

PUBLIC SECTOR - C.V.T. - JUSTICE

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Attempt to include animal rights in constitution

ARG 1 | 8 | 95

(252)

CLIVE SAWYER
Political Correspondent

ANIMAL rights should be included in the 1999 constitution, the constitutional assembly was told today

In submissions to a theme committee on socio-economic rights, the Society for the Prevention of Cruelty to Animals (SPCA) said the constitution should acknowledge that animals were sentient beings and had a right to humane treatment

Having domesticated animals centuries ago, humankind had responsibilities toward them

“Current legislation and historic thinking have classified animals as ‘goods’
This perception and definition need to

be changed to recognise that all animals are sentient beings”

This was a fundamental right and should be entrenched in the constitution

Animal issues were a national matter and should not be left to the provinces, which would lead to a fragmented approach, the SPCA said

A national animal welfare advisory committee should be appointed by the Minister of Agriculture to complement existing forums dealing with animal and veterinary matters

In a separate submission, the Animal Groups Alliance said “non-human animals” deserved to live according to their own natures, free from human cruelty and exploitation

“It is a human right to extend the human circle of respect and compassion beyond our species to include other animals, who are also capable of feeling pain, fear, hunger, thirst, loneliness and kinship”

However, this did not mean that animals should have the same rights and humans, or humans the same rights as animals

It noted that the African National Congress, during multi-party talks, had proposed that the constitution include a duty to protect the environment

● **Mystery over death of SAAF pilot in Zimbabwe, page 4.**

Rights Bill draft (252) out soon

Cape Town — A complete draft of the Bill of Rights for the final constitution should be ready early next month, a Constitutional Assembly technical expert, Professor Halton Cheadle, told a newly formed CA subcommittee yesterday.

It met for the first time yesterday to discuss constitutional draft formulations on academic freedom and the public administration.

The members of the subcommittee, chaired by CA chairman Cyril Ramaphosa or his deputy, Leon Wessels, are Valli Moosa, Yvette Myakayaka-Manzini and Collins Chabane for the ANC, Roelf Meyer and Piet Marais (NP), Triëne Groenewald or Dr Corné Mulder (FF), Colin Eghn (DP), Richard Sizane (PAC) and Kenneth Meshoe (ACDP).

The IFP's seat is still empty in line with its boycott of the constitution-writing process.

Yesterday's discussions, during which parties reached broad agreement on most issues, are to be taken into account by the technical experts as they redraft the relevant clauses on academic freedom and public administration. Sapa

Star 11/8/95

I will testify before truth commission, says De Klerk

ARC 1/8/95 (252)
CLIVE SAWYER, Political Correspondent
DEPUTY-PRESIDENT and National Party leader F W de Klerk says he will give evidence to the Truth and Reconciliation Commission on the actions of his government

He said the evidence would take the form of a well-prepared briefing, work on which was already underway

President Mandela last week signed into law the act setting up the body

Disclosures to the commission, which will hear evidence on gross violations of human rights during the apartheid era, are expected to be exploited to the hilt by political opponents

Last week ANC deputy secretary-general Cheryl Carolus said Mr De Klerk should appear before the commission.

Speaking at Stellenbosch University last night, Mr De Klerk said people in the ANC, in co-operation with people in the media, were trying to turn the commission into a "one-sided witch-hunt"

This would break down reconciliation and make a joke of nation-building

He would give a briefing to give the perspective of his government

Mr De Klerk said "My hands are clean" and, later "My conscience is clear"

Mr De Klerk told his audience of students that the NP was not given credit for its contributions to the government of national unity.

Among these was last week's decision to set up a special cabinet task team to revitalise the economy

This move had been the consequence of reports following a call by Mr De Klerk to take active steps for an investor-friendly environment, he leader said

Other items for which the ANC had been given credit were the housing policy of the late Joe Slovo and the hosting of the Rugby World Cup

Mr Slovo had adopted the plan of his NP predecessor Louis Shill, he said

Rugby administrators had told him that had it not been for the NP, the World Cup would not have been held in South Africa

Urging support for the NP to keep multi-party democracy alive, Mr De Klerk said the NP had had too much power when in government because of the lack of an effective opposition.

Only the NP was capable of tackling the ANC, which housed communists, radicals who wanted a one-party state, and people still involved in political violence

Mr De Klerk dismissed the IFP as solely concerned with Zulu politics and the DP as a rich man's party

The Truth and Reconciliation Commission: South Africa can learn important lessons

Firing up the truth machine

WM 28/7-3/8/95

(252)

Eddie Koch and Gaye Davis

WHEN the Mothers of Plaza De Mayo gather at 3pm every Thursday to bang pots in the centre of Buenos Aires, they highlight a paradox that marks the 15 truth commissions that have operated around the world since 1974. Each commission was driven by the need for collective healing in a country riven by past atrocities. But many left behind a class of victims who continue to live in the shadow of poverty and unsolved murders.

Instead of applying the balm of truth — a Russian saying says injustice is to have an eye gouged out, to look away is to lose both — many commissions have rather served the narrow interests of ruling parties, who use evidence of past atrocities to discredit political rivals. It is a prospect we may face in South Africa.

Strategic compromises during negotiations that led to last year's freedom elections also meant amnesty being guaranteed to the perpetrators of apartheid crimes. They will have to confess if they want pardon, but once amnesty is granted, there will be no further sanction, no trials or civil claims, nor will they lose their jobs.

Many have criticised the apparent special treatment this affords those responsible for past atrocities. "What about the victims?" they ask.

An answer is slowly emerging as we move towards the truth commission's establishment — and it is one that has won the admiration of those involved in the truth machines that have run in Africa, Eastern Europe and Latin America over the past two decades.

It is that South Africa's truth commission will afford meaningful relief to victims and survivors because, for the first time in recent history, ordinary men and women have the power to make the apparatus work to their advantage.

"Experiences in Argentina (where the mothers protest every week because they still do not know what happened to their children who disappeared under military rule), Chile and El Salvador show that the restorative and healing powers of truth processes can be a myth," says Paul van Zyl of the Centre for the Study of Violence and Reconciliation in Johannesburg.

"In most other countries, victims' groups emerged as a result of weaknesses in their truth commissions. The survivors are often disempowered and frustrated after being put through a legalistic process by hack-handed lawyers that only reinvokes the pain.

"Experts from these countries who visit here are astounded by a major difference. In South Africa, victims' groups were set up before the truth commission and have the opportunity to influence the way it works."

Around the country, a network of survivors' groups has already begun to form, preparing those who want to tell their stories before the commission for what to expect and ensuring that their needs and interests are promoted. It is a healing process in itself.

Organisations involved include the Trauma Centre for Victims of Violence, in Cape Town, with its counselling services for victims; the Johannesburg-based Khulumani Support Group, set up to encourage survivors to make effective use of the commission; the Centre for the Study of Violence and Reconciliation, which runs workshops to inform people of the impact the commission may have on their lives; the Association of Victims of Unsolved Apartheid Atrocities, which is demanding legal action against the people who murdered activists like Griffiths Mxenge and Matthew Goniwe in the 1980s; and Justice in Transition, which has run seminars and distributed pamphlets telling people how to use the commission.

Scores of paralegal personnel and mental-health professionals are being mobilised to brief victims before they go before the commission and, more importantly, says Van Zyl, to debrief them afterwards so they don't suffer the anxiety and sense of worthlessness victims in other countries have experienced after going through the truth mill.

A coalition of about 30 human rights groups is building a computerised database recording thousands of incidents and naming names that survivors will have access to and that can be used to cross-check amnesty applicants' testimony, to ensure they reveal all.

These organisations have already shown a robustness, a legacy of their opposition to apartheid, that sees them exercise real power over the truth process. The political deal struck in cabinet that allowed for amnesty hearings to be in secret was overturned after human rights organisations threatened to withhold their crucial co-operation if it went ahead.

"The truth commission could be a psychologically healing process by aiding a much-needed truth recovery, giving survivors the space to recount past abuses and by providing some form of reparation," says Brandon Hamber, a researcher at the Centre for the Study of Violence and Reconciliation.

"Nevertheless, lessons — particularly from Latin America — teach us that establishing a truth commission is not sufficient in itself to meet these psychological needs. The commission does run the danger of being overly involved in legal and political issues at the expense of key psychological aspects of reconciliation."

But he notes the country has a "remarkably strong" network of human rights organisations pushing the Justice Ministry to back "a range of



Truth enacted: President Nelson Mandela signs the Promotion of National Reconciliation and Unity Act into law

PHOTOGRAPH RUTH MOTAU

Case against the prosecution

Lawyers accuse KwaZulu/Natal Attorney General Tim McNally of wilfully avoiding uncovering the truth behind hit squad activities, reports **Ann Eveleth**

A FORMER security branch policeman eager to open his bag of dirty tricks is likely to go to jail on weapons charges instead, a policeman roams free three months after an inquest implicated him as an accessory to murder, three self-confessed KwaZulu Police (KZP) hit-squad killers await sentencing with no indication they will be made state witnesses.

All over KwaZulu/Natal, the truth about apartheid's crimes is begging to come out, but justice waits in the wings while Attorney General Tim McNally dithers.

Legal and human rights sources point to McNally's "abysmal" record of prosecutions. Ironically, the man in charge of the KwaZulu/Natal justice system on the eve of the Truth Commission played a pivotal role in dampening early claims of Third Force activity in the late 1980s.

McNally was responsible for the 1989 McNally report discounting the death-row confessions of Vlakplaas murderer Almond Nofomela and subsequent claims of fellow security branch policemen Dirk Coetzee and David Tshikalanga. Sources say McNally has repeatedly shown he does not believe the apartheid state sponsored police hit squads against the liberation movements.

Defending the commissions this week, McNally said he believed the findings had been "borne out by subsequent events" and pointed to the Harms Commission's exposure of the Civil Co-operation Bureau (CCB) as proof of his vigorous investigation.

While Curran admitted the evidence presented to the McNally Commission "was not wonderful", he said it should have laid the basis for further investigation. "Certainly, with what is coming out in the De Kock trial, a person with an open mind could have gotten to the truth back then."

The "truth" still remains largely hidden in KwaZulu/Natal, however, and sources say this is because McNally has not changed his tune, failing to order investigations into Inkatha Freedom Party and KZP officials implicated in Goldstone Commission and Transitional Executive Council reports, and taking decisions which favour protecting the security apparatus.

While McNally claims he is "dedicated to prosecuting murderers of whatever political persuasion", the sources say his record shows otherwise.

Former security branch policeman Sergeant Gary Pollack, who spilled the beans on his Third Force activities in Johannesburg and Durban, was convicted last month in the Durban Regional Court on charges of murder. Pollack claimed his

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Without fear, favour or prejudice: Legal sources say Tim McNally has not lived up to his oath of office.

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A litany of justice obstructed

Ann Eveleth

MCNALLY'S critics point to a succession of other decisions which, they say, cast damning aspersions on his desire to root out political violence:

● One notable instance quoted is the 1993 trial of notorious Caprivietrained hit squad operative Vela Mchunu, whom McNally unsuccessfully prosecuted under the alias Alfred Masango, for the 1992 execution-style murders of two Hammarsdale taxi owners. "Masango" was acquitted by the court, which found he had killed in self-defence.

Masango was released despite fingerprint evidence which proved him to be none other than Mchunu, who had earlier been found criminally liable — along with nine others — for the 1986 abduction and murder of three Mpopomeni trade unionists, and implicated in a separate trial which found former KwaZulu Deputy Justice MEC Samuel Jamile guilty of 15 counts of murder, attempted murder and incitement to murder Clermont political opponents.

Probed at the time on his decision to try Mchunu under a known alias, McNally said: "It is not at all unusual for a person to be prosecuted under a name different to his actual real name ... (Masango) was the name under which he was arrested, the name under which he was employed by the KwaZulu Police and the name which appears on his police appointment card."

more accountable

Ann Eveleth

MCNALLY may have many critics, but there is little the present government can do to drag him — or other attorneys general — into the present era under current legislation.

McNally was appointed in terms of the 1992 Attorney General Act passed by then-state president FW de Klerk in the dying days of apartheid. For the first time since 1926, the Act enshrined attorneys general's independence from the justice ministry, overturning nearly seven decades of often explicit political control.

While the sources say they support the principle of independent attorneys general, their experience has been that the apartheid regime merely entrenched its own people with the Act, without requiring them to be accountable for their decisions. Under the new Act, an attorney general can only be removed by an

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the time of the Goldstone reports that he felt there were no hit squads. In his view, the statements were not indicative of hit squads, but of people acting on their own," said Melville. Sources say these are just a few examples of McNally's "general bias" against Third Force exposure.

One lawyer who, like most, declined to be named for fear of prejudicing his cases in the province, said he could think of "at least 10 cases where ANC clients were prosecuted on flimsy evidence that was overturned in court and as many others where stronger cases against apartheid allies were not prosecuted".

Sources say McNally has returned "countless dockets, which seem to have sufficient evidence, without a reason". Sources say, "due process of law has collapsed in the province and

Act of Parliament and, although they are required to make annual reports to the Minister of Justice, the sources say this is of little consequence, since the ministry has no power to bring recalcitrant officials to book. The current situation led recently to calls for the creation of a "super-attorney general" from some quarters of the progressive legal community hoping to engender greater accountability among attorneys general.

The proposal, which first surfaced at a legal consultative conference in Cape Town earlier this year, has formed part of the debate on how a new South African legal system should function.

Existing attorneys general have slammed the proposal, however, arguing that such an appointment would see them once again under the tutelage of political bosses, a situation they say they fought against until the adoption of the 1992 Act.

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people know they can get away with crime". McNally rejected the allegations, saying he has "remained true" to his oath to act "without fear, favour, or prejudice".

While McNally is known to have come under pressure from the IFP in recent months, following the arrest of IFP deputy secretary general Zakehele Khumalo and four Caprivi trainees by the Investigation Task Unit (ITU), reliable sources say McNally granted the arrest warrants under enormous pressure from Safety and Security Minister Sydney Mufamadi and National Police Commissioner General George Fiyaz. Mufamadi and Fiyaz attended the briefing which led to the ITU's first arrests two months ago, and the sources say McNally had little choice in the matter.

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Most recently, critics have questioned McNally's decision to prosecute Zulu Royal House spokesman Prince Sifiso Zulu on illegal weapons charges in connection with his September 1994 televised scuffle with members of Inkatha Freedom Party leader Mangosuthu Buthelezi's entourage. Critics say Buthelezi's should have faced assault charges instead.

In sharp contrast, McNally declined to prosecute IFP senator and self-protection unit commander Phillip Powell for illegal possession of a Vlakplaas-style homemade shotgun confiscated from his car during the Transitional Executive Council's dawn raid on the Mlaba paramilitary training camp.

Powell told McNally he "found" the gun in a bus and was on his way to hand it over to police. Critics point out he could have relinquished it to Kwazulu Police members present at the camp.

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Critics have also questioned McNally's intervention in the case against Durban human rights lawyer Jenny Wild, who had unleashed numerous scandals since the 1970s. Most notable was Wild's hypothesis suggesting the South African Narcotics Bureau (Sanab) and the apartheid intelligence services were linked to crime syndicates responsible for gun-running, drug-dealing, money-laundering, and ivory-smuggling to Umtata and Renamo.

