr Kobie Coetsee, said the government considered that South Africans "still require special protection from terrorism and for this reason retains Section 29, but in a drastically amended form"

"The period of detention is now limited to 10 days and thereafter for further periods of 10 days at a time, as a judge of the Supreme Court may determine"

Mr Coetsee said there might still be

some dissatisfaction with Section 29 and urged those who favoured the repeal of the legislation to submit proposals which would ensure adequate protection against terrorists

Section 28, which provides for preventive detention, is also repealed

The Conservative Party's Mr Chris de Jager, MP for Bethal, said the party was opposed to the bill because it was against the decriminalisation of communism. It supported the limited detention without trial, however, because right-wingers were "being held in this way"

● Veteran human-rights campaigner Mrs Helen Suzman said she welcomed the improvements but said there should be an insistence that Section 29 be repealed entirely. "We need a return to the good old policy of habeas corpus, which provides for incarceration of only 48 hours"

APARTHEID BAROMETER

DIRECTORS' SALARIES ~~251~~ ~~252~~ ~~253~~ ~~254~~ ~~255~~ ~~256~~ ~~257~~ ~~258~~ ~~259~~ ~~260~~ ~~261~~ ~~262~~ ~~263~~ ~~264~~ ~~265~~ ~~266~~ ~~267~~ ~~268~~ ~~269~~ ~~270~~ ~~271~~ ~~272~~ ~~273~~ ~~274~~ ~~275~~ ~~276~~ ~~277~~ ~~278~~ ~~279~~ ~~280~~ ~~281~~ ~~282~~ ~~283~~ ~~284~~ ~~285~~ ~~286~~ ~~287~~ ~~288~~ ~~289~~ ~~290~~ ~~291~~ ~~292~~ ~~293~~ ~~294~~ ~~295~~ ~~296~~ ~~297~~ ~~298~~ ~~299~~ ~~300~~ ~~301~~ ~~302~~ ~~303~~ ~~304~~ ~~305~~ ~~306~~ ~~307~~ ~~308~~ ~~309~~ ~~310~~ ~~311~~ ~~312~~ ~~313~~ ~~314~~ ~~315~~ ~~316~~ ~~317~~ ~~318~~ ~~319~~ ~~320~~ ~~321~~ ~~322~~ ~~323~~ ~~324~~ ~~325~~ ~~326~~ ~~327~~ ~~328~~ ~~329~~ ~~330~~ ~~331~~ ~~332~~ ~~333~~ ~~334~~ ~~335~~ ~~336~~ ~~337~~ ~~338~~ ~~339~~ ~~340~~ ~~341~~ ~~342~~ ~~343~~ ~~344~~ ~~345~~ ~~346~~ ~~347~~ ~~348~~ ~~349~~ ~~350~~ ~~351~~ ~~352~~ ~~353~~ ~~354~~ ~~355~~ ~~356~~ ~~357~~ ~~358~~ ~~359~~ ~~360~~ ~~361~~ ~~362~~ ~~363~~ ~~364~~ ~~365~~ ~~366~~ ~~367~~ ~~368~~ ~~369~~ ~~370~~ ~~371~~ ~~372~~ 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COMPANY directors who control the Top 100 industrial companies on the Johannesburg Stock Exchange earned a total of R199-million in 1990 — enough to support 14 547 families, each with a "living wage" of R1 140 a month

This is the finding of the Cape-based Labour Research Service's (LRS) annual directors' pay survey, involving 1 079 directors.

The directors' weekly pay — which worked out to an average of R3 540 — was 20 times more than a labourer's average weekly wage of R179 in 1990. *Wimant 21/6 - 27/6/91.*

According to the LRS, mining houses pay more than industrial companies. "The 12 directors of Johannesburg Consolidated Investments (JCI) gave themselves R6,9-million in 1990. Each director got R11 058 a week, on average. This is 70 times larger than the weekly wage of R157 paid to a Grade Four underground mine-worker at a JCI gold mine"

HARMS COMMISSION ~~251~~ ~~252~~ ~~253~~ ~~254~~ ~~255~~ ~~256~~ ~~257~~ ~~258~~ ~~259~~ ~~260~~ ~~261~~ ~~262~~ ~~263~~ ~~264~~ ~~265~~ ~~266~~ ~~267~~ ~~268~~ ~~269~~ ~~270~~ ~~271~~ ~~272~~ ~~273~~ ~~274~~ ~~275~~ ~~276~~ ~~277~~ ~~278~~ ~~279~~ ~~280~~ ~~281~~ ~~282~~ ~~283~~ ~~284~~ ~~285~~ ~~286~~ ~~287~~ ~~288~~ ~~289~~ ~~290~~ ~~291~~ ~~292~~ ~~293~~ ~~294~~ ~~295~~ ~~296~~ ~~297~~ ~~298~~ ~~299~~ ~~300~~ ~~301~~ ~~302~~ ~~303~~ ~~304~~ ~~305~~ ~~306~~ ~~307~~ ~~308~~ ~~309~~ ~~310~~ ~~311~~ ~~312~~ ~~313~~ ~~314~~ ~~315~~ ~~316~~ ~~317~~ ~~318~~ ~~319~~ ~~320~~ ~~321~~ ~~322~~ ~~323~~ ~~324~~ ~~325~~ ~~326~~ ~~327~~ ~~328~~ ~~329~~ ~~330~~ ~~331~~ ~~332~~ ~~333~~ ~~334~~ ~~335~~ ~~336~~ ~~337~~ ~~338~~ ~~339~~ ~~340~~ ~~341~~ ~~342~~ ~~343~~ ~~344~~ ~~345~~ ~~346~~ ~~347~~ ~~348~~ ~~349~~ ~~350~~ ~~351~~ ~~352~~ ~~353~~ ~~354~~ ~~355~~ ~~356~~ ~~357~~ ~~358~~ ~~359~~ ~~360~~ ~~361~~ ~~362~~ ~~363~~ ~~364~~ ~~365~~ ~~366~~ ~~367~~ ~~368~~ ~~369~~ ~~370~~ ~~371~~ ~~372~~ ~~373~~ ~~374~~ ~~375~~ ~~376~~ ~~377~~ ~~378~~ ~~379~~ ~~380~~ ~~381~~ ~~382~~ ~~383~~ ~~384~~ ~~385~~ ~~386~~ ~~387~~ ~~388~~ ~~389~~ ~~390~~ ~~391~~ ~~392~~ ~~393~~ ~~394~~ ~~395~~ ~~396~~ ~~397~~ ~~398~~ ~~399~~ ~~400~~ ~~401~~ ~~402~~ ~~403~~ ~~404~~ ~~405~~ ~~406~~ ~~407~~ ~~408~~ ~~409~~ ~~410~~ ~~411~~ ~~412~~ ~~413~~ ~~414~~ ~~415~~ ~~416~~ ~~417~~ ~~418~~ ~~419~~ ~~420~~ ~~421~~ ~~422~~ ~~423~~ ~~424~~ ~~425~~ ~~426~~ ~~427~~ ~~428~~ ~~429~~ ~~430~~ ~~431~~ ~~432~~ ~~433~~ ~~434~~ ~~435~~ ~~436~~ ~~437~~ ~~438~~ ~~439~~ ~~440~~ ~~441~~ ~~442~~ ~~443~~ ~~444~~ ~~445~~ ~~446~~ ~~447~~ ~~448~~ ~~449~~ ~~450~~ ~~451~~ ~~452~~ ~~453~~ ~~454~~ ~~455~~ ~~456~~ ~~457~~ ~~458~~ ~~459~~ ~~460~~ ~~461~~ ~~462~~ ~~463~~ ~~464~~ ~~465~~ ~~466~~ ~~467~~ ~~468~~ ~~469~~ ~~470~~ ~~471~~ ~~472~~ ~~473~~ ~~474~~ ~~475~~ ~~476~~ ~~477~~ ~~478~~ ~~479~~ ~~480~~ ~~481~~ ~~482~~ ~~483~~ ~~484~~ ~~485~~ ~~486~~ ~~487~~ ~~488~~ ~~489~~ ~~490~~ ~~491~~ ~~492~~ ~~493~~ ~~494~~ ~~495~~ ~~496~~ ~~497~~ ~~498~~ ~~499~~ ~~500~~ ~~501~~ ~~502~~ ~~503~~ ~~504~~ ~~505~~ ~~506~~ ~~507~~ ~~508~~ ~~509~~ ~~510~~ ~~511~~ ~~512~~ ~~513~~ ~~514~~ ~~515~~ ~~516~~ ~~517~~ ~~518~~ ~~519~~ ~~520~~ ~~521~~ ~~522~~ ~~523~~ ~~524~~ ~~525~~ ~~526~~ ~~527~~ ~~528~~ ~~529~~ ~~530~~ ~~531~~ ~~532~~ ~~533~~ ~~534~~ ~~535~~ ~~536~~ ~~537~~ ~~538~~ ~~539~~ ~~540~~ ~~541~~ ~~542~~ ~~543~~ ~~544~~ ~~545~~ ~~546~~ ~~547~~ ~~548~~ ~~549~~ ~~550~~ ~~551~~ ~~552~~ ~~553~~ ~~554~~ ~~555~~ ~~556~~ ~~557~~ ~~558~~ ~~559~~ ~~560~~ ~~561~~ ~~562~~ ~~563~~ ~~564~~ ~~565~~ ~~566~~ ~~567~~ ~~568~~ ~~569~~ ~~570~~ ~~571~~ ~~572~~ ~~573~~ ~~574~~ ~~575~~ ~~576~~ ~~577~~ ~~578~~ ~~579~~ ~~580~~ ~~581~~ ~~582~~ ~~583~~ ~~584~~ ~~585~~ ~~586~~ ~~587~~ ~~588~~ ~~589~~ ~~590~~ ~~591~~ ~~592~~ ~~593~~ ~~594~~ ~~595~~ ~~596~~ ~~597~~ ~~598~~ ~~599~~ ~~600~~ ~~601~~ ~~602~~ ~~603~~ ~~604~~ ~~605~~ ~~606~~ ~~607~~ ~~608~~ ~~609~~ ~~610~~ ~~611~~ ~~612~~ ~~613~~ ~~614~~ ~~615~~ ~~616~~ ~~617~~ ~~618~~ ~~619~~ ~~620~~ ~~621~~ ~~622~~ ~~623~~ ~~624~~ ~~625~~ ~~626~~ ~~627~~ ~~628~~ ~~629~~ ~~630~~ ~~631~~ ~~632~~ ~~633~~ ~~634~~ ~~635~~ ~~636~~ ~~637~~ ~~638~~ ~~639~~ ~~640~~ ~~641~~ ~~642~~ ~~643~~ ~~644~~ ~~645~~ ~~646~~ ~~647~~ ~~648~~ ~~649~~ ~~650~~ ~~651~~ ~~652~~ ~~653~~ ~~654~~ ~~655~~ ~~656~~ ~~657~~ ~~658~~ ~~659~~ ~~660~~ ~~661~~ ~~662~~ ~~663~~ ~~664~~ ~~665~~ ~~666~~ ~~667~~ ~~668~~ ~~669~~ ~~670~~ ~~671~~ ~~672~~ ~~673~~ ~~674~~ ~~675~~ ~~676~~ ~~677~~ ~~678~~ ~~679~~ ~~680~~ ~~681~~ ~~682~~ ~~683~~ ~~684~~ ~~685~~ ~~686~~ ~~687~~ ~~688~~ ~~689~~ ~~690~~ ~~691~~ ~~692~~ ~~693~~ ~~694~~ ~~695~~ ~~696~~ ~~697~~ ~~698~~ ~~699~~ ~~700~~ ~~701~~ ~~702~~ ~~703~~ ~~704~~ ~~705~~ ~~706~~ ~~707~~ ~~708~~ ~~709~~ ~~710~~ ~~711~~ ~~712~~ ~~713~~ ~~714~~ ~~715~~ ~~716~~ ~~717~~ ~~718~~ ~~719~~ ~~720~~ ~~721~~ ~~722~~ ~~723~~ ~~724~~ ~~725~~ ~~726~~ ~~727~~ ~~728~~ ~~729~~ ~~730~~ ~~731~~ ~~732~~ ~~733~~ ~~734~~ ~~735~~ ~~736~~ ~~737~~ ~~738~~ ~~739~~ ~~740~~ ~~741~~ ~~742~~ ~~743~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~ ~~751~~ ~~752~~ ~~753~~ ~~754~~ ~~755~~ ~~756~~ ~~757~~ ~~758~~ ~~759~~ ~~760~~ ~~761~~ ~~762~~ ~~763~~ ~~764~~ ~~765~~ ~~766~~ ~~767~~ ~~768~~ ~~769~~ ~~770~~ ~~771~~ ~~772~~ ~~773~~ ~~774~~ ~~775~~ ~~776~~ ~~777~~ ~~778~~ ~~779~~ ~~780~~ ~~781~~ ~~782~~ ~~783~~ ~~784~~ ~~785~~ ~~786~~ ~~787~~ ~~788~~ ~~789~~ ~~790~~ ~~791~~ ~~792~~ ~~793~~ ~~794~~ ~~795~~ ~~796~~ ~~797~~ ~~798~~ ~~799~~ ~~800~~ ~~801~~ ~~802~~ ~~803~~ ~~804~~ ~~805~~ ~~806~~ ~~807~~ ~~808~~ ~~809~~ ~~810~~ ~~811~~ ~~812~~ ~~813~~ ~~814~~ ~~815~~ ~~816~~ ~~817~~ ~~818~~ ~~819~~ ~~820~~ ~~8~~

Hope for farm dwellers

Sowetan 25/6/91
THE community of black farmers at Goedgevonden has been granted leave to appeal against the Pretoria Supreme Court judgment authorising their eviction from the farm they reoccupied in April.