After two decades of alleged harassment by Sanab, Wild and an attorney, Brian Cutler, were arrested in June 1993 on charges of cocaine possession. Although the deputy attorney general acting in the case indicated he would withdraw the charges, McNally overruled him and decided to prosecute.

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superior race exercised in 1992. Two AK-47 rifles into the Pan-Africanist Congress and confessed to a host of other crimes he said his bosses had ordered him to commit. McNally rejected Pollack's claims, maintaining his motives were purely criminal.

Sources say the comparison between the Pollack decision and McNally's failure to expedite an investigation into two-time Kwazulu/Natal Midlands cover-up cop Major Joseph van Zyl is revealing. First implicated in a police cover-up of the infamous Trust Feeds massacre, an Inquest magistrate ruled three months ago that Van Zyl was *prima facie* an accessory after the fact to the 1990 Swaylmane murders of two UDF activists. McNally has yet to take steps to see Van Zyl removed from his current post.

The following year, McNally served as counsel to the now famously vacuous Harms Commission which rejected similar evidence and again dismissed allegations of police hit squads.

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Amnesty Interna- tional's 1992 *State of Fear* report echoed South African legal and human rights groups' reactions to the judgment, asking how the government could expect McNally to participate in an impartial investigation into allegations of police death squad activity for the Harms Commission so soon after he had concluded in a previous investigation that such activity did not exist?

Former Lawyers for Human Rights attorney Brian Curran, who represented Nofomela, Coetzee and families of several Vlakplaas victims, said McNally had "undeniably defended the wickets of the government of the day".

"The position he took was one of total disbelief toward the allegations of Nofomela and Coetzee. He threw out virtually everything they said, much of which is now being confirmed in the De Kock trial. The fact that informa-

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investigating police crime in Soweto. Meanwhile, there are still no indications McNally intends making use of self-confessed Caprivi-trained hit squad killers Romeo Mbambo, Geina Mkhize and Israel Hlongwane. The three face sentencing in Durban next month, with no indication they will be made state witnesses.

McNally says they "cannot be accused and state witnesses at the same time," adding that he will decide whether to bring charges against anyone else after the trial ends.

The sources argue, however, that McNally could have used them to nail the leaders of the hit squad network from the beginning, but failed to do so "despite serious approaches for him not to charge them", maintaining their motives were purely criminal.

Police reporting officer advocate Neville Melville recalled the prosecutor's early opposition to an adjournment, on grounds that McNally had instructed the prosecutor not to regard the case as "hit-squad related".

McNally gave early indications at

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Managing the multi business

WSM 4-10/8/95

Traditional doctors are coining it as the black business sector mushrooms, report **Meshack Mabogoane and Eddie Koch**

THE growth of black business in South Africa has reinvigorated another thriving economy — the informal *sangoma* and *muti* trade — as new entrepreneurs and executives resort to the supernatural for luck and to protect their cars, taxis, homes and businesses from misfortune

Interviews with businessmen and traditional doctors this week showed a symbiosis between the emerging black business sector and traditional doctors whose practices are mushrooming, along with black advancement in urban areas

This challenges the conventional Eurocentric view that "modernisation" and maternal development erode "traditional" beliefs in the supernatural. The way technology and traditional culture intertwine with each other to shape parts of the emerging economy is highlighted in the taxi industry, by far the largest black-owned industrial sector.

Traditional doctors (*sangomas*) and indigenous healers (*inyangas*) interviewed this week disclosed that most taxi owners are willing to pay fees of around R500 to ensure their vehicles are protected against malevolent people using the supernatural to stifle or destroy their ventures.

Makhosi Dlamini, an *inyanga* from the Eastern Cape now based in Gauteng, says this is standard practice

practised in providing a service to taxi owners and other businessmen. This specialisation was important for quality treatment and it was, therefore, important for clients to check the type of training that an *inyanga* had received. "It's like in medical practice, where the general practitioner may be good for simple ailments, but for complex work you need specialists."

Among drivers and owners, the ability to find the right *sangoma* to "work" or protect a vehicle requires much fine tuning and can be compared to the way executives rely on insurance brokers to find them the right company and package of short-term cover.

Other black business sectors are shaped by the same relationship between technology and the supernatural. "This custom is rife throughout black Africa," says Innocent Brown, representative of the Traditional Doctors' Association. "But it's not peculiar to Africans. Many Europeans consult with astrologers, and Asians with gurus and other spiritual practitioners."

Black executives and professionals also make use of the supernatural to ensure their newly acquired homes, vehicles and other material possessions are "insured". To protect a home could cost thousands of rand, depending on its location. The more prestigious the locality, the greater the premiums, because the chances of enemies and rivals aiming their



Managers and muti: Sowetan editor Aggrey Klaaste and former general manager Rory Wilson consult the ancestors (left). Above: Innocent Brown (centre), with members of the Traditional Doctors' Association

sultants have been organised into the Traditional Doctors' Association. The organisation runs an office at Darragh House in downtown Johannesburg and has begun putting details of its members on a computerised database — all part of upgrading their image, along with the growing sophistication of their clientele.

Hundreds of *sangomas* have carved a niche in middle-class life and there are reports that some have moved into upmarket suburbs. And many individuals

ple's culture also drives the elite to material and the spiritual. In the

the home are more likely. "The ability of some people to influence spiritual forces and cause misfortune is real," says Brown. "No matter that we now have formal education and exposure to Western maternal culture, the beliefs and practices of the majority of our people cannot be washed away or considered pure humbug. That's why many executives and professionals are coming to sangomas. To be forewarned about the unknown requires that one must be forearmed in case mysterious accidents occur."

It is not only the fear of the unknown and possible evil intentions of rivals that has made the *mutindus* thrive. Identification with a peo-

ple could cost thousands of rand, depending on its location.

Some need protection against unknown forces that are likely to affect them. Many come for the charms that count in a business that is so competitive — *muti* can create a favourable image of a vehicle and driver to attract customers. Others do so to evade the police nets in whatever illicit dealings they are involved with. There are many reasons.

Even major black-owned companies are coming into the open and boldly experimenting with supernatural forces for production. In 1991 and 1993, the *Sowetan* newspaper made sacrifices to the ancestors in an attempt to counter low staff morale and lagging circulation figures.

There is a wealth of benefits and lessons from cultures of the people (blacks) who work in businesses. The ceremonies had a deep meaning for me. I was moved to be included in somebody else's culture, former general manager of the *Sowetan*, Rory Wilson, is quoted as saying in a recent edition of *Enterprise* magazine.

For many years unions have been demanding that companies recognise *sangomas* and *inyanga* as bona fide medical practitioners. Although no statistics have been gathered, it is clear that the cultural roots of black business must account for millions of rand in an underground economy that is not taxed and whose internal workings remain closed to scrutiny from the outside.

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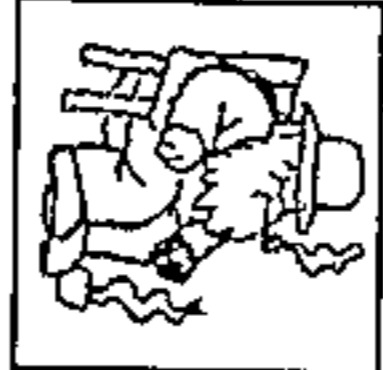
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In response to the growth in the sangoma and inyanga consultations, thousands of practitioners and con-

duction and distribution ventures. Both as business and belief, witchcraft is a significant aspect of South Africa's socio-economy.

"Insecurity in the wake of the growing disintegration of black communities is responsible for an increase in the belief in the supernatural," says Professor Mzilikazi Khumalo from the African languages department at Wits University. "People are holding on to something, and supernatural practices and beliefs deal with these uncertainties.

But there is also a decrease in these beliefs among the educated and those embracing Christianity. We are in a transitional stage and so many are combining both African beliefs and Christianity, there is no contradiction between the two, just a misunderstanding."



Krisjan Lemmer

THE SANGOMAS

Cruise for two

THE Dorabul Bar has been buzzing most of this week with the news that Peter Sullivan, editor of *The Star*, went to London to retrench the paper's bureau staff there — and followed it up with a luxury cruise to New York on the *QE2*. Only recently, however, did the precise circumstances of the sea voyage come to light. It appears that the company was offered the cruise as a freebie for two journalists — and that Sullivan swung things in such a way that his girlfriend was able to accompany him.

Oom Krisjan greatly admires Sullivan's ingenuity in brokering this deal — especially since it was Sullivan who recently wrote a leader article condemning the practice of winning the sympa-

ties of journalists by means of freebies. Sullivan's holiday was clearly a noble attempt to keep his editorial staff — what's left of them — free of corruption.

Dog days

WHEN At Naude saw a placard reading "Dogs jump over the moon! Exclusive pictures in Sunday Times", he thought it was just another attempt by the *Sunday Independent* to smear their rivals' style of journalism. Then Oubas Malan spotted the real reason for the poster: an ad for dog food in the *Sunday Times* which indeed had a picture of dogs jumping over the moon. At Naude was made to buy a round of drinks as punishment for his unnecessary and destructive cynicism.

People's power?

WRAGGING the way sport gets dragged into politics these days ... Oom Krisjan knows that Orlando Pirates were once known as "the people's team" — but is that an excuse for their supporters carrying placards with slogans like "the people shall lead" at the recent Coca-Cola cup final games? Of course, at no stage in this match were "the people" in the lead — they were *klipped* 1-0 by Wits. Perhaps the team was paying more attention to another string-gle-speak placard that was spotted in the crowd: "Through gradualism to supremacy."

Beg yours?

WHATSOEVER else you may say about the *SABC* *grootbuse*, at least they have not lost their sense of humour. Oom Krisjan hears that chief executive Zwellakhe Sisulu began a recent business meeting by begging of his guests: "You must excuse our *Safin* accents."

APOLOGY

HerdBuys Advertising and Marketing formally apologises to Adidas (SA) (Pty) Ltd for the "Tribute - Adihash" advertisement.

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Proposed Bill will ensure open government

(252) WM 4-10/8/95

Gaye Davis

GOVERNMENT employees who blow the whistle on corruption or maladministration will be protected from reprisals in terms of ground-breaking legislation currently being drafted.

The proposed Open Democracy Act contains a "whistleblower" clause, protecting government employees who reveal wrongdoing.

The draft legislation — currently in its 10th version — marks a complete break with the past secrecy which shrouded government. It aims at making government more accountable by guaranteeing people access to information and the proceedings of government bodies, and by setting up machinery to achieve these aims.

State law advisor Empie van Schoor, a member of the task group drafting the new law, said meetings would be held next week with Minister of Safety and Security Sydney Mufamadi, Minister of General Services Chris Fismar, Minister of Water Affairs and Forestry Kader Asmal, Minister of Justice Dullah Omar and Deputy Minister of Finance Alec Erwin, all of whom had raised concerns about the legislation.

Van Schoor said while there appeared to be general support for the principles underpinning the draft legislation, the ministers wanted to raise practical issues. Omar, for example, wanted to discuss the draft's application to the judiciary, while the fact that

no cost had been estimated for setting up machinery to enforce the new law was another issue.

In essence, the bill aims at granting any person the right to information held by government; regulating the use of information held about individuals without their knowledge by government or by private agencies such as credit bureaux; requiring that meetings of governing bodies be open to the public and advertised; and protecting whistleblowers.

Information can be denied in certain cases, for example, when it could jeopardise the country's defence or security. It is not a blanket exemption: the draft spells out where records could be denied (or their existence denied), such as details of arms, communication systems and codes. Reasons must be given for refusing to release or confirm the existence of information.

Information likely to harm foreign relations can also be refused, but not if the record is more than 15 years old. Access to trade information, whether private or state, is generally protected where disclosure would harm financial interests.

Information which affects individual privacy can be denied and frivolous requests can also be refused. Where it is claimed a record cannot be found, a requester must be given details of efforts made to uncover it.

To enforce the act's aims, a variety of mechanisms, including information officers, whose task it will be to deal

with requests for information, are proposed. They include specialised Information Courts, presided over by a Supreme Court judge, which will settle cases where there is a dispute.

An Open Democracy Commission would oversee the law's implementation. Chief of its tasks would be compiling a guide on using the new law, to be published, complete with contact numbers, in telephone directories. The commission would also review the act annually, receive annual reports from government bodies, and run education programmes.

Work on the act started in October 1994 when deputy president Thabo Mbeki set up a task group headed by his legal adviser, Mojanku Gumbi, to draft the Bill. Task group members include law Professor Mandla Mchunu of the University of Natal, Durban; Professor Etienne Mureinik of the Wits Law School; advocate Vincent Maleka of the Johannesburg Bar and Van Schoor, a state law advisor in the Department of Justice.

The Open Democracy Advisory Forum (ODAF), which represents 62 organisations including organised labour, business, the media, religious, education and human rights groups, and libraries and information services, is analysing the draft legislation and identifying possible problems.

The Bill is now more than 140 pages long and growing. Mbeki wanted it before the legislature this year, but this possibility now seems remote.

STATE 'DOESN'T KNOW WHAT PROPERTY IT OWNS'

Millions lost in government

CT4/8/95

(259)

PRETORIA: The government has no idea of how many properties it owns and where all of them are, says PWD director-general Mr Sipho Shezi.

THE Id was lifted yesterday on a massive property muddle involving government departments — particularly Defence and Police — that has been costing the taxpayer millions of rand a year.

Public Works Department director-general Mr Sipho Shezi said the government had no idea what fixed properties it owned anywhere in the world.

While not directly blaming the former Public Works Department, Mr Shezi said there had been mismanagement and no control over state assets.

The government was now compiling a fixed property register and would be selling off unwanted assets at market prices.

The previous public works administration had had no idea of what properties were being rented or sold by state departments.

"Every day we find out that we own a block of flats or an office building that we didn't know about. We need to take stock of what we have," he said.

State properties included a World War II bomb site in Berlin, expensive land in London and houses and flats in every city and town in the country.

The state also let blocks of flats and office buildings — some of which were used by people who hadn't paid rent for years.

Mr Shezi said the taxpayer was also paying for office accommodation and housing that had been rented and then vacated before leases had expired.

The state was known to own 120 000 properties in South Africa and overseas, but if properties owned by the former provinces and the old TBVC states were taken into account, "it would be closer to 140 000".

The Hallmark building, in Vermeulen Street, Pretoria, had stood empty for nine months at a cost to the taxpayer of R2,9 million before it was realised that it was empty.

Mr Shezi named the Department of Defence and the Police as the two main culprits who had hired offices and then simply vacated them.

Many of the state-owned buildings were falling into disrepair or were under-used.

"Only about three weeks ago we came across a block of flats in Cape Town occupied by people who have not been paying rent for years," Mr Shezi said.

State accommodation and property management deputy director Mr Leon Claassen said unused assets would be sold as soon as possible but market trends would have to be taken into account.

Savings

The national register would be compiled in collaboration with the Department of Land Affairs and provincial authorities. A project manager had still to be appointed.