Leave to appeal was granted by Mr Justice Goldstem in Pretoria yesterday.

This means the community may remain on the farm until the case is heard by the Appellate Division. It is unlikely it will be placed on the court roll, before

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next year.

Residents are hopeful the matter will be settled by negotiation before then.

Earlier this week, three Cabinet Ministers heard representations from a Goedgevonden delegation and are reporting back to the Cabinet.

The 400 men, women and children are a fraction of a community which was removed in 1978 after spending 30 years on the farm. -Political Staff-

provision of accommodation to general affairs departments by means of erection, purchase or the hire thereof, and the resultant administration of the properties including maintenance. The amount of R1 416 239 000 is subdivided under the heading buildings, structures and equipment into the following sub-items, and primarily in respect of items (a) to (d) according to the priorities of user departments

- (a) the erection or purchase of buildings and structures including engineering services, R408 602 000
- (b) the hiring and adaptation of office accommodation, R296 348 000
- (c) the hiring of official quarters, R41 746 000
- (d) maintenance, repair and renovation of buildings and structures, R237 156 000
- (e) the cleaning of buildings and tending of gardens, R78 526 000
- (f) payment of municipal services and levies, R230 000 000
- (g) the day-to-day repair and maintenance of buildings and structures as well as minor works, R1 000 000
- (h) auxiliary services for attaining the above-mentioned sub-items including provision of prestige and other furniture, R4 657 000
- (i) administration cost including the salaries of officials and funds for the appointment of private consultants for the planning of projects R118 204 000

444 Mr J J WALSH asked the Minister of Law and Order

- (1) Whether he ordered the demolition of shacks in Mbekeken near Praet on or about 29 May 1991, if not, (a) who was responsible for the order, (b) for what reasons was it issued and (c) how many shacks were demolished,
- (2) whether the squatters were given the opportunity to retrieve their belongings

HOUSE OF ASSEMBLY

- before their shacks were demolished, if not, why not,
- (3) whether members of the South African Police fired teargas at squatters trying to retrieve their belongings, if so, why,
- (4) whether these squatters have been offered alternative accommodation, if not, why not, if so, (a) where, (b) when and (c) what is the nature of this accommodation?

The MINISTER OF LAW AND ORDER
B1154E

- (1) No
- (a) The Town Council of Mbekeken, through the Secretary
- (b) The persons squatted illegally on ground which was earmarked for development
- (c) Approximately 50 completed and 60 partially constructed shacks
- (2) Yes
- (3) No, not while they were removing their belongings from the scene. The South African Police did, however, fire teargas when approximately 350 squatters attacked them with stones and petrol-bombs, injuring members of the South African Police and damaging a Police vehicle
- (4) No, all the squatters in question had accommodation in Mbekeken which they vacated so as to squat on the terrain (a) to (c) Fall away

445 Mr C W EGLIN asked the Minister of Law and Order

- (1) Whether one of the counsel to whom he referred in his reply to Question No 9 on 28 May 1991 is the same counsel to whom he referred in his reply to Question No 8 on 23 April 1991, if so, (a) what is the name of this counsel, (b) of what Bar is he a member, (c) at what stage of the Mzamka case was he appointed, (d) (i) on whose initiative, (ii) on whose recommendation and (iii) for what reasons was he so appointed, (e) (i) what was the amount of

the fee paid to him and (ii) on what basis was the fee calculated and (f) on how many days did he appear in court in the execution of his brief,

- (2) whether this counsel received any benefits in the form of (a) housing, (b) transportation and (c) equipment, if so, what was the (i) nature and (ii) value of these benefits,
- (3) whether, during the period to which this counsel was paid the above fee, he acted for the Ministry of Law and Order in respect of any other cases, if so, (a) how many other cases are involved and (b) what total amount was he paid in fees in respect of these cases?

The MINISTER OF LAW AND ORDER
B1153E

- (1) Yes
- (a) Advocate L J L Visser (SC)
- (b) The Pretoria Bar
- (c) Approximately a week before the trial started
- (d) (i) to (iii) As a result of the great public interest of the case, and the enormous magnitude thereof, the Minister decided, after consultation with the Commissioner and the head of the Legal Services of the South African Police, that it was desirable to appoint another senior advocate

During the preparation for the trial of the Mzamka-case it became clear that the case would take on an enormous magnitude. On these grounds it was decided to appoint a second senior advocate

- (e) (i) Advocate Visser's fees for professional services rendered for the period 15 September 1987 until 5 March 1990 was R1 270 650,00. This figure differs from the totals which were given on a previous occasion because the complete officially approved statements were not available before
- (ii) From 15 September 1987 until and including 1 January 1989 the fee structure was R3 000,00

per day. From 2 January 1989 an adjustment of 15% was made on the fees

- (2) (a) (i) and (ii) Advocate G D Gressel (SC) who was the leader of the team made a work division. On account of this it was senseless to continually use two senior advocates simultaneously in court and advocate Visser had to, on a daily basis, evaluate previous evidence for the purpose of cross-examination by advocate Gressel

This method of working made it possible to indicate accurately where and at what moment certain alleged members and vehicles of the South African Police were present. Unfounded allegations by the claimant's witnesses could be eliminated in this way. Advocate Visser did cross-examine single witnesses in court although it was not his work according to the work division

- (2) (a) (i) and (ii) Yes, he stayed in a flat which was also used as office space for having consultations and computer processing of evidence. This flat was initially rented at R1 100,00 per month till the end of April 1989 after which the costs were increased to R1 400,00 per month. The flat was rented since hotel accommodation and the renting of an office was much more expensive. Advocate Visser initially stayed in a hotel and rented advocates chambers
- (b) (i) and (ii) Yes, initially for the first three months of the trial a vehicle was rented from a motor rental agency at R2 546,00 per month. These costs were thereafter cut through renting a vehicle from a private instance at R1 500,00 per month
- (c) (i) and (ii) No, advocate Visser did, however, purchase a facsimile machine, a photostat machine, a computer with a screen and a printer in that period. No costs were recovered from the South African Police for the use of that equipment
- (3) No, Advocate Visser charged no fee for

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~~252~~ the KTC-case on the days on which he worked on other cases. For other cases in which he acted on behalf of the Minister of Law and Order or the South African Police he naturally, also did not charge a higher fee than that which he could charge according to the fees agreed upon for the KTC-case.

For some of these cases he, in fact, charged a fee which was less than the fees agreed upon

(a) and (b) Fall away

Government Service Pension Fund: interest rate

447 Mr P J PAULLIS asked the Minister of Finance †

- (1) What interest rate did the Government Service Pension Fund receive in each financial year from 1984-85, up to and including 1990-91 in respect of funds invested in (a) Government securities and (b) semi-Government securities,
- (2) whether a change of policy regarding investment possibilities is being considered, if not, why not, if so, what are the relevant details?

B1162E

The MINISTER OF FINANCE

(1) (a) and (b)

Interest rates in respect of funds invested in Government securities and semi-Government securities, are not individually available

1984-85	11,5%
1985-86	12,5%
1986-87	13,3%
1986-88	13,7%
1988-89	13,9%
1989-90	14,8%
1990-91	14,8%

- (2) I recently announced that a Committee of experts in the private sector had been appointed to advise the Government on the future structure and siting of the Government Pension Funds. The investment policy inevitably forms part of the Committee's assignment and until such

time as it has finalised its business and the Government has considered its recommendations, no conclusive answer can be given

Squatters in Germiston: attack by Whites

448 Mr D H M GIBSON asked the Minister of Law and Order

- (1) Whether he or the South African Police have been informed of an alleged attack by a group of Whites on squatters at Old Goedehoop High School in Railway Street, Germiston, on or about 2 June 1991, if not, why not, if so,
- (2) whether an investigation into this incident is taking place, if not, why not, if so, what progress has been made in this investigation,
- (3) whether any (a) suspects have been identified, (b) arrests have been made and (c) charges have been laid in connection with this incident, if not, why not, if so, (1) how many in each case and (ii) what is the nature of the charges,
- (4) whether any squatters were injured in this attack, if so, (a) how many and (b) what was the nature of the injuries,
- (5) whether he or the Police intend taking any action to prevent further similar attacks, if not, why not, if so, what action?

B1163E

The MINISTER OF LAW AND ORDER

(1) Yes

(2) Yes, the matter is being investigated and numerous arrests have already been made

- (3) (a) Yes
- (b) Yes
- (c) Yes
- (i) and (ii)

The case is still being investigated, but six identified suspects have already been arrested for public violence

- (4) (a) and (b)
Yes, 5 squatters sustained superficial wounds
- (5) Yes, the functions of the South African

Police are, inter alia, the maintenance of law and order and the prevention of crime. This implies that the task of the South African Police is at all time directed at, inter alia, protecting all persons against attacks by other persons, irrespective of who may be responsible for such attacks. This principle is applied consistently.

Should law and order be disturbed in any manner—also attacks on civilians—the Police will take steps to act against any transgressions of the law

Note

The squatters have already vacated the Old Goedehoop High School in terms of a court order, in that the Messenger of the Court acted in terms of an eviction order to remove them

Newlands police station child abuse reported

449 Mrs C H CHARLEWOOD asked the Minister of Law and Order

- (1) Whether a case of alleged child abuse involving a 9-year-old girl and a White couple was reported at the Newlands police station, if so, when,
- (2) whether an investigation into this incident is taking place, if not, why not, if so, what progress has been made in this investigation,
- (3) whether there are any suspects in this case, if so,
- (4) whether any arrests have been made in connection with this incident, if not, why not, if so, (a) how many, (b) when, (c) what are the names of the persons so arrested and (d) what is the nature of the charges being laid against them?

B1164E

The MINISTER OF LAW AND ORDER

- (1) No, but there was a case of alleged rape reported at the Parkview Police Station on 19 March 1991, which was investigated by the Child Protection Unit at the General Johan Coetzee Police Station
- (2) Yes, after conclusion of the investigation the case docket was submitted to the

Senior Public Prosecutor in Johannesburg

- (3) Yes
- (4) Yes

(a) 2 Persons
(b) 11 April 1991

- (c) Since the Senior Public Prosecutor has declined prosecution, it is not regarded to be in the interest of these persons to make their names known
- (d) A charge of alleged rape was investigated

Infant mortality rate

451 Mr M J ELLIS asked the Minister of National Health

What was the infant mortality rate for (a) Blacks, (b) Whites, (c) Coloureds and (d) Indians in (i) urban and (ii) rural areas in South Africa in 1990?

B1166E

The MINISTER OF NATIONAL HEALTH

Infant mortality rates for 1990 are not yet available. The following table contains infant mortality rates for 1988 and 1989. The Department of National Health and Population Development has no separate rates available for urban and rural areas in South Africa

Year	Population Group			
	Indian	Black	Coloured	White
1988	17,4	57,4	57,5	13,2
1989	12,2	n/a	35,1	8,6

Note n/a = not available

Typhoid: cases of deaths

452 Mr M J ELLIS asked the Minister of National Health

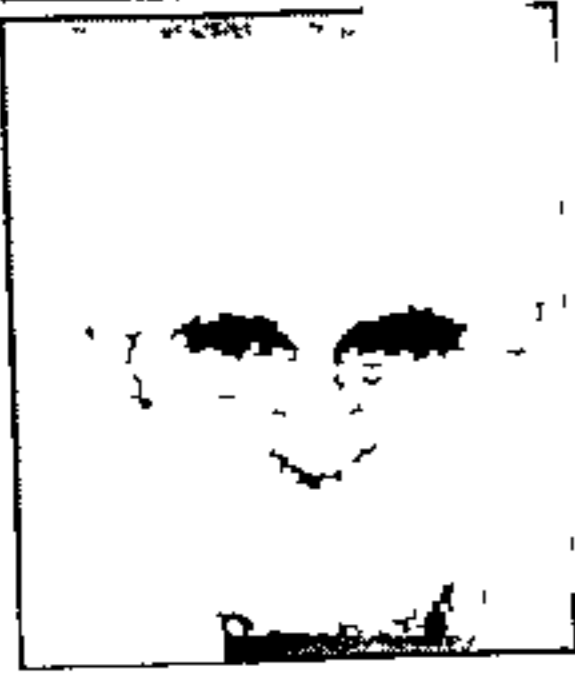
How many (a) cases of and (b) deaths from typhoid were reported in respect of each race group in each province in 1990?

B1167E

The MINISTER OF NATIONAL HEALTH

- (a) Notified cases of typhoid fever in 1990 RSA (as on 7 June 1991)

WANTED: A GREAT MAN



Radford Jordan, a regular contributor to the *FM*, was formerly senior lecturer in Political Studies at Wits University.

The ANC went into armed rebellion against the State because it could see no other means of ending apartheid. Before John Locke (1632-1704), no one had worked out a sound theoretical justification of rebellion, what he had to say is highly relevant to our country.

Locke began by describing a supposed "state of nature" in which men had lived before government came into being. From his concept of the state of nature, Locke derived criteria for governmental legitimacy and the loss of this — criteria which retain their validity, despite the fact that no one now believes that a state of nature ever existed such as he envisaged.

In Locke's state of nature every man had to defend his own property against attack by others. He defined property as a man's life, liberty and possessions. The defence of property involved the use of force and every man had to judge for himself how much force was needed in any particular case. This meant that in every dispute the individual was, as lawyers say, judge in his own cause, he then tended to use excessive force, from which violence escalated. To minimise violence, men agreed by means of a social contract to establish a political society in which all were citizens. The end for which this was done was to enable disputes to be settled peaceably.

The authority of government was essentially that of an impartial judge. Once the judge had reached a decision, government had only to see to its enforcement. While government kept to this neutral role, no citi-

zen was entitled to use force against it or any other citizen. If government ceased to be neutral, so that some citizens were denied impartial justice, these became entitled to exercise what Locke called their appeal to heaven — for want of any other remedy, their right to use force revived.

The English Revolution of 1688 fitted Locke's theories so closely that it was once believed he had formulated them after the event, but this has been disproved. The American Declaration of Independence from British rule also drew heavily on Locke.

Locke saw that men needed in practice to show restraint in the exercise of their appeal to force. Here he foreshadowed two opposed views taken of apartheid: was it just a mistake, or something worse?

Locke says "Revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling party, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people without mutiny or murmur. But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under and see whither they are going, it is not to be wondered that they should then rouse themselves and endeavour to put the rule into such hands which may ensure to them the ends for which government was first erected."

Both the Bill of Rights enacted by the British parliament in 1689 and the American Declaration of Independence set out in detail the "long train of abuses" which had made revolution inevitable.

Locke and the American Declaration alike vest in "the people" the function of re-establishing legitimate government. A cynic might say that this phrase meant neither more than less than the successful revolutionaries.

However, those who acted in the name of

the people did, in each of these two cases, put an end to the abuses which had brought about revolution.

Locke did not expressly deal with the case of a government which concluded an armistice with the revolutionaries and set itself the task of meeting their grievances.

A later writer, Alexis de Tocqueville, had something of interest to say on a comparable situation: he observed that there was no more unenviable predicament than that of the rul-

Linking the parties

er who tried to maintain his authority by good treatment of the subjects he had hitherto oppressed.

It is easy to see why such a ruler will generally fail to see the results of his past acts as they appear to those afflicted by them, hence his actions will be neither so radical nor so prompt as his survival demands.

A community of interest nevertheless links the parties to the armistice once government sets about doing the right things. But unresolved conflicts eclipse this community, and there may be no one of sufficient stature to bring into focus the continuing relationship of interdependence between them.

Yet at this very time, SA is witnessing a phenomenon which might well transform our conflict.

This is the establishment of expert bodies which undertake to facilitate the settlement of disputes by mediation or informal arbitration. The label ADR (alternative dispute regulation) has been attached to these bodies because those who have recourse to them do so rather than litigate in the courts.

Which is more important in a person put in charge of top-level bargaining, public distinction or expertise? Need this question be answered? Would not a distinguished person, with expert ADR help, have the best chance of succeeding?

Application by Aansoek van	Place of meeting Plek van byeenkoms	Date and time Datum en tyd
Johannes Petrus v d Linden (ID 471126 5007 003), of/van Stand/Perseel J50, Loskop North/Noord, P O Box/Posbus 590, Marble Hall, 0450	Magistrate's Office/Kantoor van die Landdros, Groblersdal	29 July/Julie 1991 at/om 10 00

(21 June 1991)/(21 Junie 1991)

NOTICE 552 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development; and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No. 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No. 74 of 1982), as the case may be.

KENNISGEWING 552 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENSKENNISGEWING VERSTREK HET

Die Direkteur-generaal. Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No. 501 van 6 Maart 1991 onderskryf het; en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), na gelang van die geval.

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Abrahamse	Evan Richard.....	1962-07-29
Bakade	Setuntu	1954-01-01
Beck.	Irine Winifred.	1928-08-04
Beck.	Glenn Jarrette	1956-09-26
Beck.....	Paschal Iranius... ..	1971-04-03
Blose	Goodenough Mthandeni.	1971-07-08
Cele	Robina.	1959-01-15
Chirwa.....	Lena Nora	1929-03-15
Chuburi	Daniel Amos	1969-12-21
Desha.....	Phillip Zuzile.....	1966-12-29
Dhlapo.	Jubu Thomas	1966-09-10
Dlamini..	Percival Vusi	1972-04-15
Dlamini	Precious Gabisile	1960-05-05

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Dlangamandla	Lawrence Movelolo	1959-08-07
	Dzanibe	Celo Sphewe	1969-08-23
	Faliso	Dennis Danisile	1961-09-20
	Funde	Nosizwe	1952-09-12
	Gobbs	Nikkie Boikanyo	1953-06-10
	Godole	Mxolisi	1972-09-03
	Gumbi	Patrick	1955-09-23
	Gumede	Muziwenkosi Jacques	1972-02-02
	Hadebe	Wiseman Sibongiseni	1969-04-21
	Hlophe	Mandla Caspar	1964-08-03
	Ingwane	Gregory Sello	1959-05-06
	Ismael	Adijah	1966-09-29
	Jackobs	Boyse Siphwe	1963-09-06
	Jafta	Mangaliso	1965-03-24
	Kana	Nombulelo	1968
	Kekana	Andrew Godfrey Oupa	1967-01-14
	Kena	Daniel	1949-06-02
	Khomalo	Godfrey Semphewe	1964-05-26
	Khoza	Thulani	1963-05-09
	Khumalo	Goodman Vusi	1972-12-02
	Khumalo	Tomas Tebogo	1970-02-13
	Khumalo	Sakkie Edmund	1971-01-10
	Koobe	Michael	1962-09-25
	Kunene	Dumisani Bhalaso	1963-04-19
	Latile	Vuyisile Chrstopher	1959-11-25
	Legoale	Phillip Flepe	1972-09-10
	Lehoko	Tankiso Charles	1970-10-30
	Lekhelebane	David	1963-08-31
	Lesupe	David Mokgosi	1968-02-03
	Mabasa	Elias Jimmy	1958-03-17
	Mabe	Benjamin	1968-06-17
	Mabotja	Samuel Tolozi	1967-01-28
	MacDonald	Leo	1958-06-16
	Madaka	Masitwembele	1968-03-23
	Magogotya	Mncedisi Charles	1962-06-18
	Magongo	Sannah	1966-11-11
	Magongo	Jerry Colani	1961-01-01
	Magopa	Johnson	1949-11-14
	Mahelela	David Elphis	1962-11-28
	Mahlakazela	Martha	1968-02-05
	Mahlakazela	Smanghish	1962-12-11
	Mahlaleka	Sipho Isaac	1968-03-17
	Maisela	Magisa Gogo	1968
	Majeke	Sikhumbuzo	1955-05-14
	Majola	Joseph Mlindeli	1963-08-28
	Makanda	Ntombentsha Jeanette	1960-08-22
	Makasi	Nceba	1956-11-21
	Makgale	Victor Modise	1959-01-28
	Makula	Vusi	1974-05-14
	Makuluma	Cyril Andile	1960-12-04
	Malawu	Peter	1955-09-03
	Malgas	Rantsuane Petrus	1969-07-23
	Mali	Mzukisi	1961-09-01

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Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Maluleka.....	Jabu Eddie	1969-01-20
Mametse	Sello	1961-03-01
Maphoto	Isaac Lesibe	1931
Mapitiza	Benson Saneo.....	1959-10-30
Mareka	Johannes	1973-02-13
Maringa	Solly	1973-03-09
Mashabela	Jerry Nhlanhla	1969-05-03
Mashavhathakha.	Khathutshelo.....	1972-12-04
Mashigo	Isaac Molefe.....	1952-08-22
Mashiloane.....	Thabo	1964-01-05
Mashilwana	Evens Zakhele	1969-07-13
Mashinini.....	Sisilo Lorraine	1958-02-15
Masilela	January	1955-01-01
Masoetsa	Lebohang Albert.....	1958-05-29
Mathebe	Abel.	1953-04-15
Mathebe	Sello Moses..	1970-09-24
Mathebula	Bongane Kingdom.....	1965-10-21
Mathebula	Madoda	1970-10-10
Matokoane	Pule Michael.	1967-10-30
Matsose	Johnny David	1960-11-17
Mavembula	Malendana Sight	1950-04-11
Mazibuko	Nombane Rita	1942-03-14
Mazibuko.....	Raymond Skhumbuzo	1970-04-22
Mazibuko.....	Bheki	1969-07-07
Mbeje	Xolani S.....	1970-11-24
Mbele	Moses Khumbulani	1957-03-07
Mbhele	Vincent	1962-11-22
Mei	Meshack Litsietsi.	1954-06-21
Mfeka	Desmond..	1971-01-12
Mhlongo	Arnold Monwabisi..	-
Mkhohlwa.....	Caution Gcina	1961-01-01
Moatlhudi	Levy	1958-01-13
Modise	Frederck..	1955-06-11
Moeketsi	Francis	1974-01-23
Mofoken	Jan Segame	1969-09-18
Mohlala	Brian Aubrey	1969-02-07
Mohohlo	Jimmy Douglas	1957-11-08
Mokgatla	Prince Lerata	1971-03-29
Mokhaoba	Patrick	1974-02-15
Mokoaledi.....	Cohen Thabo	1957-03-10
Mokobo	Caswell Itumeleng	1947-08-29
Molaletsa.....	Jacob	1957-06-08
Molokwane	Peter Tumelo.	1961-02-14
Moloto	Tebogo Bockey	1961-01-21
Monare.	Oliphant Jacob.	1958-08-03
Monare.....	Christopher	1958-07-26
Mooketsi.	Bruce Tebogo	1974-01-16
Mothiba	Matshiliso	1959-03-16
Mothiba	MacGlory M	1959-01-16
Motsepe	Ngwato Maniki	1959-04-14
Motugagae	Radinko..	1947-06-19
Moumakoe	Enock Selaotse	1970