Mr Shezi said the Department of Public Works would fund the project from savings effected in the annual budget, and he hoped the project would be completed by the end of next year.

"The cabinet will be approached to sanction the project and to provide guidance on the long-term responsibility for and maintenance of the register," he said. — Special Correspondent, Sapa

Azapo cadres to receive indemnity

CP 7/8/95 (252)

South African Liberation
Army, who were tried on
charges of underground political
activity, terrorism, and piracy
are about to receive indemnity
from the Minister Mr Dull
Oman's lawyer.

He made the announce-
ment at a Youth in People's
Organisation (YPO) debate
on the Truth and Reconciliation
Commission in Durban.

Azapo has demanded the
release of its armed wing
members, claiming they too
were political prisoners and
should qualify for indemnity.

It is not clear how many
members will be eligible, but it
is thought 19 were arrested before
last year's election. Some
cadres were held after that
falling outside the scope of
previous indemnity.

Mr Oman told about 100
YPO members he had rec-
ommended to President Sel-
von Mandela that the cadres
be released. — Sapa

2000 08/08/95

Truth will set us free

(252) Soweto 7/8/95

BY EARLY next year, the much-vaunted Truth Commission will start its work. It is going to take 18 hectic months during which details of thousands of cases of human rights abuses, incidents of violence and deaths will be laid bare before the nation.

It is also going to contribute towards rebuilding and healing the people of this country, says Minister of Justice Mr Dullah Omar.

"For the first time in this country's history, the state will provide a platform for victims to tell South Africa their story. They will be able to make known their pain, the hurt and suffering that was done to them."

More importantly, for the first time, some degree of reparation and justice will also be provided for victims.

"I would expect a mother in Soweto or Atteridgeville, whether she is illiterate or doesn't have the funds, to take advantage of this law," says Omar.

"I hope that local communities will organise and mobilise around this - organisations will be able to talk to victims and survivors. They can get statements and do follow-ups on cases."

Omar says the process of getting the Commission to work is directly linked to "our objectives to transform our society - it's a way that violence and intolerance will also be dealt with."

The work of the Truth Commission, he says, will be directly linked to the Government's aims of abolishing crime and a "desire to not only build a new South Africa but to build new South Africans too."

Upliftment and change

Omar says this will hopefully not happen in isolation - for there to be reconciliation, there has to be socio-economic upliftment and change.

The oppressed people of this country, he says, have shown a great deal of compassion and restitution. "Revenge is not part of our psyche and violence is not an inherent part of our nature."

"Society has been dehumanised and brutalised, therefore there is so much violence. But there have always been lots of wonderful people everywhere who have fought for human rights and displayed enormous amounts of tolerance."

"The task of the Commission would be to speed up that kind of process."

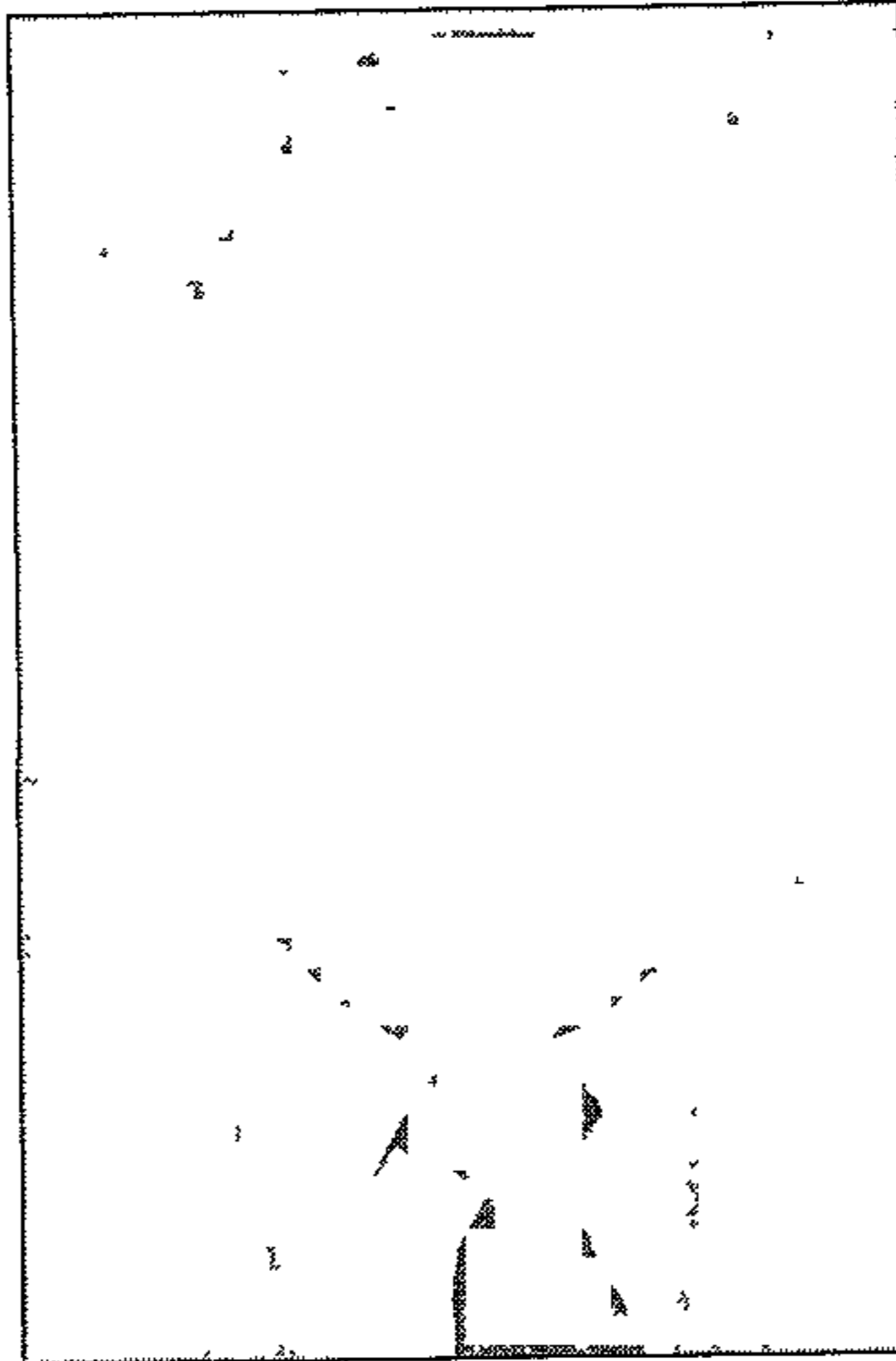
A lot will depend on how the commission manages the process. It is important that there is prosecution and not revenge, he says.

Three committees will look at different aspects. There will be a Committee on Human Rights Violations, another on Amnesty and a third on Reparation and Rehabilitation.

The procedures according to which these three will work still have to be finalised. Ultimately, Omar says, the aim is to get people to turn their backs on

The Truth Commission, after many months of debate, is finally about to start its work of unravelling the untold story of South Africa's secret past.

Sharon Chetty details the implications:



Justice Minister Dullah Omar ... He was one of the main driving forces behind the belated establishment of a Truth Commission

violence. The commission hopes to show that there is a form of justice.

"We also have a quest for a greater justice, which is social justice," says Omar. He says we have made the mistake of thinking of victims only in the immediate sense of family, friends and relatives.

But the greater community has also been a victim of atrocities. "We must bear in mind that the whole of South African society has been a victim of apartheid. Therefore we need to ensure that there is some kind of collective social justice."

He is confident that the Truth Commission will be worth the effort and believes that it will be for our greater good.

"Victims have been completely neglected and marginalised which has led to a lot of anger. Yet there are also those who are still prepared to forgive." This process must help us "achieve the kind of new society victims fought and died for", he

Victims have been completely neglected and marginalised, which has led to a lot of anger

says. "Organisations and communities are grappling with the idea of justice. A part of this must be the restoration of dignity."

In consultation with communities, creative ways of dispensing justice can be found. For example, Mamelodi doctor Fabian Ribeiro and his wife Florence could have a clinic built in their honour in their township. A bursary fund could bear the name of murdered Durban lawyers Griffiths and Victoria Mxenge. For Matthew Goniwe, his life and joy was education - it would be fitting if a creche or school were to be erected in his honour.

At the end of their work, the commissioners will have to make recommendations ensuring that none of the past atrocities are repeated. Although the mechanisms of the Truth Commission are not yet known, Omar expects the entire process to be "independent and people friendly." A media campaign will create awareness.

Non-governmental organisations like churches and human rights groups will "make or break" the commission, he believes. He expects NGOs to play a crucial role in assisting and supporting people. Counselling and psychological services will be a key component.

And while it is not known yet whether the Commission will sit in a central venue or whether it will be held in different regions, Omar says he cannot see a commission which will only sit in one place - it will have to go to the people.

"This can be an exciting process," he says. "Ultimately we must become a nation that is at peace with itself."

He is not afraid that revelations may lead to revenge and heightened tensions. "The oppressed people have shown great generosity. That's how we managed to arrive at the Government of National Unity."

"Throughout our liberation struggle, we've shown great compassion and humanity. This process should help us to live in peace with ourselves."

DP wants jail-for-life, tighter bail

(252) CT 9/8/95
THE government yesterday tabled a Democratic Party amendment to the Criminal Procedure Act providing for imprisonment until death and tightening the rules on bail.

If approved by Parliament, the bill would oblige judges to refuse bail to repeat offenders in certain circumstances and would give them the right to rule out parole.

"It is thought necessary to amend the Criminal Procedure Act to impress upon criminals that society in general disapproves of ... early parole or release from prison to the extent that the sentences passed by the courts are largely nullified," DP MP Mr Douglas Gibson said in a memorandum supporting the bill.

The bill was tabled the day after Port Elizabeth judge Mr Justice Chris Jansen sentenced two young rapists to life imprisonment, adding that any future parole board should know "my intention was that they spend the rest of their lives in prison".

The youths raped and stabbed one victim while free on bail pending trial for another rape case.

In one of its first judgments earlier this year the Constitutional Court ruled that hanging was unconstitutional.

A Correctional Services Department source said the proposal could be unconstitutional, and imprisonment without prospect of parole could make it difficult to control certain prisoners. — Reuter

Chief magistrates galore

(262) CFM 9/8/95

East London — The cash-strapped Eastern Cape government has inherited 27 chief magistrates from the former Transkei — twice the number serving in the entire "old SA".

According to the Department of Justice there are 27 chief magistrates in Transkei and seven other posts equal to that of a chief magistrate.

By comparison, the former Ciskei had no chief magistrates and the rest of the Eastern Cape was able to make do with just one chief magistrate, based in Port Elizabeth.

Excluding the TBVC states, SA employed 13 chief magistrates and one special magistrate, according to senior magistrate Fanie Stander.

Justice Department liaison officer Pieter du Rand said yesterday the ongoing Hoexter Commission into the rationalisation

of the various jurisdictions of the Supreme Courts was currently looking at the imbalance.

He said it was likely to propose an "evening out" of chief magistrate posts.

The secondment of two judges to Transkei and two to Ciskei would also be addressed.

Married seconded judges receive a foreign allowance of 24% of their gross pensionable salary, a children's allowance, and an interstate allowance of R720 a year.

The Eastern Cape government has said it will cut the province's bloated civil service, by 4,45%, starting next month. About 7 000 are likely to lose their jobs, bringing the civil service complement to almost 150 000.

The province's civil service is five times as big as that of the Free State but serves only twice as many people — Eena.

Public cry for death penalty

252

Sowetan 9/8/95

SEVEN reports approved by the theme committee on fundamental rights on Tuesday are to be forwarded to the Constitutional Committee for debate and approval.

These include reports on citizen's rights, freedom of movement, freedom of residence, children's rights, the right to administrative justice, the right of access to courts and the rights of detained, arrested and accused persons.

The committee accepted reports on political rights, freedom of association, freedom of assembly, demonstration and petition, and the right to life on Monday.

The issue of the right to life, Sheila Camerer (NP) said, required public hearing because of overwhelming public reaction to the issue.

Referring to the public submissions, she said the most contentious and emotional issues remained abortion, euthanasia and the death penalty.

A synopsis of public submissions showed overwhelming support for the reimposition of the death penalty, while people were divided over abortion and euthanasia - *Sapa*.

Truth probe no witch hunt, all will be done fairly — Mandela

PRETORIA — President Mandela meets former police and army generals, including Freedom Front leader Constand Viljoen, in Pretoria today to discuss their concerns about the Truth Commission, said a government official.

"President Mandela will give the assurance that there is no such thing as a witch-hunt and that things will be done fairly," said the official.

Former police commissioner Johan van der Merwe will be among those to meet Mr Mandela, Defence Minister Joe Modise and Justice Minister Dulah Omar at the Union Buildings.

The generals will tell Mr Mandela "how they think things should be done", said the offi-

ARG 10/8/95 (252)
cial
"The president has an interest in assuring them that if they co-operate there is nothing to fear"

The underlying principle behind the whole truth commission is that they should co-operate and come forward and give evidence," said the official.

"What people must understand is that all crimes that did not have anything to do with the conflict of the past are going to be punished," he said.

The commission has the power to grant amnesty to human rights offenders who fought for or against apartheid and to compensate victims —
Reuter

Draft Bill aims to throw away the key

Adrian Hadland

(252)
PD 10/8/95

CAPE TOWN — Criminals sentenced to a new form of life imprisonment will leave jail only in a coffin, according to draft legislation tabled in Parliament this week.

The Criminal Procedure Amendment Bill, which was proposed by DP MP Douglas Gibson, seeks to toughen the judiciary's sentencing and bail options in a bid to tackle SA's high crime levels.

It states that imprisonment for life may be handed down "without the possibility of parole or release from prison before the death of the person so convicted".

The passage of the Bill through the private members' legislative proposals and petitions committee to the National Assembly's justice committee marks the first time legislation introduced by an individual MP has reached so far in the law-making process.

According to the explanatory memorandum of the Bill, the substance of the legis-

lation was framed "in order to impress on criminals that society disapproves of provisions in the present Act which leads to early parole or release from prison".

The Bill introduces two new categories of imprisonment. a life sentence "which means just that", according to Gibson, and a jail term which excludes parole.

Following the abolition of the death penalty, it was "necessary that the courts should have an additional sentencing option appropriate to aggravated crimes where there are no mitigating factors".

The Bill also compels the court to refuse bail to persons accused of serious offences unless the accused is able to convince the court that a release would not be contrary to the interests of justice.

"The onus of proof should shift to the accused," said Gibson.

The Bill was accepted unanimously in the private members' committee and has been given the support of Justice Minister Dullah Omar.

ALTHOUGH millions of words have been written about the so-called third force, it is remarkable how little of the original conspiracy theory has been proved

As first defined, the "third force" was systematically orchestrated by the NP government as an essential component of a political strategy designed violently to attack the ANC while at the same time negotiating with it. It was thus an official, although secret, policy. On some occasions Nelson Mandela said that FW de Klerk was "himself fuelling the violence". On others he said De Klerk's main fault was that he failed to "rein in" the "third force". Moreover, this strategy was blamed for virtually all the political violence in SA. At one stage even taxi violence was blamed on the "third force".

Subsequently, as expose after expose failed to provide proof of the original theory, the "third force" was redefined. Violence was no longer almost entirely the result of a state-orchestrated plan. Rather, anyone doing anything that led to violence and instability was part of the "third force" — a definition so wide as to make it meaningless.

The most recent allegations are particularly interesting in confirming this shift of thrust. De Klerk is now accused less of orchestrating violence than, as one "third force" pro-pagandist said, of "cheating" during negotiations and the election "by allowing some of the dirty tricks" to continue. Of course, if De Klerk was aware of any crimes and did not try to stop them he should still be held politically accountable and possibly even be charged as an accessory.

The truth has not been served by the alacrity with which the Press has sometimes leapt upon confessions and exposes by former security policemen and undercover practitioners of dirty tricks. Such people are trained in the art of deception. They infiltrate and lie, and they pretend to be what they are not. Instead of what they say being treated with

Truth hearings will be a circus for the

political classes

Business DMJ

10 Aug. 1995

(252)

JOHN KANE-BERMAN

caution, it is sometimes taken as gospel, particularly if it happens to confirm preconceived theories.

De Klerk, reacting to the recently published secret Goldstone report, says he was not prepared to act against Gen Johan van der Merwe, the now retired police commissioner, on the basis of "untested" allegations. This is reasonable, although it deepens the mystery surrounding the 23 Defence Force officers against whom De Klerk acted in December 1992.

Presumably the allegations against them had been "tested" to his satisfaction or he would not have insinuated that some of them had been involved in illegal killings. But he makes no mention of this when he refers to the dismissals in his recent six-and-a-half-page report answering allegations against him. Two-and-a-half years down the road, we still do not know whether any of the 23 were indeed involved in criminal acts and, if so, why they have not been prosecuted.

Another extraordinary thing is why no charges have yet been laid against Van der Merwe and former Law and Order Minister Adriaan Vlok. Goldstone alleged more than a year ago that they "must have" ap-

proved funds for certain criminal acts including murder, fraud and blackmail. Why have they not been charged as accessories? If Col Eugene de Kock can be put on trial, why not his superiors? Do Van der Merwe and Vlok speak the truth when they say the allegations against them by Goldstone were never put to them?

Van der Merwe was branded by Goldstone as a criminal who was "patently unfit" for his job. Mandela, unlike the rest of us, has known about this for a year, since he received the secret Goldstone report at the time of the elections. Mandela's behaviour in relation to Van der Merwe is as puzzling as De Klerk's in relation to the 23 SADF officers. It is barely conceivable that the incoming President did not read the report damning the police chief as he was inheriting from his predecessor. Yet in January this year Mandela thanked Van der Merwe for his leadership of the SA Police and for helping to manage the political transition. The "third force" was designed to prevent.

More puzzling still, last month — on the basis of the same Goldstone report — Mandela said that reading it could lead to "one conclusion and one conclusion only; that this was the man behind the third force activities". It is extraordinary that somebody labelled by Goldstone as "depraved", and by Mandela as the organiser of violence on a horrendous scale, should not have been instantly dismissed, if nothing else.

There was talk some time ago of a major "third force" trial for which

the De Kock trial was but a dress rehearsal. Given what Mandela has now said, it is odd that Van der Merwe still has not appeared before a magistrate to face charges, and at least had his passport impounded to ensure that he stands trial. After all, a man so "depraved" would surely not bat an eyelid in fleeing.

De Klerk says that the NP will not tolerate a one-sided witchhunt by the truth commission. "Brutal neckiace murders", "torture", "violent intimidation" and "terrorism" will not be swept under the carpet, but laid before the commission.

It will be interesting to see how much of this the commission regards as admissible. For example, will Foreign Affairs Minister Alfred Nzo be expected to admit to wrongdoing in calling, as he did, for "collaborators with the enemy" to be eliminated by necklacing if that is what "the people decide to use"?

Will liberation theologians, who devoted a great deal of money and energy to denouncing the very notion of reconciliation, admit before the truth commission that they had some responsibility for the polarisation that occurred?

Those now in power, partly because revolutionary violence helped them to get there, have little incentive to express any misgivings about successful political strategies. Those previously in power, on the other hand, have every reason to make their peace with the new regime by renouncing their past and their failures.

The political classes will not doubt enjoy the spectacle promised by the truth commission while, in the real world, the murders, the hijackings, the sickness, the hunger and the poverty will carry on.

The Romans sought to provide both bread and circuses for the masses. South Africans, losing out on the bread front, will have to be content with circuses.

□ Kane-Berman is SA Institute of Race Relations CE.



VAN DER MERWE

Commission gets backing

(252) Sowetan 11/8/95
Former security chiefs show willingness to cooperate with the truth and commission

Sowetan Correspondent

THE Government yesterday overcame a major obstacle on the establishment of the Truth and Reconciliation Commission when South Africa's former security chiefs, some of whom have been against the commission, pledged support for it.

In a meeting with President Nelson Mandela in Pretoria yesterday, retired police commissioners Mike Geldenhuys, Hennie de Witt, Johan Coetzee and Johan van der Merwe and former SA Defence Force chiefs Jannie Geldenhuys and Constand Viljoen requested equal treatment for politicians and security personnel before the commission.

They also pleaded for a moratorium on pending criminal cases against security policemen and soldiers.

The former security chiefs asked Mandela — who was accompanied by Justice Minister Dullah Omar, Safety and Security Minister Sydney Mufamadi and Defence Minister Joe Modise — that the commission should be han-

dled in an even-handed manner and both sides of the conflict should be called to account for their crimes.

Mandela in turn assured them that the commission would be handled in a fair manner and in accordance with the law as it stands.

Rejecting the call for a moratorium, Mandela said that everybody, including former security personnel, was welcome to apply for amnesty.

At a Press conference after the meeting, Omar said after the generals had pledged their support for the commission, Mandela moved to allay their fears and assured them that the commission would act in an even-handed manner.

He said the generals were primarily concerned about amnesty and ongoing investigations concerning former security force members.

"Regarding amnesty, the President pointed out that the law made provision for an even-handed process.

"The committee that will consider applications will be headed by a judge and not political leaders. Applications will be considered on an individual basis," Omar said.

Consumed by guilt

EVERY NIGHT JEREMY is consumed by guilt and anguish. He suffers from acute insomnia and cannot sleep for days on end.

Jeremy (not his real name) is a well known and popular figure in his township. When he returned from exile five years ago he was welcomed back as a hero.

He has since managed to put his military past behind him and has lived a fairly "normal" life. Recently, however, he has been having nightmares about the missions he undertook as an Umkhonto we Sizwe cadre.

Like thousands of others, Jeremy was forced into exile when the security branch got too hot on his trail. As an MK operative in a highly trained unit, he took part in several successful missions. People died as a result.

Until recently, Jeremy had confined the memories of what he did as an MK soldier to the dark recesses of his mind. He had wanted to make a fresh start and had done his best to reorientate himself to civilian life.

But with the sitting of the Truth Commission a certainty, he is afraid of what might come out. "There are a lot of things I did that no one knows about," he admitted this week.

"As a trained member of a unit I undertook missions with others and by myself. Each time, a report was sent to my commanders and this information is floating about somewhere."

Past actions justified

Jeremy says that during the "revolutionary fervour" of the '80s, it was easy to justify his actions. A decade later, he is a civilian and has been re-assimilated into his community.

Many of the people he now works and socialises with did not share his revolutionary zeal and he is afraid of what may happen if revelations of his activities are made to the Truth Commission.

"I'm scared of being shunned by people. I'm not sure that I can live with that," says Jeremy.

"For years I've been suppressing my anxiety. What if people find my deeds unacceptable?"

"My personal relationships with people will be affected. I may have to quit my job. It was very hard finding this one and I'm not trained for any career."

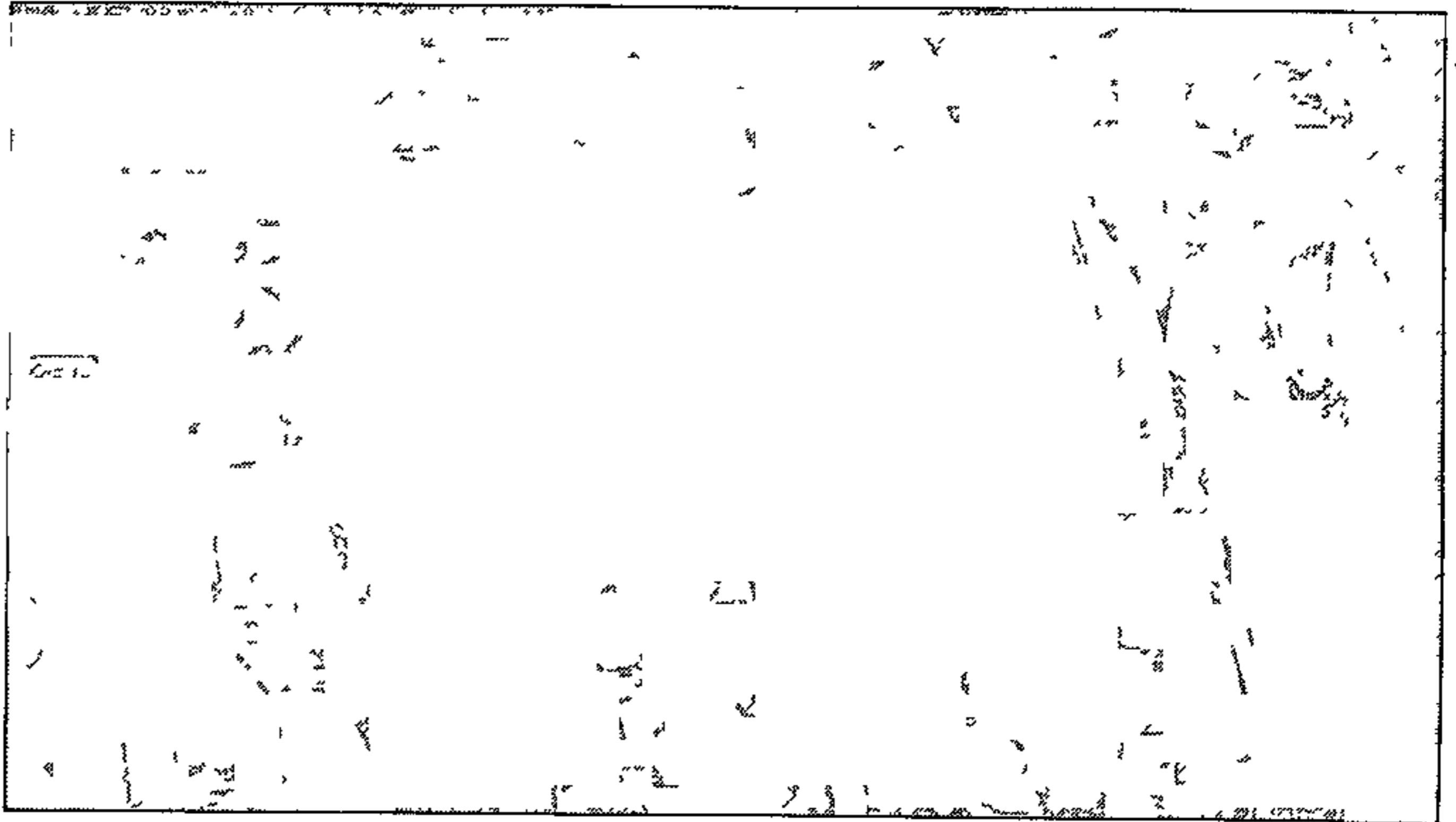
The possibility of revenge weighs heavily on his mind. "What if I know the children of some of the people I've hurt?" he asks.

He fears that many MK people, faced with questions about their past, may not be able to cope and will resort to suicide.

"We are living in a different era. Hardened revolutionaries have softened, they're civilians. What was acceptable in the past won't necessarily be tolerated now," he says.

"I'm faced with enormous ethical questions, like is it right to take another person's life? Even if I am forgiven I still have to live with myself and I'm

Former MK cadre members live in fear of what the Truth Commission will reveal of their past actions, reports Sharon Chetty (262) Sewelam 9/8/95



FLASHBACK ... MK soldiers complain that once they were heroes, but now they may have to account for their actions in front of the Truth Commission.

not sure that I forgive myself.

"Over the past few years, I locked away all these memories - now the floodgates will be opened and it's going to be very painful."

Theodore (not his real name) was 21 when he went into exile in the early '80s. He, too, has committed certain acts that no one knows about.

In his 10 years in exile, many as a footsoldier operating out of the Frontline States, he progressed rapidly through the MK ranks. At the time of the ANC's unbanning, he was based at military headquarters in Lusaka, Zambia.

He married a fellow cadre in exile and their first child was born three years ago.

His reservations about the Truth Commission stem from what he describes as the ANC's "selling out and marginalisation of MK."

MK members, he said, were heroes in the past. Once negotiations started, however, they were ignored. Now they will have to account for their actions in a war they knew was just.

He agrees that there has to be a "cleansing" process and that the truth about the past must come out. MK people, however, are going to be the ones who will suffer most, he feels, and they are in a quandary.

Whereas the policemen and soldiers who committed atrocities were working under orders, MK people had to fend for themselves much of the time.

"We had a grand plan and ideas about what we had to do. But a lot depended on the individual because we were an underground movement," he said.

"The other difference is that while the Boers may want to tell their stories to ease their conscience, for us to relive the past will be an added trauma.

"Most of us spent an average 10 years of in exile. There isn't anyone I know who served in the camps who has not had a life-and-death experience.

"When we returned, there was absolutely no support from the ANC - we had to learn to cope in a changed country by ourselves.

"Now that we've settled down, started our families, got jobs and reintegrated, our whole lives may come apart because of revelations that may be made.

"It's not going to be easy. Don't expect many MK people to volunteer to go before the commission.

"With cleansing there has to be bloodletting. Once again it's going to be MK blood that's going to be spilt.

"When most of us joined the movement, it was tough. We knew that we had to do certain things to achieve our liberation.

"Now we have to apologise for that. People have so quickly forgotten that MK contributed to

Truth probe men worried

Star 10/8/95

(252)

BY MONDLI MAKHANYA
POLITICAL REPORTER

V0V1U
A delegation of former top police and army generals will meet President Mandela today to voice their concerns about the truth commission

The delegation, led by Freedom Front leader and former SA Defence Force chief of staff General Constand Viljoen and retired police commissioner Major-General Johan van der Merwe, will tell Mandela about the "unease" among serving

and retired security personnel regarding the commission

The meeting with the men who were at the centre of apartheid's security machinery is regarded as crucial as the truth commission will need the co-operation of security personnel if it is to succeed. Mandela is also keen to reassure the generals that the primary purpose is to uncover the truth and not to conduct a witch-hunt against individuals.

"These guys can either make or break the truth commission," a senior government official said.