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Moyene	Eliot	1965-04-30
Moyikwa	Sindile	1955-07-28
Mphaphuli	Mashudu	1949-02-12
Mpungoshe	Bekinhlaha Lookluck	1944-02-02
Mthabela	Kosi	1971-11-16
Mthembu	Sindiswa	1958-03-09
Mthimkulu	Mandla Titos	1952-06-16
Mtjale	Sbusiso Hemelton	1973-03-12
Mtoba	Xolisa	1963-06-06
Murauha	Sabatha Theodore	1972-02-25
Mxaka	Boy-Boy	1961-05-06
Myrdal	Brett Carl	1960-06-17
Nare	Khotso	1967-07-27
Ncubuka	Thomas Vusumuzi	1955-12-22
Ndabandaba	Sipho Skholo	1966-01-20
Ndlovu	Mdodezi	1968-11-03
Ndlovu	Sipho Ernest	1963-09-12
Ndwalane	Thula	1958-09-23
Ndwardwe	Samson	1962-12-19
Neswiswi	Azwitamise	1962-03-16
Netshitomboni	Tshibvumo	1970-10-10
Ngwenya	Phinda Keith	1965
Njapha	Mku Sikhumbuzo	1970-03-01
Nkosibomvu	Loyiso	1967-12-08
Nthathe	David Stobane	1958-06-08
Nxumalo	Sibusiso	1955-09-13
Nxumalo	Matshidiso	1956-05-31
Olifant	Jack Pakwe	1965-02-04
Pebane	Jurs Chico	1972-12-24
Phelelo	Felix	1956-01-30
Phindani	Themba	1964-06-16
Phoswa	Themba	1969-12-03
Piliso	Noxhanti Tanya Janet Vuyelwa	1966-06-20
Potsane	Stephen Malefetsane	1969-12-07
Rasegatla	Johannes	1952-01-20
Ratala	Edward Jacob	1954-03-03
Ronela	Trevor	1970-04-21
Sagela	Eddie Zolile	1960-02-04
Sakwane	Shadrack Hufanang	1955-02-23
Selepe	Gordon	1972-08-27
Shekeshe	Petros	1944-03-10
Shezi	Protas Mandlakayise	1961-03-11
Sibanyoni	Tabulani Simon	1965-02-16
Sibiya	Peter	1970-04-12
Sibiya	Aron	1967-10-01
Sidu	Phillemon Mooi	1969-01-27
Sifiso	Mbambo Leslie Mfijoli	1970-11-08
Sikhakane	Zakheleni Edward	1964-03-25
Silinga	Minda	1964-04-01
Smith	Mazwenene Welcome	1969-03-25
Stuale	Bonginkosi Mduduza	1968-02-05
Tele	Teboho Moses	1969-08-23

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Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Thabethe.....	Setuntu.....	1962-02-02
Thipe.....	Paulus Tolamo	1967-04-18
Tloome.....	Moses	1954-07-24
Toleni.....	Manelisi	1959-07-11
Tsatsi.....	Theophilus Makhafola.....	1968-07-22
Tshongweni.....	Monde.....	1964-04-14
Tsikoe.....	Alfred Gottsemodimo	1962-06-17
Tumisi.....	Johannes Kgwadi	1961-05-10
Vilakazi.....	Pheneas	1966-04-26
Wanda.....	Wiseman	1972-01-19
Zitha.....	Mshumayeli Julius	1960-06-03
Zungu.....	Mandla Msidesene.....	1972-08-12
Zwane	Khabonina Sarah	1963-03-28

(21 June 1991)/(21 Junie 1991)

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NOTICE 553 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

The Director-General: Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons

KENNISGEWING 553 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENSKENNISGEWING No. 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone.

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Adonis.....	Colbiert Thembinkosi	1960-04-14
Bakade.....	Setuntu	1954-01-01
Beck.....	Irine Winifred	1928-08-04
Beck.....	Glenn Jarrette	1956-09-26
Beck.....	Paschal Iranius	1971-04-03
Blose.....	Goodenough Mthandeni	1971-07-08
Bunseedhur.....	Bennie Mohanlall	1935-10-22
Ceevy.....	Paseka Phillip	1953-04-01
Cele.....	Robina	1959-01-15
Chirwa.....	Lena Nora	1929-03-15
Chuburi.....	Daniel Amos	1969-12-21
Diangamandla	Lawrence Mbulelo	1959-08-07
Dzanibe	Celo Sphewe	1969-08-23
Faliso	Dennis Danisile	1961-09-20
Funde	Nosizwe	1952-09-12

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Gobbs ..	Nikkie Boikanyo ..	1953-06-10
	Godole ..	Isaac Mxolisi..	1972-09-03
	Gumbi ..	Patrick ..	1955-09-23
	Gumede ..	Muziwenkosi Jacques ..	1972-02-02
	Hadebe ..	Wiseman Sibongiseni ..	1969-04-21
	Hancock ..	John ..	1959-02-26
	Hlatshwayo ..	Doctor Petros ..	1955-09-08
	Hlophe ..	Mandla Caspar ..	1964-08-03
	Ingwane ..	Gregory Sello ..	1959-05-06
	Ismael ..	Adijah ..	1966-09-29
	Jafta ..	Mangaliso..	1965-03-24
	Jibiliza ..	Vugani Micheal ..	1964-08-29
	Kali ..	Peace..	1964-02-24
	Kana ..	Nombulelo ..	1968
	Kekana ..	Andrew Godfrey Oupa ..	1967-01-14
	Kena ..	Daniel ..	1949-06-02
	Khomalo ..	Godfrey Semphewe ..	1964-05-26
	Khoza ..	Thulani ..	1963-05-09
	Khumalo ..	Goodman Vusi ..	1972-12-02
	Khumalo ..	Tomas Tebogo ..	1970-02-13
	Khumalo ..	Edmund ..	1971-01-10
	Koobe ..	Michael ..	1962-09-25
	Kumalo ..	Sonnyboy ..	1968-06-25
	Kunene ..	Dumisani Bhalaso ..	1963-04-19
	Latle ..	Vuyisile Christopher ..	1959-11-25
	Legoale ..	Phillip Flepe..	1972-09-10
	Lehoko ..	Tankiso Charles ..	1970-10-30
	Lekhelebane ..	David ..	1963-08-31
	Likhojana ..	Peter Nkosana ..	1956-06-19
	Mabasa ..	Elias Jimmy ..	1958-03-17
	Mabe ..	Benjamin ..	1968-06-17
	Mabuza ..	Elizabeth Thembani ..	1957-07-21
	MacDonald ..	Leo ..	1958-06-16
	Madaka ..	Masitwembelo ..	1968-03-23
	Maele ..	Norman ..	1955-04-10
	Magadu ..	Nkosinathi ..	1967-05-20
	Magongo ..	Sannah ..	1961-11-11
	Magongo ..	Jerry Colani ..	1961-01-01
	Magopa ..	Johnson ..	1949-11-14
	Mahelela ..	David Elphis ..	1962-11-28
	Mahlakazela ..	Martha ..	1968-02-05
	Mahlakazela ..	Smanghish ..	1962-12-11
	Maisela ..	Magisa Gogo ..	1968
	Majola ..	Mncedisi Robert ..	1967-10-21
	Majola ..	Joseph Mlindeli ..	1963-08-28
	Makanda ..	Ntombentsha Jeanette ..	1960-08-22
	Makasi ..	Nceba ..	1956-11-21
	Makgale ..	Victor Modise ..	1959-01-28
	Makhuba ..	Patrick ..	1974-02-15
	Makula ..	Vusi ..	1974-05-14
	Makuluma ..	Cyril Andile ..	1960-12-04
	Malawu ..	Peter ..	1955-09-03

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Malgas	Rantsuane Petrus	1969-07-23
	Mali	Mzukisi	1961-09-01
	Maphoto	Isaac Lesibe	1931
	Mareka	Johannes	1973-02-13
	Maringa	Solly	1973-03-09
	Mashabela	Jerry Nhlanhla	1969-05-03
	Mashavhathakha	Khathutshelo	1972-12-04
	Mashilwana	Evens Zakhele	1969-07-13
	Mashinini	Sisilo Lorraine	1958-02-15
	Masoetsa	Lebohang Albert	1958-05-29
	Mathebula	Bongane Kingdom	1965-10-21
	Mathebula	Madoda	1970-10-10
	Matokoane	Pule Michael	1967-10-30
	Mazibuko	Nombane Rita	1942-03-14
	Mazibuko	Raymond Skhumbuzo	1970-04-22
	Mazibuko	Michael	1955-10-24
	Mazibuko	Bheki	1967-07-07
	Mbeje	Xolane S	1970-11-24
	Mchunu	Xolani Simphiwe	1970-01-13
	Mdondo	Kani	1969-11-09
	Mer	Meshack Litsietsi	1954-06-21
	Mfijoli	Sifiso Mbambo Leslie	1970-11-08
	Mhahlahla	Bongani	1971-07-30
	Mhlala	Oscar	1951-11-11
	Mkhohlwa	Caution Gcina	1961-01-01
	Mnguni	Patrick Sibusiso	1966-05-31
	Moatlhudi	Levy	1958-01-13
	Modise	Frederick	1955-06-11
	Moeketsi	Francis	1974-01-23
	Mofoken	Jan Segame	1969-09-18
	Mofokures	Peter Tumelo	1961-07-14
	Mogapi	Babi Charles	1966-08-03
	Mogotsi	Isaac Mpho	1962-12-22
	Mohamed	Amin	1927-05-29
	Mohamed	Maria Theresa	1943-09-11
	Mohohlo	Jimmy Douglas	1957-11-08
	Mokoaledi	Cohen Thabo	1957-03-10
	Mokobo	Caswell Itumeleng	1967-08-29
	Moloto	Tebogo Bockey	1961-01-21
	Monare	Christopher	1958-07-26
	Mooketsi	Bruce Tebogo	1974-01-16
	Mothiba	Matshiliso	1959-03-16
	Mothiba	MacGlory M	1959-01-16
	Motsepe	Ngwato Maniki	1959-03-14
	Motugagae	Radinko	1947-06-19
	Moumakoe	Enock Selaotswe	1970
	Moyene	Eliot	1965-04-30
	Moyikwa	Sindile	1955-07-28
	Mphaphuli	Mashudu	1949-02-12
	Mpungose	Bekinhlahla Lookluck	1944-02-02
	Mthabela	Kosi	1971-11-16

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Mthethwa	Lazarus Khazamula	1960-01-12
	Mtjale	Sbusiso Hemelton	1973-03-12
	Mtoba	Xolisa	1963-06-06
	Mtombela	Wiseman Maxwell	1956-12-09
	Murauha	Sabatha Theodore	1972-02-25
	Mxaka	Boy-Boy	1961-05-06
	Myeza	Zwelisha Maxwell	1966-08-13
	N'bele	Moses Khumbulani	1957-03-07
	Nare	Khotso	1967-07-27
	Ncubuka	Thomas Vusumuzi	1955-12-22
	Ndabandaba	Sipho Skholo	1966-01-20
	Ndlovu	Mdodozi	1968-11-03
	Ndlovu	Sipho Ernest	1963-09-12
	Ndwalane	Thula	1958-09-23
	Ndwandwe	Samson	1962-12-19
	Neswiswi	Azwitamise	1962-03-16
	Netshitomboni	Tshibvumo	1970-10-10
	Ngwenya	Phinda Keith	1965
	Njapha	Mku Sikhumbuzo	1970-03-01
	Njomba	Edward Thamsanqa	1960-06-29
	Nkosi	Nicholas Bafikile	1937-08-14
	Nkosibomvu	Loyiso	1967-12-08
	Nkuna	Sibandiso John	1964-05-04
	Nxumalo	Sibusiso	1955-09-13
	Nxumalo	Matshidiso	1956-05-31
	Olifant	Jack Phakwe	1965-02-04
	Phelelo	Felix	1956-01-30
	Phindani	Themba	1964-06-16
	Phoswa	Themba	1969-12-03
	Rankin	Joyce Nomafa	1943-06-24
	Rasegatla	Johannes	1952-01-20
	Ratala	Edward Jacob	1954-03-03
	Rogale	Motsamai Archibald	1966-05-27
	Sagela	Eddie Zolile	1960-02-04
	Sakwane	Shadrack Hufanang	1955-02-23
	Selepe	Gordon	1972-08-27
	Shisana	William Oupa	1951-03-04
	Sibisi	Gordon	1961-01-05
	Sibiya	Aron	1967-10-01
	Sikhakhane	Zakheleni Edward	1964-03-25
	Sthole	Mduduza Nkosi Bonginkosi	1968-02-08
	Tele	Teboho Moses	1969-08-23
	Thabethe	Setuntu	1962-02-02
	Thipe	Paulos Tolamo	1967-04-18
	Tihabanelo	Remembrance Nhlanhla	1969-07-16
	Tloome	Moses	1954-07-24
	Tsatsi	Theophilus Makhafola	1968-07-22
	Tsikoe	Alfred Gottsemodimo	1962-06-17
	Tumisi	Johannes Kgwadi	1961-05-10
	Vilakazi	Pheneas	1966-04-26
	Zitha	Mshumayeli Julius	1960-06-03
	Zondo	Queen Anne	1958-07-02
	Zungu	Mandla Msidesene	1972-08-12
	Zwane	Khabonina Sarah	1963-03-28

Man's death: anger over R100 fine

SAP 22/6/91 252

THE destitute family of a Ventersdorp man who died after a policeman assaulted him for urinating in public is furious over a R100 fine imposed by a Potchefstroom court.

Jappie Matabogo (35) was assaulted and arrested on his way home from church by Constable Andries Brits on July 22 last year after urinating in the street in Ventersdorp, Western Transvaal.

A magistrate in the Potchefstroom Regional Court sentenced Brits to a R100 fine or 20 days in jail after he was found guilty of assault.