Generals for truth probe

(252)

ET 11/8/95

SPECIAL CORRESPONDENT

JOHANNESBURG: The government overcame a major obstacle yesterday regarding the Truth and Reconciliation Commission when South Africa's former security chiefs, some of who were against the commission, pledged their support for it.

In a meeting with President Nelson Mandela yesterday, retired police commissioners General Mike Geldenhuys, General Henne de Witt, General Johan Coetzee and General Johan van der Merwe and former SADF chiefs General Jannie Geldenhuys and General Constand Viljoen requested equal treatment for politicians and security staff before the commission.

They also asked for a moratorium on cases pending against security policemen and soldiers.

The generals asked Mr Mandela — who was accompanied by, among others, Justice Minister Mr Dullah Omar and Defence Minister Mr Joe Modise — that the commission should be handled fairly and that both sides should be called to account for their crimes.

Rejecting the call for a moratorium, Mr Mandela said everybody, including former security personnel, could apply for amnesty.

He assured them the commission would be handled fairly.

● See Page 5

Drive to revamp SA's legal system

(252) ARG 11/8/95

'Quick-fix crime laws won't work'

Political Correspondent

LAWs to combat the crime wave should not open the way to authoritarianism, says Johnny de Lange, chairman of the national assembly justice committee.

"We need to guard against falling back into old, authoritarian ways by proposing — usually emotionally and with little basis in rationality — mechanisms which are anti-democratic, anti-people and the antithesis of a human rights culture.

"These short-term, quick-fix solutions have not worked anywhere in the world, as far as I am aware."

Mr De Lange made the comments when introducing his committee's proposed agenda for legislation and hearings.

He said part of the programme, notably the amendments to the Criminal Procedure Act to change the law on granting bail, would help in combating crime.

CLIVE SAWYER
Political Correspondent

A BATTERY of bills reforming South Africa's legal and judicial system will keep parliament's justice committee busy this session

Justice Minister Dullah Omar has tabled several pieces of legislation and has more in the pipeline for presentation to the cabinet

Not yet on the agenda, although acknowledged as a strong possibility, are further amendments to truth and reconciliation commission legislation

It is unclear whether the committee and parliament will be able to complete its heavy workload in the four-week sitting starting next Tuesday

Public hearings are to be held on the Emergency Bill and Right of Appearance in Courts Bill

Other forthcoming legislation includes the Judicial Matters Amendment Bill, which provides for the rationalisation of magistrates' courts

The Criminal Procedure Amendment Bill will set guidelines for magistrates in granting bail

It will give magistrates wid-

er inquisitorial powers in bail hearings

The First General Law Amendment Bill removes references to the former South West Africa from all laws

Legislation still being scrutinised by state law advisers includes the ratification of the Hague Convention on Civil Aspects of International Child Abduction, the Legal Aid Amendment Bill, and the Interception and Monitoring Prohibition Amendment Bill

The last bill will amend legislation which allows monitoring of telecommunications

At present the law allows only retired judges to preside at hearings to decide whether to allow monitoring. A ministerial spokesman said the category of those who would be allowed to preside was to be broadened

Legislation still to be approved by the cabinet includes a law to broaden access of fathers to their illegitimate children

This follows recommendations in an SA Law Commission report

The Magistrates' Courts Amendment Bill will end imprisonment for debt

'Truth' gets generals' nod

STON 11/8/95 (252)

BY MONDLI MAKHANYA
POLITICAL REPORTER

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The former security chiefs told Mandela — who was accompanied by Justice Minister Dullah Omar, Safety and Security Minister Sydney Mufamadi and Defence Minister Joe Modise — that the truth commission should be handled in an even-handed manner and both sides of the conflict should be called to account for their crimes.

Mandela in turn assured them that the commission would be handled fairly and in accordance with the law as it stands.

Rejecting the call for a

moratorium, Mandela said everybody, including former security personnel, was welcome to apply for amnesty.

At a press conference following the meeting, Omar said that after the generals had "pledged their support" for the commission, Mandela moved to allay their fears and assured them that the probe would be fair.

He said the generals were primarily concerned about amnesty and ongoing investigations concerning former security force members.

"Regarding amnesty, the president pointed out that the law made provision for an even-handed process. The committee that will consider applica-

tions will be headed by a judge and not political leaders. Applications will be considered on an individual basis," Omar said.

There had been discussions in military and police circles about a joint submission by top personnel to the commission.

Omar said Mandela had told the generals that where evidence was sufficient to justify prosecutions, the attorney-general would be bound by law to prosecute.

The generals had also accepted that human rights violations had occurred in the past.

"They realised the violations needed to be dealt with by the truth and reconciliation commission," Omar said.

Haggling holding back the truth commission

(252) Star 12/8/95

It is likely President Mandela will take into account the positions of various lobby groups on the appointment of commissioners to the truth commission, writes **BRONWYN WILKINSON**

While the process to set up the truth commission overcame a major obstacle this week with a pledge of support to President Mandela from former security chiefs, it is now being held back by haggling over the appointment of the commissioners.

Although the legislation gives the final decision on an appointment process to Mandela and the Cabinet, several lobby groups have voiced their positions on the matter and it is likely Mandela will take these into consideration before he announces a decision in the next couple of weeks.

Sue de Villiers, a spokesman

for Minister of Justice Dullah Omar, told the *Saturday Star* that the commission was to be set up by October, but that the infrastructure would not be fully in place by then

Once the commissioners had been appointed, she said, they needed to find offices and employ staff

Consensus

On the issue of decentralisation of the commission, De Villiers said consensus had finally been reached that the commissioners would have to travel to reach the people instead of the other way around.

Graeme Simpson, a spokesman for a coalition of non-governmental lobby groups, said the haggling over the commission's appointment process had been intense, but the decision was now up to Mandela and the Cabinet

Mandela this week met former security chiefs who, after

being assured there would be no witch-hunt, gave their support to the commission and pledged their co-operation

Retired police commissioners Mike Geldenhuys, Hennie de Witt, Johan Coetzee and Johan van der Merwe, and former South African Defence Force chiefs Jannie Geldenhuys and Constand Viljoen, met Mandela and Omar in Pretoria this week and requested equal treatment for politicians and security personnel before the commission.

The meeting was also attended by Safety and Security Minister Sydney Mufamadi and Defence Minister Joe Modise.

Mandela assured the generals that the commission would be handled fairly, but he rejected a call from the generals for a moratorium on criminal cases pending against soldiers and police

He said everybody, including former security personnel, was welcome to apply for amnesty.

E Cape takes up school feeding scandal with Govt, slams 'haphazard policies'

(252) Star 12/8/95

OWN CORRESPONDENT

Port Elizabeth — The Eastern Cape government, which in the past week has come under strong public and official criticism for its poor handling of its multimillion-rand school feeding fund, is planning to take the matter up with the national Government on August 21.

Provincial director-general Thozamile Botha yesterday said provinces felt aggrieved at having to endure criticism for failing to implement policies passed haphazardly by the national Government

Botha's statements in discussions with the Government followed his startling admission on Wednesday that Bisho had, indeed, failed to prepare properly for the implementation of the ill-fated feeding scheme. The admission came amid reports that the provincial R107-million pri-

mary schools nutrition programme (PSNP) — which has been temporarily suspended — had been defrauded of amounts estimated at between R2,34-million and R5-million.

An investigation involving external auditors, the national RDP office and the police Commercial Crime Unit had been launched and was expected to report to the Government soon.

Criticised

Botha's statement also coincided with a call from President Nelson Mandela for an extensive audit of the PSNP throughout the country.

Botha said yesterday that provinces, and Eastern Cape in particular, were being criticised for issues that they were "not really responsible for".

"The problem faced by provinces is directly related to the manner in which policy is intro-

duced by the Government. They introduce a policy today for implementation tomorrow, doing so without adequate provision for an enabling process to facilitate implementation. Yet, when things do not work out as envisaged, an impression is created that provinces are not planning properly.

Presidential spokesman Parks Mankahlana said in Pretoria that Mandela would "quite soon" ask for audits of all presidential schemes, including the feeding scheme, which has been plagued by fund shortages and allegations of corruption and mismanagement. The call came amid reports by the PSNP's national directorate that the number of children benefiting from the scheme had dropped from 5,4-million early this year to 3,1-million. The figures were confirmed by PSNP national coordinator Dianne Kloka.

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Law society covers up scandal over bribes

ST 13/8/95

(252)

By JEREMY WOODS

THE Cape Law Society has closed ranks to cover up details of a racket in which 20 top attorneys paid state officials to help them register property transfers.

A senior deeds office official allegedly involved in the scam is due to appear in the Cape Town magistrate's court tomorrow on charges of bribery and corruption.

The attorneys, some from the Cape's most prominent firms, have already quietly paid R92 000 in fines to the law society after being found guilty of professional misconduct in internal inquiries.

But the society, citing a two-year-old resolution, this week refused to name the attorneys involved or their firms. They claimed the guilty parties might be "stigmatised".

There have been no moves to have the attorneys struck from the roll.

A Cape attorney whose firm was not involved in the racket said "A member of the public would probably go to jail for bribery. Why are attorneys holy cows?"

Another senior partner in a legal firm said it was outrageous that the attorneys had not been named and, if necessary, struck from the roll.

Ingrid Hoffman, the director of the Cape Law Society, confirmed this week that 20 attorneys had been found guilty of "professional misconduct" relating to payments to deeds office officials and had been fined amounts varying between R2 500 and R13 000.

Asked why their names were not published, Mrs Hoffman said "Their names will never be mentioned by us. We had a big debate two years ago and the members of the society decided that names should not be published over disciplinary matters."

Mrs Hoffman explained that, after being found guilty and fined, a member could take the finding on review to the Supreme Court.

"The process takes a long time. A member would be stigmatised if there had been a misdirection by the disciplinary council. That's why members voted against the publication of names."

But, she said, there was nothing to stop a member bringing an amendment to the ruling at the society's next annual general meeting in October.

Explaining why the attorneys had not been struck from the roll, Mrs Hoffman said

"None of them were fined for bribery and corruption. They consulted deeds office officials after hours if they had problems with deeds."

"All were fined for having acted unprofessionally by having paid deeds office officials."

Asked what the difference was between bribery and paying deeds office officials, she said "That is a very long argument and I would like to refer you to someone else who can give it better than I."

Lawyers' deed scam covered up

⇒ From Page 1

Investigating the matter, and charges would presumably be laid against the 20 attorneys if the evidence warranted them.

The Cape publication *Noseweek* alleged in its latest edition this week that staff of Sonnenberg Hoffman and Galombik, a top Cape legal firm, had been involved.

Noseweek alleged the firm made two payments, one of R2 500 and the other of R500, to a deeds office examiner. The payments were the subject of a law society disciplinary committee hearing on April 19.

A former employee is reportedly a witness against the deeds office official facing charges.

David Nurek, a senior partner at the firm, said yesterday the matter was sub judice.

A spokesman for the Office for Serious Economic Offences, the top Justice Department unit used to investigate serious fraud, confirmed this week that its findings on the matter had been handed to the Cape attorney general "with certain recommendations". Corruption and bribery charges are being considered.

Tony Hardy, the president of the Association of Law Societies and a council member of the Cape body, distanced himself from its decision not to release the names of members internally disciplined.

He said the time had come for the rule to be changed.

Jim McIntosh, the society's vice-president, said "We thought about this for a very long time. The payments were not payments to expedite the registration of a transfer."

"They were payments for assistance rendered in the preparation of a complex conveyancing transaction."

He said the attorney general's office was still inves-

To Page 2 ⇒

Advocates vote to bypass courts

ST 13/8/95
By CARMEL RICKARD

(252)

ADVOCATES are to set up a new centre in Johannesburg's northern suburbs where clients can settle civil disputes without going to court.

The idea was given the backing of an overwhelming majority of Johannesburg Bar members at a special meeting this week.

Michael Kuper SC, chairman of the Johannesburg Bar Council, said members of the bar would continue to maintain downtown chambers, but would now be able to consult in the proposed new centre as well.

The centre would also offer a base for resolving civil disputes if parties preferred not to use the court system.

Accountants doing legal work, architects, engineer and attorneys are all involved in resolving disputes. We would say to them: come and resolve problems at our centre. We would also invite them to contribute their skills to resolving the disputes of others.

"For example, it has already been tried successfully in this country to have lawyers and accountants sitting jointly as arbitrators in resolving a dispute."

The idea of an out-of-town base for the Bar was originally mooted earlier this year. Supporters of the plan said that many business people disliked going to court in the CBD because the streets were dangerous and the courts badly equipped, inconvenient and inflexible.

Mr Kuper said the new centre would provide business, industry and labour with facilities for the "quick, competent and confidential settlement of disputes".

Lay assessors to help magistrates

Source: 14/8/95 (252)

By Khathu Mamalia

THE GOAT of an elderly Venda woman was once stolen by a young man who lived in the neighbourhood. The matter was reported to the police and the suspect was arrested.

The complainant was called on to testify in court. Asked by the prosecutor if the accused had stolen her goat, the witness said "Anga thuyva a tsvela ts'havi iyu? Ha tswi mus?"

The interpreter gave a literal translation "Can this one steal from the poor? He does not steal."

Not realising that the complainant was being sarcastic, the magistrate acquitted the accused because the sole witness had exonerated him.

Frustration with outcome

The court's finding frustrated the complainant and she concluded there had been a miscarriage of justice. As far as he was concerned, the judicial system could not serve her.

This is a classical example of what could happen in court if the presiding officer does not understand the profile and circumstances of the

Community participation will improve the image of the courts, it is hoped

ed by their beliefs? Would a lay assessor who believes in witchcraft be able to convict a youth accused of assaulting an alleged witch?

Mengwan argued that the accused would stand a better chance of arguing his case as the lay assessor would understand him better because the latter lived in the same village.

To a foreigner, the accused could appear to be a heartless and brutal villain - but to locals, including the assessor, the accused might seem to be a selfless hero committed to freeing his village of evil people, according to Mengwan.

Rabe said there were mechanisms in place to deal with assessors who proved to be biased in their finding.

Objectivity

"The assessors would be sworn in and they would be expected to be objective. As soon as the assessor is not objective, an application could be made and he would be excused," said Rabe.

However, Petersburg-based lawyer Mr Don Nkadimeng is sceptical about the programme to involve lay assessors in criminal trials in magistrate's courts.

He said "The Ministry should have started with a training programme before throwing this sensitive area open to lay people."

Witchcraft

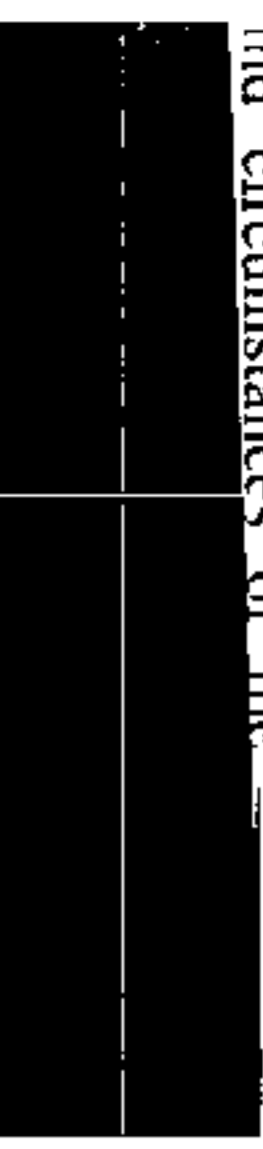
"In the Northern Province, for example, it will be difficult to find a lay assessor who does not believe in witchcraft. If such an assessor was requested to make a factual finding on the existence or otherwise of this benighted belief, the results may be catastrophic for the criminal justice system."

"It is even more frightening when one considers that the presiding magistrate may be outvoted by lay assessors on factual issues."

Whether the system will produce the desired results remains to be seen.



Lawyer Don Nkadimeng ... the involvement of lay assessors in criminal trials is very risky.



complainant and the accused

This is why the Justice Ministry has introduced the system of lay assessors – to make the judicial system accessible to all

The system has been introduced in Thabamoope district in the Northern Province.

Explaining how the system works, Thabamoope Lay Assessors Association spokesman Mr Simon Mengwai said lay assessors would help the magistrate to understand the background of the case and would clarify confusing terminology

Asked what qualifications were needed to be an assessor, Mengwai said "No qualification is required. As long as you live in the particular district, you can submit your name and stand for election with other candidates."

The lay assessor would be paid R250 a day by the government

Their powers

Mengwai said lay assessors would have the power to overturn the magistrate's ruling.

Justice Department spokesman Mr Charles Rabe confirmed that this was so. But he emphasised that overturning the finding had to be based on facts and not on the application of the law.

"They could overturn the decision of the magistrate only on the basis of the evidence led in court and not on legal points."

Rabe said the idea was to make the law more accessible to the majority of the people. Many people did not have confidence in the courts. Community participation in court proceedings would improve the image of the courts.

But what if the objectivity of the assessors was tainted?

Sowetan

14/8/95

252

'Church must take part in healing'

By Joe Mdhlela
Political Reporter

THE CHURCH MUST not only involve itself in the process of the truth and reconciliation campaign but should also facilitate the healing process to both victim and perpetrator

This is according to general secretary of the South African Council of Churches, Ms Brigalia Bam, who was speaking at the close of the SACC-sponsored national conference on Christianity, African Culture and Development in Southern Africa at the

SACC takes stance on truth and reconciliation process (252) (252)

Sowetan 14/8/95

weekend

She said a task group to involve itself in this process would be established soon

African flavour

The four-day conference at the Telkom College in Olifantsfontein, also sought to redefine Christianity, giving it an African flavour

Kenyan Professor Gilbert Ogutu of the University of Nairobi, Professor

Mazisi Kunene of Natal University, Dr Mthobeli Guma of the University of the Western Cape and the Methodist Church's Bishop Stanley Mogoba were among speakers who participated in the conference

Bam said the SACC had already spoken to Minister of Justice Mr Dulla Omar about how the church planned to get involved in the process

The minister's response had been positive

(252)
 Disciplined attorneys may face exposure
 Star 15/8/95

■ BY NORMAN CHANDLER
 PRETORIA BUREAU

The Association of Law Societies is investigating whether the names of attorneys disciplined by law societies should be published if they commit unprofessional, dishonourable or unworthy acts of conduct

President Tony Hardy said in Pretoria yesterday that individual societies — those of the Transvaal, Cape, Natal and Free State — had the right to decide whether "to adopt the publication route"

He was commenting on media criticism of a decision by the Cape Law Society (CLS) to with-

hold names of attorneys who paid fines to Cape Town Deeds Office officials who helped them register property transfers.

Democratic Party spokesman Douglas Gibson has alleged that the CLS decision was a breach of the legal system's basic principle that justice must be seen to be done.

Hardy said in Pretoria yesterday: "As the profession is presently structured, the individual law societies have the autonomy to decide whether or not to adopt the publication route. The members of the Cape Law Society, like the other three law societies, have resolved that names

of disciplined attorneys should not be published and this resolution is followed by all the councils of the societies"

However, at a meeting on July 27, Hardy said concerning disciplinary measures the ALS had come to the conclusion that "there is a need for uniform procedures to be adopted by the different societies".

The ALS has formed a special committee to investigate and make recommendations

"The investigation will cover issues such as the right of complainants to be present at disciplinary hearings, their right to be legally represented at such hearings, whether such hearings

should be otherwise open to the public, whether lay observers or participants should become part of the disciplinary process and whether the names of disciplined members should be published," Hardy said

Factors

The ALS was, he added, "acutely aware of the need for transparency and openness in this particular field of attorneys practice, just as in all other fields of that practice and these are factors that will clearly be taken into account in future deliberations on this subject"

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Demarcation model shown

(251) Star 15/8/95

BY PAULA FRAY

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The Gauteng cabinet will review final ward demarcation proposals for Greater Johannesburg tomorrow

The demarcation board's hearings were completed in Braamfontein yesterday and various proposals discussed

Demarcation board acting chairman Mavela Dlamini said the board would meet with provincial officials prior to cabinet discussions.

Tony Thompson, elections preparations project manager for Greater Johannesburg Transitional Metropolitan Council, presented the four-substructure ward demarcation model. Consensus on some proposals had already been reached before yesterday, where alternative submissions on demarcation within the statutory halves of the Northern, Southern and Western substructures were made

On the basis of a voting population of 1,81-million, Greater Johannesburg's four substructures will have 220 seats collectively. Of these, 60% (132) will be filled by ward representatives and 40% (88) by proportionally elected representatives

The breakdown of wards is as follows:

- Northern MSS (Greater Randburg): 50 seats of which 30 are for wards and 20 for proportional representation;
- Eastern MSS (Greater Sandton): 60 seats of which 36 are for wards and 24 are proportional representation;
- Western MSS (Greater Roodepoort): 40 seats of which 24 will represent wards and 16 are for proportional representation;
- Southern MSS (Greater Soweto/Johannesburg): 70 seats of which 42 are wards and 28 proportional representation

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Bar council is heading north

BY TAMSEN DE BEER

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The Johannesburg Bar Council has voted overwhelmingly in favour of establishing an arbitration and consultation facility in the northern suburbs.

The Society of Advocates in

(252) Star 15/8/95

the city decided last week to set up consultation rooms in Sandton to "provide easier access to counsel by those who need legal advice", according to council chairman Michael Kuper

The Bar will, however, retain its presence in the CBD

Summary

The Truth and Reconciliation Commission has not political team - **Kaizer Nyatumba, Patrick Bul and Mondli Makhanya** - publishes what it b-

Could they lead

Although the Promotion of National Unity and Reconciliation Bill signed by President Nelson Mandela last month allows for between 11 and 17 people to serve on the commission, we list below 26 names of men and women of integrity who could give the commission the independence it needs. We have decided on more names in case some of the people listed below are not available. The unanimous choice for the position of chairman of the commission is Archbishop Desmond Tutu.

Archbishop Desmond Tutu
The country's second Nobel Peace Prize laureate after late ANC leader Chief Albert Luthuli, Tutu has consistently opposed human rights abuses throughout the world. He has yet again proved his independence by taking shots at the ANC-led Government of National Unity from time to time.

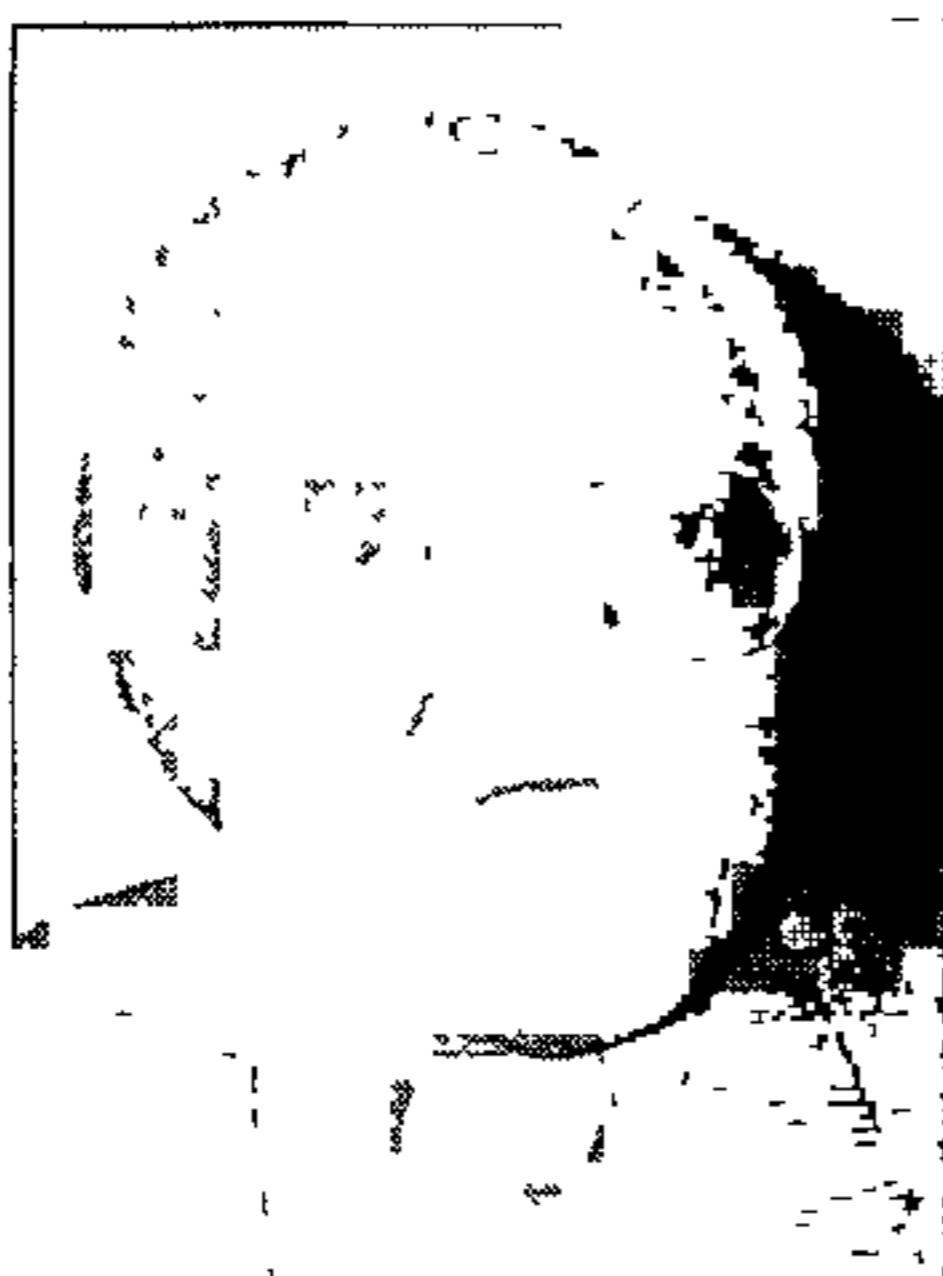
Robben Island

The Rev Dr Stanley Mogoba
An ardent advocate of peaceful negotiations, Mogoba is a former Robben Island prisoner who was jailed for PAC-related activities. He has received awards for his fight against human rights abuses and is head of the Methodist Church. Human rights, religious and political background make him an ideal head of the Truth Commission.

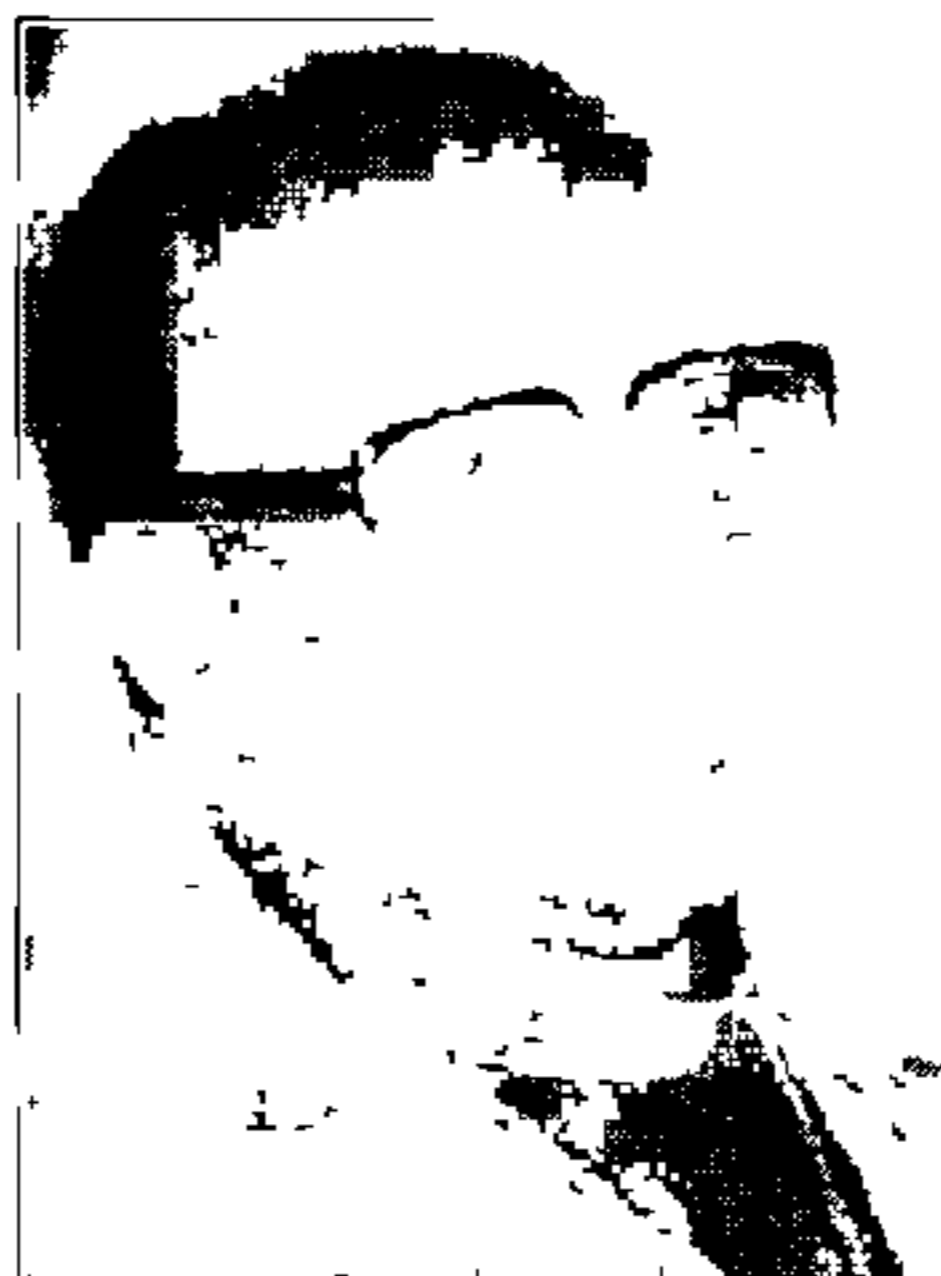
Helen Suzman
A former MP, Suzman single-handedly opposed the National Party government and its apartheid policies in Parliament for many years. She has a strong human rights record combined with determined liberal principles. She served on the Independent Electoral Commission and is widely respected both in South Africa and abroad.