Respect

A police spokesman said this week that the SAP would respect the finding of the court.

But the victim's family intend taking the matter further. Lawyers for Human Rights (LHR) in the Western Transvaal said the organisation would help the Matabogo family challenge the court finding.

According to medical evidence presented during the February trial, there was no sign of internal injuries in Mr Matabogo's body.

However, an eye-witness who did not present evidence to the court, said Mr Matabogo was punched in the stomach by Brits (19), who had detained Mr Matabogo for public indecency.

After complaining of stomach pains, Mr Matabogo was transferred to hospital where another police officer allegedly served him with a summons.

Mr Matabogo was with his girlfriend, Irene Dintwe, and his sister, Rosina Matabogo. Neither gave evidence during the trial. Saturday Star learnt



THE VICTIM Jappie Matabogo died after being assaulted after answering a call of nature

The incident led to the suspension of Brits from the police force.

However, he was reinstated on February 14 — the day he paid the R100 fine.

Asked why a policeman found guilty of a criminal offence could remain on the force, a police spokesman said Brits was "not convicted of a serious offence".

The spokesman could not be drawn into distinguishing between serious and less serious offences.

Brits was charged with culpable homicide but eventually

found guilty of common assault.

This week, Saturday Star tracked down the Brits family, their defence counsel during the trial and the Matabogo family in the Western Transvaal farms and townships.

Contacted by Saturday Star, Mr Brits, the constable's father, would not give his first name as he expressed the family's joy at the outcome of the trial.

He said the case was "tragic for the family".

happy that the whole matter is now behind us," he said, and questioned media interest in the "fair outcome of the trial".

He would not allow an interview with his son.

The two parties gave differing versions of the events that led to the death of Mr Matabogo.

"The deceased was totally uncontrollable and rude," said advocate Eunice Grey, who defended Brits in the trial.

"He tried to attack the po-

lice. He was swearing and provocative.

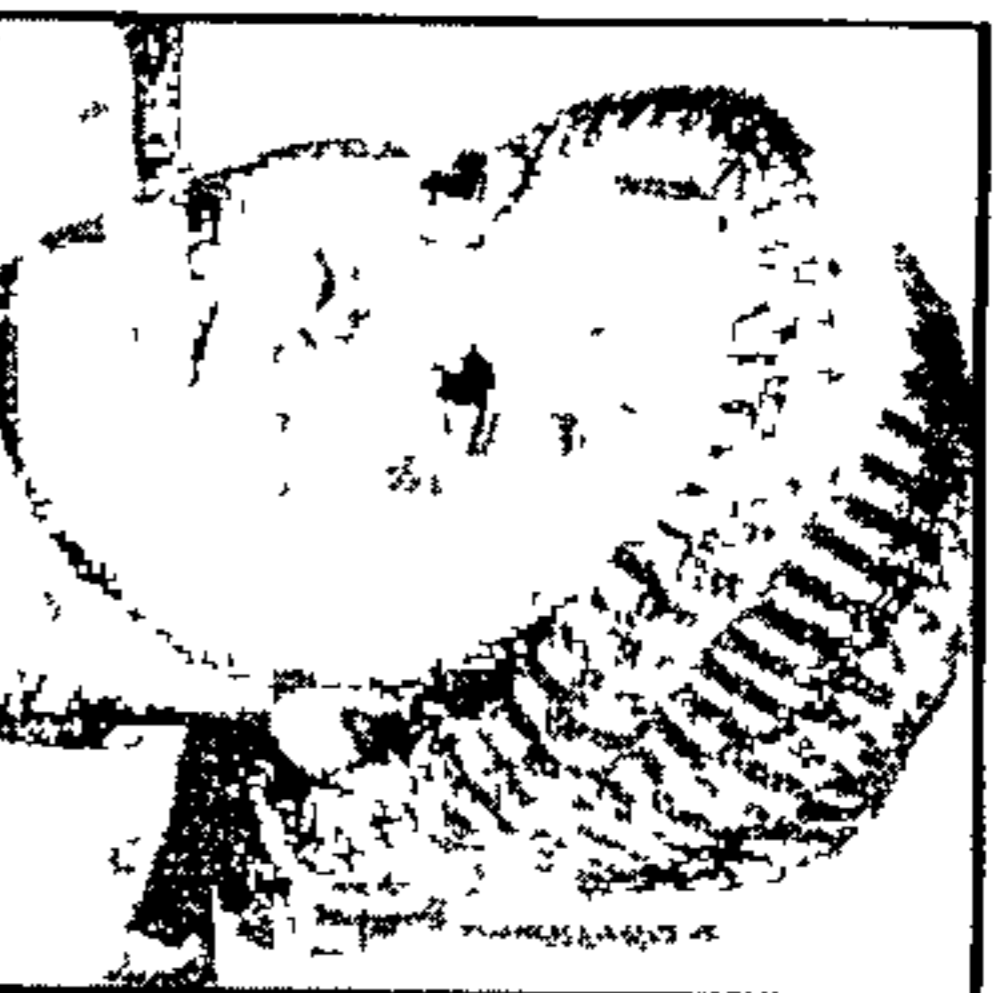
Constable Brits hit the deceased, who was also under the influence of alcohol, with an open hand — only once."

The deceased had complained of stomach pains about five hours after he was arrested, she said.

"That was when he was taken to the Ventersdorp Hospital,



ORPHANED AT 12 Monosi Matabogo, the son of the dead man, can't hold back his tears



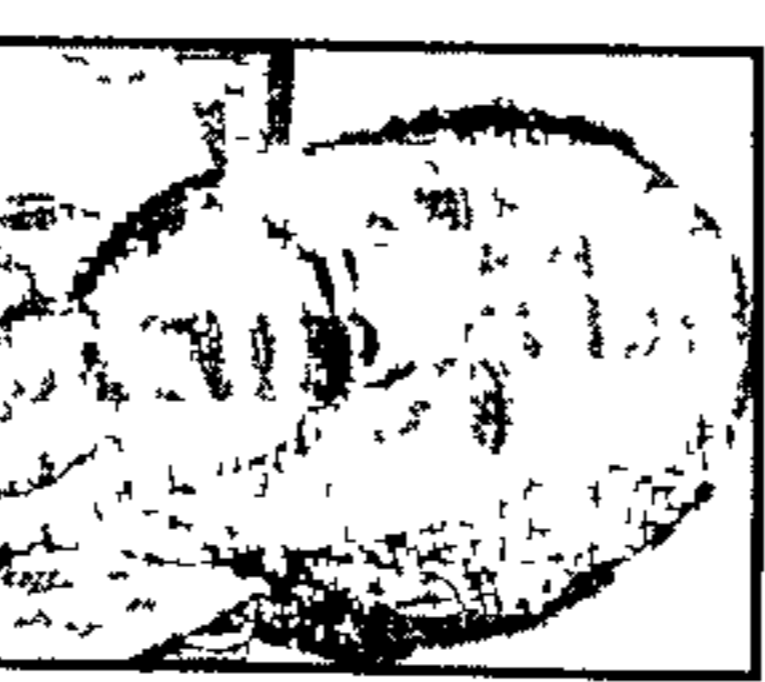
ASKED FOR TEA Christinah Mochladie was told to serve police guarding her uncle



GRIEF-STRIKEN Mashibe Matabogo blames "a heartless boer" for her son's death



SHOCKED The victim's sister, Rosinah Mochladie, is enraged by the R100 fine



RIDICULOUS No infection, says Piet Matabogo

SAP 'can't act until man is conscious'

POLICE have completed their investigations into the assault on a black man who allegedly exposed himself to a white woman while urinating — but say they cannot charge anyone until the man regains consciousness.

Around 7 pm on June 7 Sapa reporter Jan de Koning found the man lying in a pool of blood near the Florida rail-

way station on the West Rand. Despite abuse and threats of assault from passersby and nearby residents, he called an ambulance for the man.

The man was taken to Leratong Hospital near Krugerdsdorp, where he has been in a coma since the assault.

A police spokesman said yesterday police had completed all their investigations

All the necessary statements had been taken from witnesses and those involved in the beating, but the police still needed a statement from the injured man.

The spokesman quoted doctors as saying the man was close to regaining consciousness. However, this could not be confirmed by staff at Leratong Hospital — Sapa

from where he was later transferred to another hospital in Klerksdorp.

Advocate Grey told Saturday Star the doctor who examined Mr Matabogo could also establish that "there was no rupture of any organ whatsoever".

Instead, said advocate Grey the doctor discovered the deceased "had an infection — which was at quite an advanced stage".

Miss Dintwe who was present during the arrest of Mr Ma-

tabogo, gave her own account of the incident to LHR.

She said as her boyfriend was urinating, a police car stopped. An argument ensued between the two men, with Mr Matabogo telling the policeman he found nothing wrong with urinating in the street.

The policeman, according to Miss Dintwe then assaulted Mr Matabogo with his fists. She said she watched as Mr Matabogo was slapped in the face.

After Mr Matabogo was driv-

en to the police station, Miss Dintwe told LHR she followed the police vehicle on foot.

The last time Miss Dintwe saw her boyfriend, she said, he was lying on a mattress inside a cell.

He said "Irene, I am dying," she said.

Christinah Mochladie a hospital employee and Mr Matabogo's niece recalled how she spoke to her uncle on arrival at the Ventersdorp hospital, demanding details of the assault.

She said Mr Matabogo spoke with difficulty, and murmured "A white policeman". He could neither walk nor turn himself on the stretcher.

For the few hours that the niece saw her uncle, he drank two jabs of water — complaining of dehydration. "They've killed me," lamented the dying, 35-year-old father of two.

Mrs Mochladie said it was about four in the morning when a black policeman arrived to serve her uncle with a dagvuur (summons) while he was asleep.

It warned him to pay a fine of R30 by July 28, six days after he was arrested.

A Western Transvaal police spokesman would neither deny nor confirm that such a summons was issued.

Guard

After some time, continued Mrs Mochladie, two white policemen arrived "to put my uncle under guard". A senior nursing sister instructed her to make the policeman some tea.

The last time she saw Mr Matabogo was when he was transferred to Tshepong Hospital in Klerksdorp.

Mr Matabogo's grief-stricken mother, Mashibe Matabogo (66), said that since her son's death she had been unable to sleep at night.

She and her son lived together on a farm in Ventersdorp. Mr Matabogo was casual labourer for local businessmen.

"He took care of me," said Mrs Matabogo. "I remember every Friday he would come with meal-meal and some vegetables." A heartless "boer" had taken his life, she said.

Healthy

Piet Matabogo, Jappie's brother, scoffed at the suggestion that the dead man had an infection. He described him as healthy and a hard worker who seldom complained.

Jappie's sister, Rosinah Mochladie, could not reconcile the death of her brother with Brits's R100 fine. "We were shocked, but God is there."

Mr Matabogo's death has made an orphan of Monosi, his 12-year-old son, whose mother died years ago.

The boy was this week found wandering aimlessly on a farm between Klerksdorp and Ventersdorp.

Asked about his father, he wept, saying "No one gives me money any more."

No new Biko inquest: Woods 'disappointed'

CIT 22/6/91 Own Correspondent

(252) ~~252~~

LONDON. — Former East London Daily Dispatch editor Mr Donald Woods has expressed disappointment at the news that the government has decided not to open a fresh inquest into the death of black activist Mr Steve Biko

Quoted in yesterday's Western Mail, on which he also used to work, Mr Woods said he was initially very pleased when he heard reports that the government would look again at the circumstances surrounding Mr Biko's death in police custody

Mr Woods built up a close rapport with the black consciousness leader in the mid-1970s and campaigned for his death to be investigated. He was served with a banning order as a result.

Pressure to probe human rights

ACTION by pressure groups is gradually forcing human rights back on to the Commonwealth agenda after years in which the subject was either taboo or used for internal politics.

But a report published last week calling on the next Commonwealth summit meeting — in Zimbabwe in October — to agree to a declaration of human rights that would apply to all 50 Commonwealth countries may be going too fast for many member nations.

Mr Richard Bourne, director of the advisory group which produced the report, is not confident it will be adopted.

Belief

He said "To put human rights on the agenda in such a short time — by Commonwealth standards — may not be possible. A draft of the final communiqué from the Harare meeting is already in existence."

Because of the conference venue, Africa will have great influence. While small, poor African countries, such as Gambia and Botswana, are eager to deal with human rights, the larger ones are not.

The report noted that the Commonwealth had too

often turned a blind eye to abuses in member countries. No machinery existed to deal with complaints or to monitor performance.

In 1971, the Commonwealth asserted its belief in "the liberty of the individual and in equal rights for all citizens, regardless of race, colour, creed or political belief".