John de Gruchy
A prominent churchman in the United Congregational Church of South Africa, De Gruchy is a religious studies professor at the University of Cape Town. He has written widely on apartheid and its effects on society. He strongly opposed P W Botha's 1983 tricameral constitution and is an ardent supporter of reconciliation.

Johan Degenaar
A prominent Afrikaner academic, Degenaar is a professor of political philosophy at the University of Stellenbosch. He gave evidence in the "Bethal"



Desmond Tutu



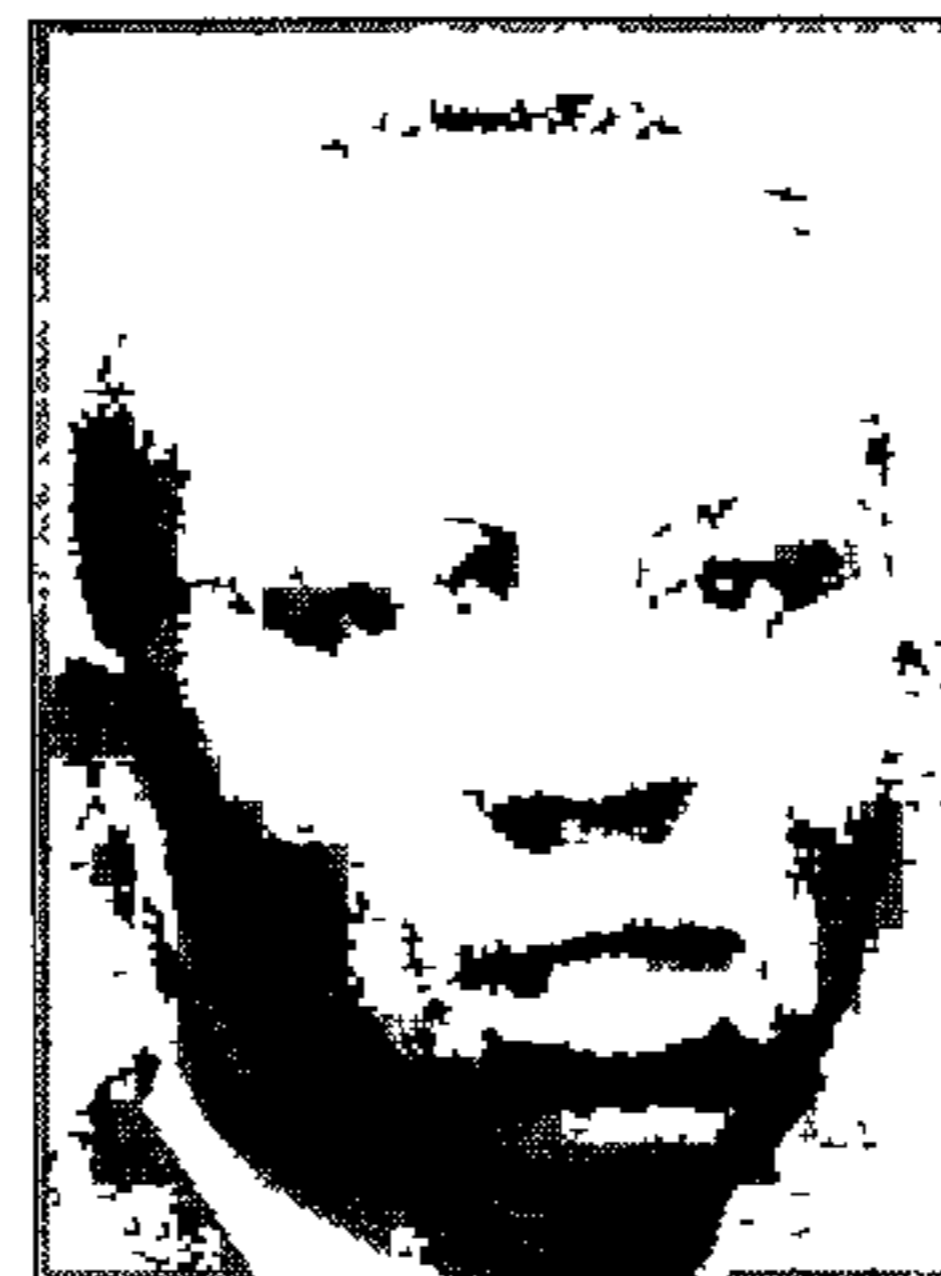
Stanley Mogoba



Jimmy Carter



June Sinclair



Dikgang Moseneke



Mamphela Ramphele

treason trial and is considered an expert on "structural violence".
Professor Charles Dlamini
The Rector of the University of Zululand since 1993, Dlamini is a prominent legal academic who has served in the past on the SA Law Commission. His legal background would serve him well on the Truth Commission.

Zac Yacoob
An advocate and civil rights campaigner, Yacoob - who is blind - is well respected both in SA and abroad. He was an IEC commissioner and the legal representative for UDF figures who took refuge in the British consulate in Durban in the 1980s.

Norgaard Principles

Professor Carl Norgaard
The author of the Norgaard Principles on which the Truth Commission will operate, Norgaard was involved in the Namibian independence process.

Jimmy Carter
A former US president, Carter has become known in recent years for his efforts at international mediation in incidents like the North Korea nuclear dispute and the Haiti crisis. He has good credentials as an understanding negotiator and, together with Norgaard, would provide the international input the commission seeks.

Professor June Sinclair
Deputy Vice-Chancellor of the University of Witwatersrand, Sinclair is generally respected in legal circles for her incisive mind. She was nominated for the Constitutional Court.

Eugene Nyati
An independent thinker, Nyati has made his mark as an outspoken but non-partisan socio-political commentator. He is the Director of the Centre for African Studies in Johannesburg.
Dr Oscar Dhlomo
Dhlomo sent shockwaves through KwaZulu-

Natal three years ago when he resigned from the IFP and as Education and Culture Minister in the KwaZulu government. He was a lecturer at the University of Zululand before joining the homeland government. His political background notwithstanding, he is an independent man who now heads the Durban-based, non-partisan Institute for Multi-Party Democracy.

Advocate Dikgang Moseneke
Now Managing Director of Telkom, Moseneke is one of the brightest legal minds in the country. A former Deputy President of the PAC, he is a man of integrity with a mind of his own. He was one of the experts who helped with the drafting of the Interim Constitution.

Dr Mamphela Ramphele
A close associate of late Black Consciousness leader Steve Biko in the mid-70s, Ramphele has since

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STATEMENTS OF STANDARD ACCOUNTING PRACTICE

Segmental reporting

(Issued June 1990)

The provisions of this statement of standard accounting practice should be read in conjunction with the Explanatory Foreword to accounting standards and need not be applied to immaterial items

SEGMENTAL REPORTING

2.125

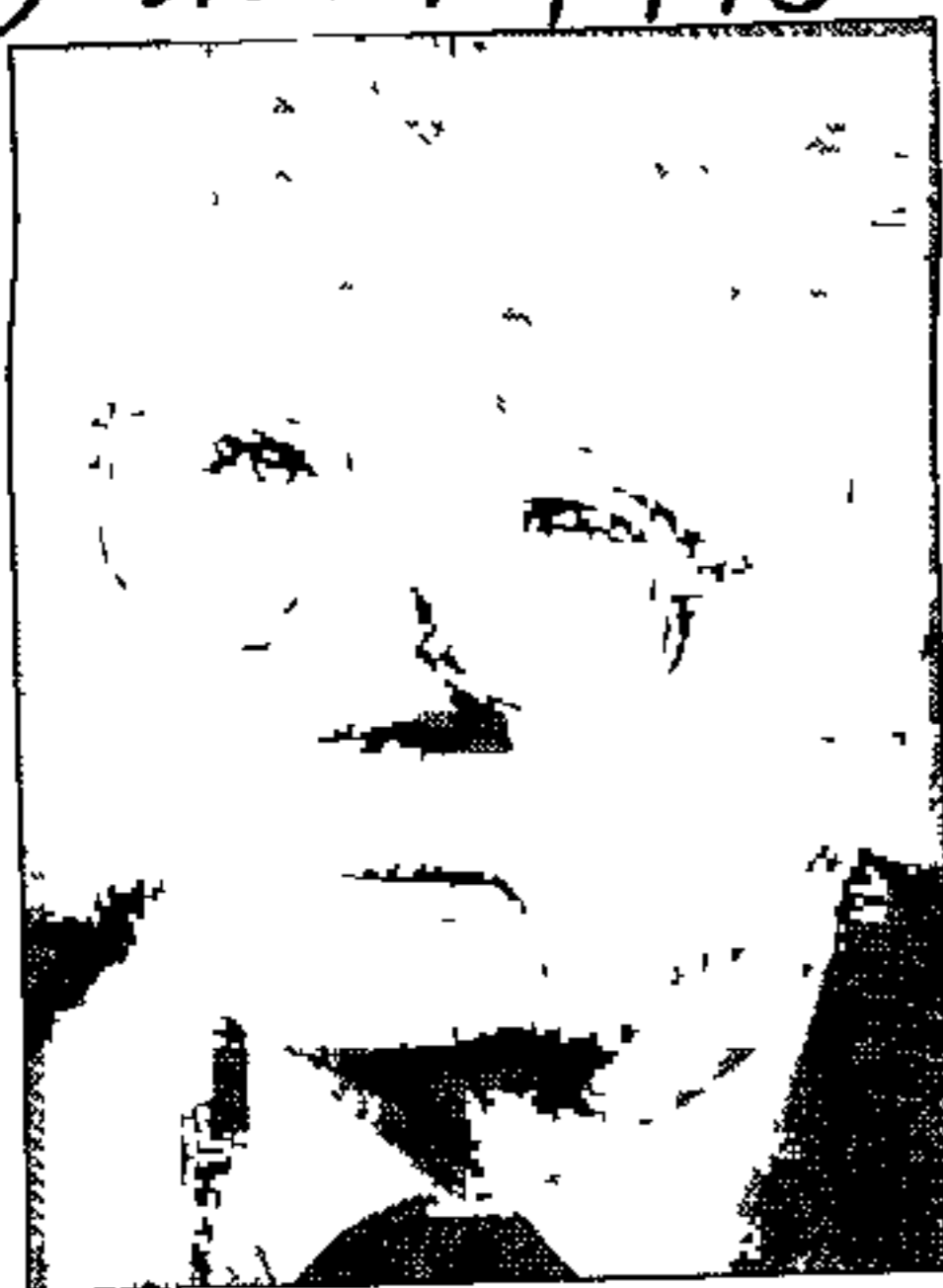
However, a subsidiary that is not a public limited company or a banking or insurance company need not comply with these provisions if its parent provides segmental information in compliance with this accounting standard

All entities are encouraged to apply the provisions of this accounting standard in all financial statements intended to give a true and fair view of the financial position and

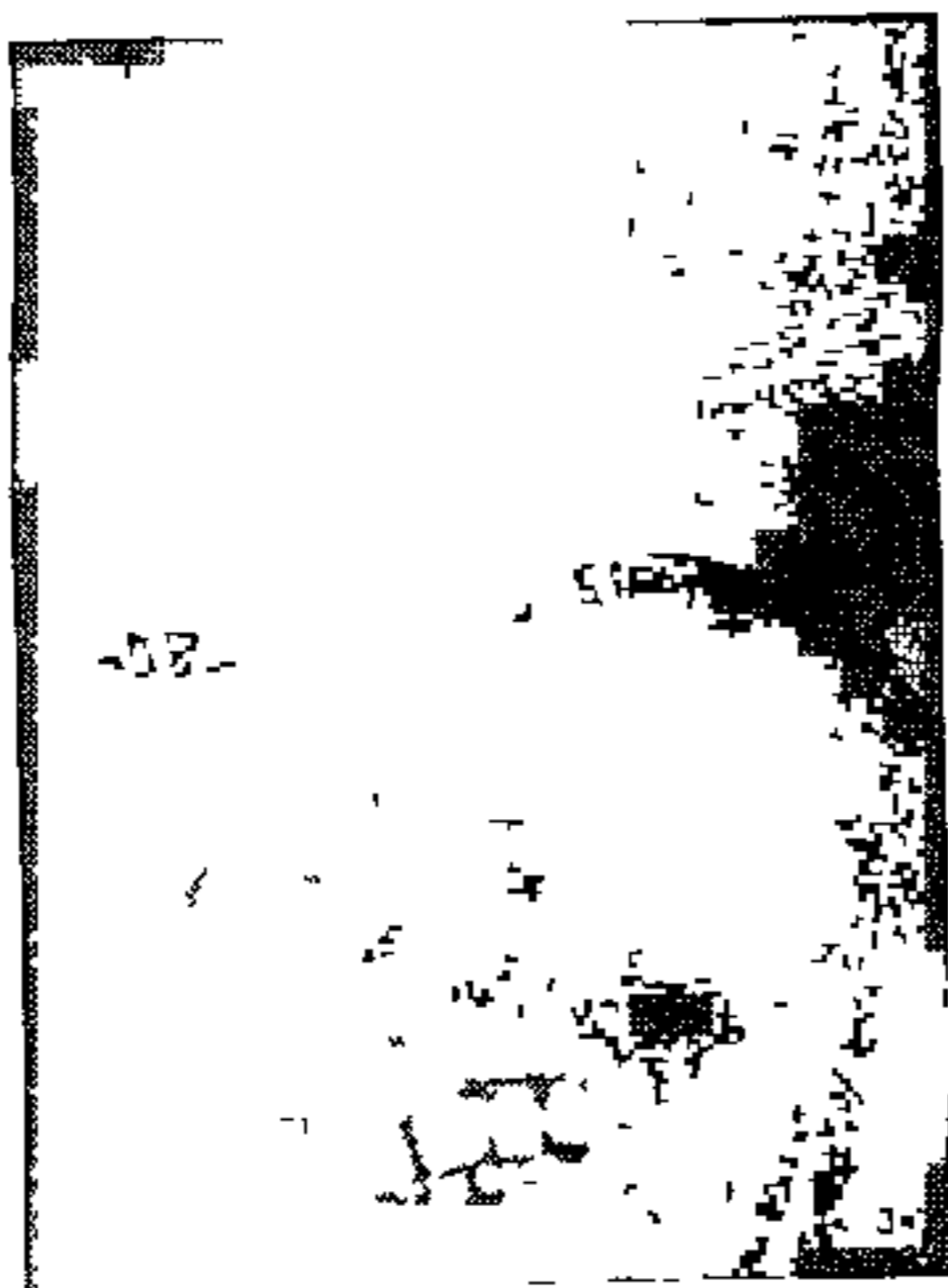
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is to truth?