But it was another 10 years before approval was given to setting up a human rights unit in the Commonwealth Secretariat and five more years before it was established.

The report said the Commonwealth record on human rights was poor. More than half the members had not signed the appropriate international convention.

"Large numbers of Commonwealth citizens live in constant fear of their lives," it said.

"Many are driven to seek refuge abroad at a time when the world seems to have turned its back on refugees and asylum seekers. Others live in abject poverty."

The report did not single out countries, but it concludes that there are many

JOHN BULLOCH in London reports that the Commonwealth cannot now turn a blind eye

places in the Commonwealth where children and women are exploited, where governments discriminate against opponents or where indigenous people are prevented from getting legal title to land they have occupied for centuries.

Detained

Amnesty International gives specifics. This year it has reported on six Commonwealth countries, finding abuses in all its conclusions.

● **INDIA** "Rampant" abuses by the security forces in Punjab.

● **SRI LANKA** "Thousands of people have 'disappeared', many of them

victims of executions by government forces.

● **PAKISTAN** This year introduced new forms of punishment considered cruel and degrading.

● **MALDIVES** Many people detained for criticising the government. Reports of ill-treatment of prisoners and harassment of their relatives.

● **NIGERIA** General concern about the situation, particularly the execution of 69 prisoners after an attempted coup. Civilians detained without charge, children as young as 14 sentenced to death.

● **MALAYSIA** Opponents of the government "rehabilitated" by being held in indefinite detention without charge or trial.

Those who seek to improve the situation in the Commonwealth will also be in danger, according to the report.

It said "Some states make a practice of detaining human rights workers or harassing them in other ways. There is a sustained campaign to discredit them by false accusations or innuendoes."

"In extreme cases, governments use vigilantes or paramilitary forces to eliminate activists."

As the report said, the usual approach to human rights so far in the Commonwealth and elsewhere has been to use concern as a tool of international politics and pressure.

Harare 1991 could just be a turning point — but as a result of private pressure, not government initiative — *Daily Telegraph*

The disappearance and alleged death of police informant Japie Maponya, claimed to have been murdered by three Security Police members six years ago — again came under the spotlight yesterday with the start of an official inquest in a Pretoria Magistrate's Court.

The inquest is being held to determine how Mr Maponya died and whether anyone could be held accountable for his death.

It is being held in the wake of allegations by Death Row pris-

Inquest into death of informant begins

Almond Nofomela that Mr Maponya had been kidnapped by members of the Security Police and shot dead at the infamous security police base, Vlakplaas.

The Harms Commission found that Nofomela's claims could not be substantiated.

Brigadier Krappies Engelbrecht, former investigating officer into the case, testified that neither Nofomela nor the three

security policemen alleged to have been involved in the incident had been at Vlakplaas at the time of Mr Maponya's alleged death, either on September 23 or 24 1985.

Mr Maponya's father and girlfriend had never reported his disappearance because they thought he had, like his brother, O Maponya, joined the ANC in Botswana.

Mr Maponya's brother was

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killed some years later when a landmine exploded in his face outside the Sterland cinema complex in Pretoria.

He said that according to the building society in Krugersdorp where Mr Maponya had been employed, he had disappeared only two days before he was to have gone on his annual leave.

Deposits and withdrawals were made from Mr Maponya's accounts on September 23 and

24 1985

Brigadier Engelbrecht said Mr Maponya's body had never been found and no information could be gained from ANC recruits on whether he joined the ANC and had perhaps been killed in another country.

Brigadier Engelbrecht said his investigation had determined that Mr Maponya had disappeared but that no one, not even Nofomela, could prove the man was dead.

The hearing continues —
Sapa

Murder part of my duties — Nofemela

Star 26/6/91 (231) (252)

Part of his work as a security policeman stationed at the notorious Vlakplaas police camp included kidnapping and murder, Death Row prisoner Almond Nofemela told an inquest in a Pretoria Magistrate's Court yesterday.

Nofemela said he had been part of a group of four security policemen, under the leadership of Captain Eugene de Kock (now a colonel), who had kidnapped a police informant, Japie Maponya, in Krugersdorp in September 1985.

At Vlakplaas, Mr Maponya was questioned at length about his brother, an ANC member. He was also, on the instructions of Captain de Kock, punched and kicked by the policemen.

Mr Maponya's brother died some years ago when a landmine exploded in his hands at a cinema complex in Pretoria.

At one stage, Nofemela said, Mr Maponya was blindfolded. Teargas was also sprayed in his face before further questioning.

He said Captain de Kock had

ordered two policemen to leave the scene while two others remained. Mr Maponya was shot in the head with a silenced pistol by Captain de Kock while he lay unconscious on the ground.

Nofemela said he had helped to cover the body in plastic and placed it in the boot of Captain de Kock's vehicle. He had no knowledge of what Captain de Kock did with the corpse.

He felt nothing about the shooting because it was part of his job, Nofemela said.

Under cross-examination by counsel for the three policemen allegedly involved in Mr Maponya's death, he admitted that he had made a statement implicating them on the eve of his hanging because he wanted revenge as Captain De Kock had failed to help him while he was on Death Row.

He had been at Vlakplaas for six years but had witnessed only one murder — that of Mr Maponya. He later admitted that part of his job at Vlakplaas was kidnap and murder.

The hearing continues. — Sapa.

Coetsee: 'Stop being a bureaucrat'

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South 27/6 - 3/7/91

THE Human Rights Commission (HRC) has appealed to the Minister of Justice and Correctional Services, Mr Kobie Coetsee, to adopt a less bureaucratic approach to the issue of political prisoners

The appeal follows Coetsee's attack on the accuracy of HRC statistics when he responded last week to a United States declaration making the lifting of sanctions conditional on the release of political prisoners

Indemnity

Coetsee claimed that many of the prisoners on the HRC list "are clearly not prisoners in the American context or the context of the Pretoria Minute"

The Minute signed between the government and the ANC in August last year gives guidelines as to which categories of prisoners qualify for indemnity

The definition of "political prisoner" has been in dispute ever since and has become one of the major obstacles to negotiations

Coetsee also claimed that names on

The Human Rights Commission has urged Minister of Justice Kobie Coetsee to stop being a "bureaucrat" on the issue of political prisoners. **HENRY LUDSKI** reports:

the HRC list of political prisoners did not correspond with his own records.

The HRC responded angrily by blaming the Department of Correctional Services for the discrepancies

The HRC said that the department had managed to trace at least 100 prisoners in their records whom they initially had been unable to find.

"We are convinced that more can be found by continuing the process, which we want to do," they said

The HRC said that in terms of their count of 11 June, 972 political prisoners are still being held in South African jails

The commission said that, together

with the Department of Correctional Services, they had identified 284 prisoners who qualified for indemnity in terms of the government's categories of security, security-related, unrest-related and Death Row prisoners.

The HRC said they were "completely at a loss to understand" Coetsee's claim that many of the prisoners did not qualify for release

The commission called on Coetsee to remove the logjam by shifting away from a "bureaucratic" approach and towards an administrative procedure which extended and broadened the categories whereby "hundreds can be released at the stroke of a pen".

days at Motswedi Police Station

ANC three
indemnified

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for 27/6/91
Indemnity has been granted to three ANC operatives in terms of the Pretoria Minute.

The Government Gazette yesterday named them as Enneth Anne Fuziwe Webster, Timothy Peter Jenkin and Benneth Mokoko

Miss Webster was wanted by the police for entering South Africa illegally in 1987 and for attempting to hold hostages during the same period to secure the release of Durban bomber Robert McBride

Mr Jenkins escaped from police custody in December 1979 and Mr Mokoko was wanted for the assault of a policeman in Thembalesizwe Township in August last year — Sapa

D521942

Indemnity granted to ANC trio (252)

Sowetan 27/6/91

INDEMNITY has been granted to three ANC operatives in terms of the Pretoria Minutes, according to the Government Gazette published on Wednesday. They are Miss Enneth Anne Fuziwe Webster, Mr. Timothy Peter Jenkin and Mr Benneth Mokoko. Webster was wanted by the police for entering South Africa illegally in 1987 and for attempting to hold hostages during the same period, in order to secure the release of Durban bomber Robert McBride. Jenkins escaped from police custody in December 1979, and Mokoko was wanted for the assault of a policeman in Thembalesizwe Township in August last year - Sapa

Scrap useless indemnity process — HRC

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Application procedures for the release of political prisoners are impractical and should be abandoned, says the HRC

Weekly Mail Reporter

THE Human Rights Commission (HRC) has called for the indemnity application process to be abandoned

HRC Commissioner Dr Max Coleman said this week hundreds of applications were flowing into the government's indemnity offices. It had become obvious that the application procedure was impractical because "it will take months for the applications to be processed and many more months for the indemnity committees to hear them".

The HRC's call came as the government and the African National Congress continued a week-long meeting designed to hammer a way out of the impasse surrounding the release of political prisoners.

A spokesman for the Department of Justice, Nic Grobler, this week repeated the government's position that all prisoners falling under the categories in terms of the Pretoria Minute had been released

However, Coleman said of the 972 political prisoners identified by the HRC, only 284 had been "audited" — referring to those agreed upon by the HRC and the government as political prisoners

Among remaining prisoners were 79 minors at time of trial who could not be named; 210 "untraced prisoners" not yet on the Department of Correctional Services' records; 208 recent additions to the HRC list not yet "audited", and 133 homelands prisoners

"The last category deserves specific attention, because most of these prisoners were convicted of treason in the 1988 attempted coup in Bophuthatswana," said Coleman.

He said the HRC laid the continued incarceration of political prisoners squarely at the door of the government. After the signing of the Pretoria Minute, the government unilaterally created consulting bodies without the consent of the ANC, he said

"Glaring contradictions in the figures provided by the government have recently been compounded by Minister of Justice Kobie Coetsee's statement of May 29, to the effect that the only prisoners left were those who had committed serious crimes of murder, rape, robbery and serious bodily harm

"The choice of words is extremely unfortunate in that it has the effect of throwing up a smokescreen by which legitimate political prisoners are depoliticised and criminalised," said the HRC.

The HRC suggests that additional indemnity categories be created

Membership of any previously banned organisation should result in automatic release, regardless of whether the person was involved in violent acts — provided the organisation vouches for the membership and that the member was acting on instructions

A second category would include those involved in political unrest during the State of Emergency — such as boycotts and stay-aways — regardless of whether violence was involved or not

"We believe that such categories will break the back of the problem and leave only borderline cases, which should then be decided either by an independent body or by a body in which there is equal representation between the government and the ANC," Coleman said

Prickly questions are a thorn in the government's side

w/mant 28/6-47/91.

LAW & THE COURTS

252 Carmel Rickard

Two potentially law-making cases have begun in the Durban Supreme Court, unrelated but both dealing with thorns in the flesh of the government — the first with death squads, the second with the right to carry "cultural weapons".

In the first, the hit squad-related killing of Durban civil-rights lawyer Griffiths Mxenge was recalled during evidence in a claim brought by his family

Mxenge was murdered in November 1980. Two years later, an inquest found he was killed by persons unknown. But in October 1989 death-row prisoner Almond Nofomela claimed that when he was a member of the police, he was part of a group who killed Mxenge. His evidence was later backed by the testimony of former police captain Dirk Coetzee.

On the strength of their evidence the Mxenge family has demanded the minister of law and order must pay for the support of Mxenge's children and his elderly mother, claiming R398 800 on the grounds that he was killed by members of the SAP acting in the course of their duty.

The case raises all sorts of issues, but the family has a preliminary legal difficulty to overcome: the Police Act says a civil action against the South African Police must be started within six months of the cause — in this case, Mxenge's murder. The family knew nothing of Nofomela or Coetzee at that time and the public had not yet heard of the police death squads.

Mxenge's brother gave evidence at the start of the case that he had received scores of claims about who was responsible for the murder. When he first heard Nofomela's claims, he was sceptical and only in-

structed his attorney to begin legal action once he became convinced the allegations had substance.

The case was postponed on the second day for the family to file further pleadings, which could raise intriguing problems.

For example, since the family could have had no knowledge of alleged police involvement at the time of Mxenge's death, was it permissible to bring the application later — within six months of learning of Nofomela's allegations? And at what point can the family be said to have learnt of these allegations — when they were published in the media, or when the family received a copy of Nofomela's affidavit?

If the judge finds that the claim did have to be lodged within six months of Mxenge's death, he may have to consider another question: could it have been parliament's intention that if the state covers up its involvement in a murder, it should be protected by the six-month limit for civil actions?

A few days later, a set of equally tricky questions was raised in the first legal challenge on the controversial issue of the right of Zulu people to bear "cultural weapons", brought by Durban freelance journalist Lechesa Tsenoli.

Amendments to the kwaZulu Code, made by the state president last year, widen the circumstances under which Zulus may car-

ry dangerous weapons, allowing them to be borne in public if this is done "in accordance with Zulu customs".

Tsenoli claims the changes are invalid. His counsel, Arthur Chaskalson SC, said they would create a public perception that Inkatha was benefitting from "a form of political favouritism", widening divisions in an already deeply divided society.

Previously the code said no weapons could be carried in public by any black person in Natal, except under strictly controlled conditions. Lawyers at Durban's Legal Resources Centre (LRC) had repeatedly drawn to the attention of the police the fact that Inkatha-supporting marchers in Natal were blatantly carrying weapons, but the police did not act on their complaints.

Chaskalson argued that the changes were introduced in order to give the police legal justification for refusing to disarm members of Inkatha. He said that on the grounds of discrimination, vagueness and ulterior purpose, the changes were invalid.

Before the judge can even consider if the amendments were valid, however, he must first decide whether the powers used by the state president in making the amendments may be challenged by the court.

Much of the argument so far has focused on this point, with counsel for the state president, David Gordon SC, arguing that it is outside the powers of the court to consider the changes to the code.

He said the main purpose of the code was to enable the state president to preserve, maintain and control Zulu customs. "Since (his) amendment serves that purpose, the court has no jurisdiction to examine (his) wisdom," he said.

Something rotten in

these state inquests

W/McA 28/6-4/7/91

252

Concern is rising about secret inquests into deaths where police scrutiny is under scrutiny.

By JOHN PERLMAN

AST month *The Weekly Mail* charged that a personal inquiry into police abuses by the deputy commissioner of police, Lieutenant-General Mulder van Eyk, had revealed nothing. We were wrong. Van Eyk's response to 30 cases of alleged assault and murder we submitted to him did reveal one startling fact — that the inquest into the death of a man who drowned while in police custody has been held without the family's lawyers being notified. Van Eyk said investigations into the 30 cases were continuing. One case deserves his urgent attention.

Lesley Majola drowned in July 1990 in the Vaal River while in the custody of the Vanderbijlpark Murder and Robbery unit. Majola was handcuffed and manacled at the time.

In February, the police told us that Majola's death was "still being investigated". Van Eyk said that the inquest, held last December, found Majola had committed suicide, a verdict confirmed by the attorney-general.

The first time that lawyers for the Majola family heard about the inquest

was when we phoned them for comment. Yet correspondence clearly shows that police knew they were the family's representatives.

Human-rights lawyers have expressed concern that secret inquests have taken place in cases where police conduct is under scrutiny.

The attorney-general is considering reopening the inquest into the death of Nixon Phiri, a 16-year-old Khutsong youth who died last January while in custody at the Welverdiend police station near Carletonville.

Attorneys for Phiri's family were notified of the inquest. A letter from the magistrate's office informed them it would be held on February 22 this

year. However, the letter was dated February 21 and only reached the lawyers on March 1. The attorneys had sent a number of letters to the police, dating back to February 1990, notifying them that they were acting for the Phiri family.

Phiri was among a group of youths arrested in Khutsong following unrest in which a policeman's house was

burnt. He died while being interrogated. At the inquest, which was informal, the two policemen who interrogated Phiri testified that he suddenly began to shake and talk in a strange voice, then fell to the floor, hitting his head against a cupboard. They said attempts to revive him were in vain.

The court was presented with statements from two of Phiri's aunts and from his mother, saying that he had been an epileptic.

Had attorneys for the family been able to present their case, much of the evidence would have been contested.

The report of an independent pathologist showed that Phiri had abrasions on his wrists, forearms, elbows,

shoulder, back and right shin. There was also damage to his skull, right eye and mouth.

One of Phiri's aunts has since signed an affidavit saying she had attested her statement without knowing its contents, and that he was never sickly. Phiri's mother has also stated under oath that he was healthy.

In a third case, a black man employed as a gardener in Randburg and suspected of burglary, was shot dead in September 1989 by a local police sergeant — who also runs a private security firm. An inquest, held on November 29 last year, found that the shooting was justifiable homicide.

The only person who testified at the hearing was the police sergeant. Three women who had been with the deceased gave statements to the police regarding incidents that preceded the shooting, but none of them were subpoenaed to appear, although their statements were presented to the inquest magistrate.

Lawyers say the family was not notified and attempts are under way to have the inquest reopened.



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Vol. 312

PRETORIA, 28 JUNE 1991
JUNIE 1991

No. 13328

PROCLAMATIONS

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by the
State President

of the Republic of South Africa

No. 59, 1991

REMUNERATION OF JUDGES

Under the powers vested in me by section 2 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), I hereby determine the rate, as indicated in the attached Schedule, at which salaries are payable to Judges with effect from 1 July 1991.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Twelfth day of June, One thousand Nine hundred and Ninety-one.

F. W. DE KLERK,
State President.

By Order of the State President-in-Cabinet.

H. J. COETSEE,
Minister of the Cabinet

SCHEDULE

Designation of Office	Salary per annum
Chief Justice of South Africa	R229 000
Judge of Appeal	R213 500
Judge President	R212 000
Deputy Judge President	R208 000
Judge	R206 000

PROKLAMASIES

van die

Staatspresident

van die Republiek van Suid-Afrika

No. 59, 1991

BESOLDIGING VAN REGTERS

Kragtens die bevoegdheid my verleen by artikel 2 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), bepaal ek hiermee die skaal, soos in die meegaande Bylae aangedui, waarteen salarisse met ingang van 1 Julie 1991 aan regters betaalbaar is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad, op hede die Twaalfde dag van Junie Eenduisend Negehoenderd Een-en-negentig.

F. W. DE KLERK,
Staatspresident

Op las van die Staatspresident-in-Kabinet.

H. J. COETSEE,
Minister van die Kabinet.

BYLAE

Naam van Amp	Salaris per jaar
Hoofregter van Suid-Afrika	R229 000
Appèlregter	R213 500
Regter-president	R212 000
Adjunk-regter-president	R208 000
Regter	R206 000

VOTERS' ROLL • KIESERSLYS

Name of owner Naam van eienaar	Scheduled area Ingelyste oppervlakte	Number of votes Getal stemme
Agenbag, G J N. ...	22,1 ha	5
Bonthuys, G L. ...	21,0 ha	5
Botes, J. J. J. ...	20,6 ha	5
Botes, J J J. (Kobus) ...	21,7 ha	5
Botes, W J J. ...	20,2 ha	5
Burger, M M. (Mrs/Mev) ...	22,0 ha	5
Carobeth (Bpk) ...	11,4 ha	3
Coetzee, A ...	10,6 ha	3
Coetzee, F J ...	21,7 ha	5
Collard, S C ...	43,9 ha	9
De Lange, A J ...	22,6 ha	5
Duraan, J. H H ...	32,4 ha	7
Ehlers, B J ...	10,2 ha	3
Gresse, W H. ...	21,0 ha	5
Hanekom, A P ...	25,2 ha	6
Hanekom, S. C J. (Mrs/Mev.) ...	9,5 ha	2
Husselman, W. G. ...	33,2 ha	7
Hyman, A C ...	9,4 ha	2
Jacobs, P (Mrs/Mev) ...	10,4 ha	3
Kotze, J L. ...	9,5 ha	2
Kotze, M W. (Mrs/Mev.) ...	9,5 ha	2
Krapohl, D. J. A. ...	61,0 ha	10
Liebenberg, W. J J ...	18,8 ha	4
Lourens, M. J. ...	63,3 ha	10
Louw, H H ...	21,6 ha	5
Louw, J. J. ...	20,0 ha	4
Louw, P. A ...	25,8 ha	6
Nieuwoudt, H. ...	20,9 ha	5
Odendaal, W. de K. ...	10,2 ha	3
Reynecke, C F. ...	21,2 ha	5
Small, C. J ...	20,4 ha	5
Stadler, A C M. (Mrs/Mev) ...	11,0 ha	3
Stadler, J. G ...	22,1 ha	5
Steenkamp, P C B ...	51,6 ha	10
Stemmet, D. J. S ...	11,0 ha	3
Stemmet, W C. ...	10,9 ha	3
Van Blerk, P J. ...	21,6 ha	5
Van der Westhuizen, C J. ...	25,9 ha	6
Van der Westhuizen, H L. ...	31,5 ha	7
Van der Westhuizen H. G M. (Mrs/Mev) ...	8,3 ha	2
Van der Westhuizen, J. ...	31,1 ha	7
Van der Westhuizen, J C L ...	10,7 ha	3
Van der Westhuizen, J. H ...	43,0 ha	9
Van der Westhuizen, N. S ...	62,9 ha	10
Van Heerden, J H. ...	20,6 ha	5
Van Niekerk ...	20,3 ha	5
Van Rensburg, D. F du P ...	10,2 ha	3
Van Staden, C J ...	10,4 ha	3
Wiese, J D ...	33,4 ha	7
Wiese, J. H ...	11,4 ha	3
Wilcocks, C T. ...	20,1 ha	5

(28 June 1991)/(28 Junie 1991)

NOTICE 590 OF 1990

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No. 3013 OF 18 DECEMBER 1990

The Director-General: Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to

KENNISGEWING 590 VAN 1990

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No. 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van

in paragraph (b) of Government Notice No. 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons.

Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlatting van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone.

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SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Beyile	Enoch Solomzi	1963-09-16
Bhembe	Joseph	1956-10-23
Biyela	Bheki	1970-05-04
Buthelezi	Bongani Vincent	1968-12-26
Buthelezi	Mlungisi Harry	1977-05-20
Carpede	George Lucas	1938-10-22
Dahile	Sbusiso Blessing	1973-09-12
Duma	Jabulani Lucky	1971-07-10
Fumba	Johannes Vuyisile	1958-05-02
George	Vernon Joseph Jacob	1959-02-23
Goba	Innocent	1969
Gxekwa	Gugulethu Goodhope	1964-04-07
Hlongwa	Poppy Cynthia	1968-12-19
Hlophe	Mondli Sandile	1947-10-28
Hlophe	Michael Mzuzephi	1952-04-12
Hlozi	Bongani	1971-02-03
Jwili	Alfred Zanele	1963-07-23
Kgokgo	Lesley Motlatsi	1966-07-23
Lesole	Steven Funi	1963-02-08
Letsoha	Joyce Ma-Queen	1969-02-03
Lukhele	Shodi Hezekial	1933
Lusaba	Jacob	1945-03-10
Madenge	Edith Norma	1929-08-16
Magongo	Sthulele Stanly	1970-08-26
Mahlangu	Bisisiwe Elsie	1970-12-24
Makgabo	Tilshang Sekgala	1963-10-13
Malati	Maria Sandra	1969-12-20
Malindi	Ishmal Fanyana	1973-02-02
Maloka	Mncedisi Gracious	1962-04-23
Maloyi	Patrick	1968-05-05
Mamabolo	Jerry Nyamane	1955-08-13
Manoka	Robert	1940-01-01
Martin	Belinda Venetia	1954-09-23
Maseko	Leon Gandhi	1963-11-17
Masetlha-Mavimbela	Mpho Gift A	1957-09-07
Masipa	Killian Thuchana	1952-05-17
Masuku	Sheila	1958-12-16
Matebeta	Mandla Stephen	1938
Mbanjwa	Jabu Happiness Down	1973-07-14
Mdaka	Robert	1956
Mdlungu	Bongani	1966-05-06
Mgwala	Winston Dumile	1968-09-16

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Mhlonga	Moses Melusi	1970-01-17
	Mkhize..	Siyabonga	1972-03-13
	Mlangeni	Aubrey Matia..	1953-09-10
	Mnguni	Thabane	1970-04-27
	Mntambo	Leonard.	1968-06-05
	Moeletsi..	Azarel Thekiso..	1961-01-27
	Mogodiri	David.	1959-10-01
	Moikanqoa	Naniki N.....	1961-09-10
	Mokgotsi..	John Jungle	1939-06-07
	Moekoena	Dick	1967-08-14
	Molebatsi	David	1968-09-28
	Monare.	Gertrude..	1929-05-10
	Montsho	Andrew	-
	Moraile	Mana	1937-10-27
	Mosholi	Andres	1969-08-19
	Mosoeru	Jacob Thabane	1972-08-22
	Mthethwa	George Nathaniel	1966-06-23
	Mthiyane	Vusi Michael.....	1975-02-12
	Naidoo	Elatchini Nathan "Indres"	1936-08-26
	Nakedi	Sylvester Gibson.	1969-09-17
	Ncapayi....	Vukile	1966-05-05
	Ndlumbini	Patric Mzingisi	1964-04-04
	Nene	Thamsanqa..	1968-03-06
	Netshitenzhe	Joel Khathutshelo.	1956-12-21
	Ngcobo	Christopher G.	1968-03-27
	Ngwenya	Godfrey Nhlanhla	1950-04-28
	Nkosi.	Philimon	1954-08-22
	Nqobese	Mthembeni Tepe M	1970-09-04
	Ntemane	Andrew Mpho.	1974-12-16
	Ntenti.....	Patrick Themba.	1955-06-06
	Nthatsi	Solomon.....	1961-01-15
	Ntlabati	Ronald Lulama. .	1964-09-22
	Ntshangase	Jabulani Moonlight	1967-07-11
	Nzimande	Dumisani J	1970-07-27
	Obose	Mluleki	1967-06-20
	Phaoane.....	Kebalebile	1944-08-03
	Phokoje	Esaia Pule.	1973-02-26
	Pule	Ernest Lekoto	1955-03-30
	Qamata	Wandile Arthur	1967-05-06
	Radebe	Esther Nthlokwa	1972-09-18
	Ramothibe	Thibedi Serote.	1949-12-24
	Ramsdale	Edward Thomas	1938-04-23
	Rapodile	Stanley Mlungisi	1971-08-21
	Sabi.....	Eddie Simphiwe	1968-06-07
	Sabi	Sinnah	1938-03-08
	Sebothelo.....	Kaizer Abraham	1966-10-27
	Sekano.....	Hector	1966-05-16
	Senzeni.....	Themba Stephen	1971-10-08
	Serote	Dipuo Hilda.	1969-10-16
	Serote	Thabile Emily..	1974-03-08
	Shandu.	Tshabane	1974-05-15
	Shilubane	Elisah	1958-01-03

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Sibisi	Thandi Elizabeth	1953-04-22
Simelane	Mzwandile	1971-07-13
Singh	Ushaber Eric	1932-08-31
Sithole	Simon	1968-09-26
Skhosana	Joseph Jabulani	1965-06-16
Sokoyi	Zwelitsha George	1973-07-09
Sosibo	Sifiso Ennock	1970-05-02
Thabede	Christian Mduduzi	1968-05-09
Thaisi	Michael N	1968-04-07
Tselanyane	Esther Mashudu	1963-03-03
Tshabalala	Sphiwe	1972-03-02
Tyeku	James	1930-02-04
Vudo	Shimwell	1939-06-26
Xaba	Mfundo	—
Xaba	Cornelius Sphiwe	1963-05-30
Xaba	Sikumbuzo Eric	1947-07-29
Yantolo	Zongezile	1954-02-06
Zama	Patricia Duduzile	1959-09-06
Zungu	Bhekisisa	1972-12-09

(28 June 1991)/(28 Junie 1991)

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NOTICE 591 OF 1991
DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No. 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development; and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No. 74 of 1982), as the case may be.

KENNISGEWING 591 VAN 1991
DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No. 501 van 6 Maart 1991 onderskryf het, en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrekket het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No 74 van 1982), na gelang van die geval.

SCHEDULE • BYLAE

252 Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Anderson.	Bill Elliot	1955-05-27
Baartman	Sidwell...	1958-08-08
Belle	Monwabisi Mzamo Raymond	1954-05-17
Beyile	Enoch Solomzi	1963-09-16
Bhemba	Joseph	1956-10-23
Biyela	Bheki	1970-05-04
Carpede	George Lucas	1938-10-22
Diudlu	Sipho Herman	1965-12-08
George	Vernon Joseph Jacob	1959-02-23
Hamabolo	Jerry Nyamane	1955-08-13
Hlophe	Poppy Cynthia	1947-10-28
Hlophe	Michael Mzuzephi	1952-04-12
Hlozi	Bongani	1971-02-03
Kana	Nombulelo	1969-12-01
Kweyama	Khanyisile	1964-11-28
Lekalake	Ben Oupa	1953-05-31
Lesole	Steven Funi	1963-02-08
Letsoha	Joyce Ma-Queen	1969-02-03
Lukhele	Shodi Hezekial	1933
Lusaba	Jacob	1945-03-10
Mabathla	Mpho Gift A	1957-09-07
Mabunda	John	1963-01-04
Madenge	Edith Norma	1929-08-16
Magongo	Stanly S	1976-08-26
Mahlangu	Bosisiwe Elsie	1970-12-24
Maikanqoa	Naniki Nthabiseng	1961-09-10
Makgabo	Tilshang Sekgala	1963-10-13
Malati	Maria Sandra	1969-12-20
Malindi	Ismal Fanyana	1973-02-02
Maloka	Mncedisi Gracious	1962-04-22
Maloyi	Patrick	1968-05-05
Martin	Belinda Venetia	1954-09-23
Maseko	Leon Gandhi	1963-11-17
Masetlha-Mavimbela	Mpho Gift Angelia	1957-09-07
Masuku	Sheila	1958-12-16
Matabako	Tebogo Eric	1970-03-13
Matebeta	Simon Mandla	1938
Matjiu	Mokgele Jonas	1970-03-06
Mbanjwa	Cyril	1967-12-13
Mdaka	Robert	1956
Melane	Johannes	1953-09-15
Mgwala	Winston Dumile	1968-09-16
Mhlongo	Moses Melusi	1970-01-17
Mlangeni	Aubrey Matia	1953-09-10
Mofokeng	Edwin Nyakallo	1947-03-17
Mogodiri	David	1959-10-01
Mokgotso	John Jungle	1939-06-07
Mokoena	Dick	1967-08-14
Monare	Getrude	1929-05-10
Montsho	Andrew	—
Morale	Maria	1937-10-27

252	Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
	Mosholi	Andries	1969-08-19
	Mosoeu	Jacob Thabane	1972-08-22
	Motanbo	Leonard	1965-06-05
	Nakedi	Sylvester Gibson	1969-09-17
	Mannan	Vanessa Agnes	1961-10-27
	Ncapayi	Vukile	1966-05-05
	Ndzanga	Cecil Luthuli	1961-06-04
	Nene	Thamsanqa	1968-03-06
	Netshitenzhe	Joel Khathutshelo	1956-12-21
	Ngcobo	Eugene Nhlanhla	1956-01-08
	Ngcobo	Christopher Gina	1968-03-22
	Ngobese	Mthembeni Tepe	1970-09-04
	Ngwenya	Goderey Nhlanhla	1950-04-28
	Nkosi	Philimon	1954-08-22
	Ntemane	Andrew Mpho	1974-12-16
	Ntenti	Patrick Themba	1955-06-06
	Nthatsi	Solomon	1961-01-15
	Ntshangase	Jabulani Moonlight	1967-01-11
	Nzanga	Cecil Luthuli	1967-06-04
	Nzimande	Dumisani Justice	1970-07-27
	Phaoane	Kebalebile	1944-08-03
	Poswa	Sonwabile	1969-12-12
	Pule	Ernest Lekoto	1955-03-30
	Qamata	Wandile Arthur	1967-05-06
	Ramothibe	Thibedi Serote	1949-12-24
	Rapodile	Stanley Mlungisi	1971-08-21
	Saul	Andile Stanford	1964-11-22
	Sebothelo	Kaizer Abraham	1966-10-27
	Sekano	Hector	1966-05-16
	Senzeni	Stephen	1971-10-08
	Shandu	Tshabane	1974-05-15
	Shezi	Nozipho Priscilla	1965-09-11
	Shilubane	Eliah	1958-01-03
	Sibisi	Thandi Elizabeth	1953-04-22
	Simelane	Mzwandile	1971-07-13
	Sithole	Simon	1968-09-26
	Skhosana	Joseph Jabulani	1965-06-16
	Sokoyi	Zwelitsha George	1973-07-09
	Thaisi	Michael N.	1968-04-07
	Thekiso	Moses	1966-12-14
	Tselanyane	Esther Mashudu	1963-03-03
	Tshabalala	Sphiwe	1972-03-02
	Tyeku	James	1930-02-04
	Vudo	Shimwell	1939-06-26
	Xaba	Sikumbuzo Eric	1947-07-29
	Xaba	Cornelius Sphiwe	1963-05-30
	Xokelelo	Reginald Mlulani	1936-02-03
	Yantolo	Zongezile	1954-02-06
	Zitha	Mshumayegi Julius	1960-02-02
	Zondo	Patrick Seiso	1964-07-05
	Zumi	Alfred Zanele	1963-07-23

Amnesties: HRC role is over

Sunday Times Reporter

THE Human Rights Commission, which played a leading role in the release of political prisoners, has been dropped from negotiations

Justice and Correctional Services Minister Kobie Coetsee said the ANC had agreed to deal directly with government and form a "scrutiny committee" comprising only the ANC and the government.

The ANC had agreed that the Audit Committee,

which included the HRC, had no further function in deciding which prisoners qualified for release under the Pretoria Minute, he said

However, ANC spokesman Gill Marcus said Mr Coetsee's announcement had come as a complete surprise. At no stage had the ANC agreed to the HRC being dropped, she said

Most of the names on the list submitted by the ANC for indemnification were supplied by the HRC

The HRC was formed with representatives from various anti-government organisations after the 1988 banning of the Detainees' Parent Support Committee, a group established to press for the release of political detainees

Repression

The HRC functions as a monitoring and research group focusing on repression, according to Miss Safoora Sadek, a spokesman.

While the organisation is independent of the ANC, a number of its commissioners are members of the ANC

They are

- Albertina Sisulu, a member of the ANC's Women's League,

- Human rights lawyer Geoff Budlander;

- Black Sash vice-chairman, Mary Burton,

- Cape Town lawyer and member of the ANC's Constitutional Commission, Dullah Omar;

- Durban Advocate Pius Langa, nominated for election to the ANC's NEC. He represented Winnie Mandela in her recent trial,

- Cosatu deputy-president, Chris Dlamini,

- Dr Max Coleman, an activist and formerly a leading light in the DPSC.

- Joyce Mabudafhasi, a human rights campaigner and member of the Northern Transvaal ANC,

- Dr Diliza Mji of the National Medical and Dental Association,

- Father Smangaliso Mkhathshwa, head of the Institute of Contextual Theology.

CCB probe

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Mr Rossouw, who started his inquiry three months ago, said that because of the complexity of the investigation, he could not guarantee charges would be brought, but the matter was being treated as a priority.

He refused to speculate on how much longer the inquiry would take. "It's a big case" He also declined to discuss possible witnesses or who may end up in the dock.

But, regardless of the task force's progress — even if it succeeded in building a number of criminal cases — perpetrators could still escape scot-free if the Government decided to grant indemnities.

Brigadier Floris Mostert, assistant CID chief in charge of special units on the Witwatersrand, is one of a number of police officers assisting Mr Rossouw's team.

Brigadier Mostert is investigating the death of Dr Webster, who was shot outside his home in Troyeville, Johannesburg, in May 1989.

Attorneys-general nationwide were instructed to investigate possible criminal actions by the CCB after a series of startling allegations were made during the Harms commission of inquiry into politically motivated murders last year.

Two of the more serious CCB allegations involve incidents that occurred in the Cape — the conspiracy to murder Cape Town advocate Dulah Omar and the bomb attack on the Early Learning Centre in Athlone.

"When the investigation started it became clear that co-ordination of the effort nationally was necessary," said Mr Rossouw.

During the Harms inquiry, Eberhard Bertelsmann SC and Martin Luitingh, representing the David Webster Trust and other parties, strongly recommended that a number of CCB members stand trial.

The advocates listed six CCB-connected operatives whom they said should be prosecuted for attempted murder or conspiracy to murder arising out of actions against Mr Omar, Johannesburg journalist Gavin Evans, the Urban Foundation's Roland White and Durban attorney K E Mhlaba.

The operatives are General Webb, Colonel Verster, head of region 6 (internal operations) Staal Burger, and his agents, Slang van Zyl, Calla Botha and Ferdi Barnard.

The advocates argued that charges of sabotage, terrorism or malicious damage to property should be brought against Mr Burger, Mr van Zyl, Mr Botha and Isgak Hardien in connection with the bombing of the Athlone centre.

General Webb and Colonel Verster, the advocates argued, may have aided and abetted those allegedly involved in the bombing and could face charges of malicious damage to property.

Similar charges of sabotage, intimidation, malicious damage to property and/or attempted murder, attempted sabotage, attempted malicious damage to property and/or conspiracy to commit sabotage, murder, or malicious damage to property could be laid against Mr Burger, Mr Botha, Mr van Zyl and Mr Barnard.

The same charges could be brought against General Webb and Colonel Verster for planned attacks on a Cape furniture factory, the burning of minibuses and an attack on a bus taking students to Delmas.

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