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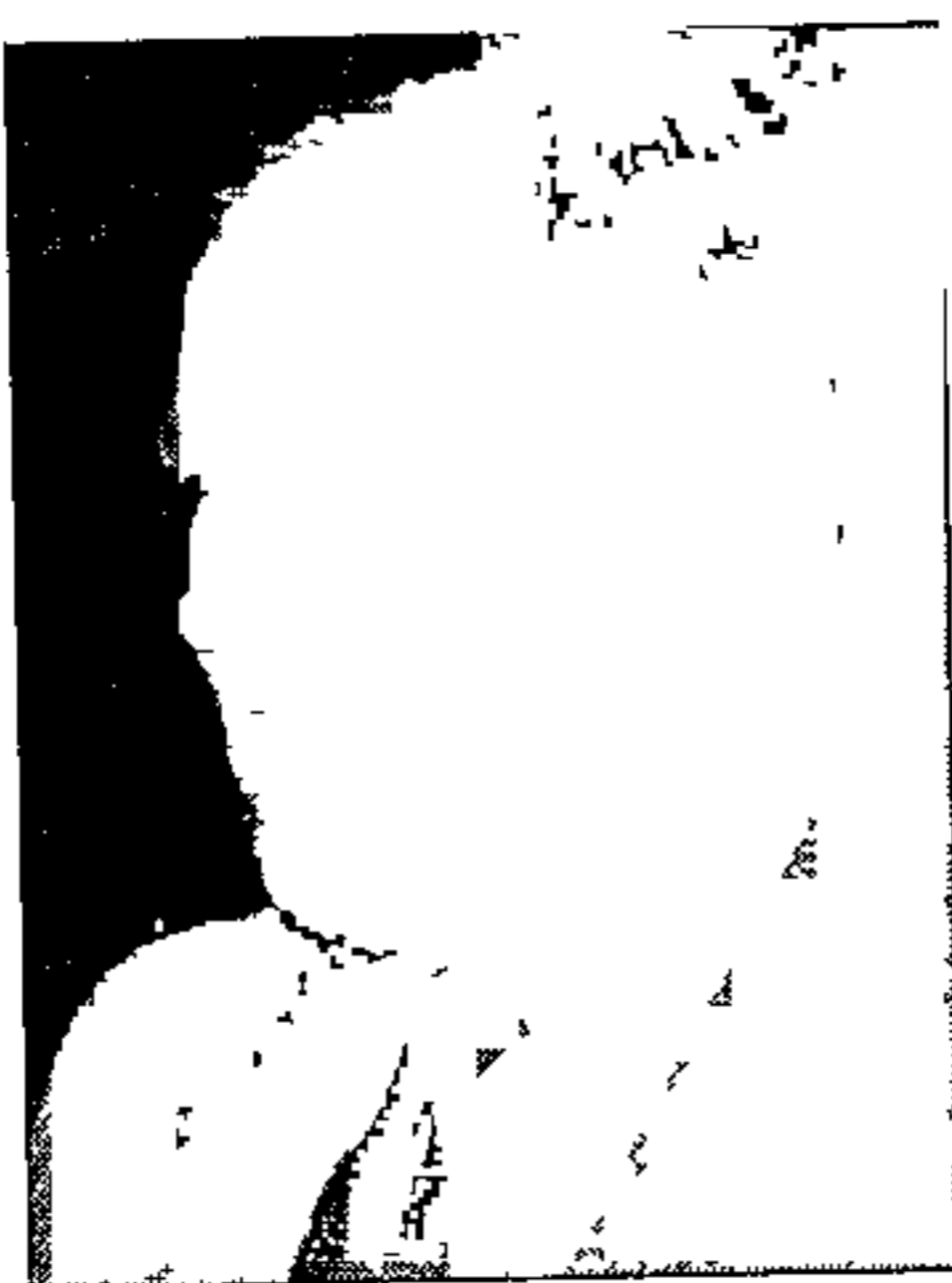
Beyers Naude



Jon Qwelane



Dennis Davis



John Dugard

businessmen that met the exiled ANC leadership in Lusaka in 1985. Having never overtly flown any political flag, he would have the confidence of both sides of the political divide. He also has plenty of time on his hands.

The Rev Freek Swanepoel: The man charged with ensuring the Ned Geref Kerk sheds its image as the body that for decades offered a theological justification for apartheid, Swanepoel has earned a lot of respect in the political and religious spheres. His presence on the commission would greatly enhance its credibility within the security establishment, much of whose role in human violations was premised on holding "godless communism" at bay.

Charles Nupen: A lawyer who has mediated in many labour disputes, Nupen is the former director of the Independent Mediation Services of South Africa and was an IEC commissioner. He was recently involved in mediating a deadlock between trade unions and big business on the Draft Labour Relations Bill.

Jody Kollapen: A national director of Lawyers for Human Rights, Kollapen is well known in the legal fraternity for his litigation skills and was in demand during the political turmoil in the '80s.

African thought

Professor Herbert Vilakazi: A head of the sociology department at the University of Zululand, Vilakazi is the Executive Director of the Council for African Thought and has contributed a number of papers to newspapers and other forums. Although he is believed to be an IFP sympathiser, he is his own man.

The Rev Mvume Dandala: A Johannesburg-based Methodist Church minister, Rev Dandala has gone where most South African leaders fear to tread. He played a crucial role in bringing peace to Johannesburg's formerly conflict-ridden hostels.

Dr Antonie Gildenhuys: An advocate by training, Gildenhuys was chairman of the National Peace Secretariat, a position in which he demonstrated the impartiality that was needed to gain the confidence of the warring factions, including the police. He is a good mediator who could ensure that the commission does not engage in a witchhunt.

as an independent of human Vice-Chan-ty of Cape the Public established moeracy in

time jour- editorial publish- he also talkshow in as an out- columnist, time as a at, writing struggle for but human '70s and '80s Davis: He is e for Applied University of As the quick- of the tele- Imperfect,

Davis has done groundbreaking work in promoting public debate on human rights issues and has displayed his ability to mentally upend any proposition and look at it anew.

Applied law

Professor John Dugard: Dugard is currently an adviser to the Constitutional Assembly. As founding director of the Centre for Applied Legal Studies at the University of the Witwatersrand, he is also godfather to a generation of lawyers who have impacted strongly on the new constitutional order. During the dark '70s he was one of a handful of lawyers who spoke out ceaselessly against abuses of power.

Dr Beyers Naude: A theologian and activist, Naude epitomises the search for truth and reconciliation. He renounced leadership in the Nederduitse Gere-

formeerde Kerk to fight for social justice through the Christian Institute and South African Council of Churches. With the demise of apartheid, Naude was reconciled with the NGK and it, in turn, with the broader Christian community.

Lillian Baqwa: The first female attorney in the former Natal, Baqwa has been described by colleagues as one of the "best legal brains" in the country. She rose to prominence with the Legal Resources Centre, where she made a name fighting human rights cases, including acting for murdered anti-apartheid activist Griffiths Mxenge. She also acquitted herself well as a member of the panel which interviewed SABC Board candidates and as a Goldstone commissioner.

Gavin Relly: The retired chairman of Anglo American Corporation led the first delegation of

Politics of seeking the truth

(252) Star 15/8/95

■ BY KAIZER NYATSUMBA
POLITICAL EDITOR

A month or so from now, South Africa will have its long-awaited Truth and Reconciliation Commission.

Signed into law by President Mandela on July 19, the Promotion of National Unity and Reconciliation Act establishes a commission — of between 11 and 17 members — which will work through committees, and set up sub-committees in various regions.

Hearings will be open but in the interests of justice, com-

missioners can declare that certain details should not be published

The Committee on Human Rights Violations will hear victims' testimonies. The Committee on Amnesty — which will be chaired by a judge — will consider politically motivated acts committed between March 1 1960 and December 5 1993 and grant amnesty to qualifying perpetrators. The Committee on Reparation and Rehabilitation will decide how victims should be compensated.

But, there is no political consensus on the commission. The National Party fears a political

witch-hunt. The Inkatha Freedom Party is opposed to the idea. The Pan Africanist Congress prefers Nuremberg-style trials, and relatives of some victims want only justice.

Today The Star lists 26 people it believes should allay fears about the commission's objectivity. We stress, however, that the *real* commission has yet to be appointed, and that it is Mandela who will do the appointing. The men and women listed inside may provide a starting point for him.

► Can they lead us to the truth? — Page 13

Call to reject new amnesty

(252)

ANOTHER general amnesty that would free 52 000 prisoners should be rejected because of the rising crime wave and the tendency of those released to commit new crimes.

ET 16/8/95
That is the view of Parliament's Portfolio Committee on Correctional Services in a report tabled today. It also said that uncertainty about amnesties was a major cause of unrest in prisons.

The committee, chaired by ANC MP Mr Carl Niehaus, was commenting on hearings it held on a report by a judicial inquiry into prison unrest chaired by Mr Justice Johann Kriegler.

The commission had recommended a general remission of sentences subject to a maximum of three years. Its effect would have been to release 52 000 prisoners.

Political Staff

Law chiefs agree to be cross-examined by MPs

ROGER FRIEDMAN
Staff Reporter

ATTORNEYS-general have agreed to be cross-examined by the parliamentary justice select committee to explain decisions

This concession was made as debate on transparency in the legal profession gathered steam after disclosures that several Cape Town attorneys had allegedly bribed deeds office officials

In a letter to the ministry of justice yesterday, the country's nine attorneys-general consented to discuss grievances, and problems before the select committee although, legally, they are only accountable to the minister of justice

But the Law Society is holding firm in its refusal to disclose the names of attorneys found guilty of unprofessional conduct.

President of the Law Society

of the Cape of Good Hope Andries Landman said although the society agreed that attorneys who deviated from "the straight and narrow" should be disciplined, it was precluded from publishing names

Former Masterbond attorney Robin Hazell is the only one of 20 attorneys disciplined by the Law Society over alleged payments to deeds office officials to have been struck from the roll — and therefore to have had his name made public

ARG 16/8/95

The other attorneys were fined between R2 000 and R15 000 for unprofessional conduct. Their names were not publicised, although their firms were listed on the charge sheet of deeds office official Andrias Sepp, who appeared in court this week on 91 counts of bribery, fraud and corruption

Cape Attorney-General Frank Kahn said last night "other prosecutions" would follow and would include attorneys and officials

Mr Landman said the Attor-

(252)
neys Act gave the Law Society disciplinary powers and the power to make rules for the profession

Law Society rules precluding the publication of names of lawyers found guilty of unprofessional conduct had been passed by judges-president and the chief justice, and published in the Government Gazette

Mr Landman said insinuations that the society was involved in a cover-up were "reprehensible and disgusting"

Mr Kahn said he did not wish to comment on the specifics of the row involving the law society and its non-disclosure rule

But, explaining the decision by attorneys-general to be cross-examined, he said "justice cannot function without being credible in the eyes of the community"

"Credibility can only be achieved through transparency, which is within the spirit of the new constitution"

'Promotions defied ruling'

BD 16/8/95 (252)

Own Correspondent

EAST LONDON — At least 19 principal magistrates in the former Transkei were promoted to the position of chief magistrates in contravention of resolution 47 of the Transitional Executive Council last year, the Browde Commission was told yesterday.

The commission, busy with its seventh session yesterday, is investigating possible irregularities in hiring or promotion of civil servants between April 27, 1993 and September 30 last year.

A member of the investigating team, Arno Rossouw, said the magistrates were promoted in April last year, retrospective to July 1 1993.

This contravened Resolution 47, which placed an embargo on the creation and upgrading of all posts in the public sector from March 22 last year, and also stated that all promotions should have been put

before a transitional executive committee economic subcouncil for consideration

Rossouw said the promotions contravened this.

The economics subcouncil had never been informed of the decision, nor the treasury department, Treasury as they should have been, he said.

The complaint was lodged by finance MEC Shepherd Mayatula and Justice Minister Dullah Omar.

Finding

Late yesterday afternoon, the magistrates said they wanted a postponement on the hearing as they did not have enough time to study the documents handed to them by the investigators

Judge Jules Browde postponed the hearing until this morning, when a finding was expected to be delivered.

Uncertainty cause of unrest

Amnesty will 'strengthen crime wave'

Star 16/8/95 (252)

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Another general amnesty that would free 52 000 prisoners should be rejected because of the rising crime wave and the tendency of those released to commit new crimes

That is the view of Parliament's Portfolio Committee on Correctional Services in a report tabled yesterday. It also said that uncertainty about amnesties was a major cause of unrest in prisons.

The committee, chaired by ANC MP Carl Niehaus, was commenting on hearings it held on a report by a judicial inquiry into prison unrest chaired by Mr Justice Kriegler.

The commission had recommended a general remission of sentences subject to a maximum of three years. Its effect would have been to release 52 000 prisoners, about half the prison population.

The committee report argued in response that "amnesty is not a general part of the release policy of the Department of Correctional Services" and that it was a "unique mechanism which is the prerogative of the president and is usually announced to mark an important event in the history of the country".

The amnesties announced by President Mandela on June 16 1994 and April 27 1995 were intended to "mark the transition to a non-racial democracy in South Africa".

"They were not intended to, and could not in any sustainable way, resolve the serious problem of overcrowding in prisons."

The crime wave and the high levels of recidivism among prisoners, who have benefited from previous amnesties militated against granting more substan-

tial amnesties, said the committee.

It further said it would be inappropriate to create an amnesty resolution committee. General release policies which were fair to prisoners and which had regard for the protection and safety of communities should be developed.

The committee said it was concerned about the way amnesty decisions were communicated to prisoners. The announcement at Modderbee Prison "was probably a contributing factor to the further violence that erupted". These events highlighted the lack of confidence that most inmates have in the department.

Communication

"It is evident that years of prison management during the apartheid era had seriously undermined the credibility of the department and special attention should be given to communication strategies in order to rebuild confidence," said the committee.

The committee supported the department's new release policy, but said parole or correctional supervision should be used to avoid sentences being prolonged by the policy.

The committee called for a permanent interdepartmental forum to implement Cabinet decisions on prisons.

Turning to the prison unrest at the time of last year's elections, the committee recommended that "urgent psychological help" be given to staff and prisoners who suffered from post-traumatic stress.

Legal proceedings should be dropped against those who escaped from prison but surrendered. Those who did not surrender should be prosecuted, however.

Early parole a hot issue

■ BY PRISCILLA SINGH

The "no more early releases" proposal by a parliamentary committee yesterday followed a public furore over prison policies which often see criminals back on the streets after serving only a fraction of their sentences.

Judges, magistrates, attorneys-general and members of the public have called for a serious rethink on the granting of amnesty or early parole to convicted criminals.

Also in the spotlight is the State's policy to refer criminal suspects under the age of 21 to "places of safety" from which many have escaped before they could be brought to trial.

Pretoria Attorney-General Dr Jan D'Oliveira said he was concerned about the early parole privileges granted to long-term prisoners and challenged the De-

partment of Correctional Services to revise the system.

"One has to work very hard to secure a conviction and there is always immense cost and utilisation of resources, not to mention time involved."

"To see a convicted person walking out on the streets after serving just a fraction of his sentence is demoralising to the court. It is also unfair to the community. The parole system is cause for great dissatisfaction and definitely needs to be revised," he said.

But Amanda Dissel, of the Prisons Research Project of the Centre for the Study of Reconciliation and Violence, said, "We support phased and early releases as it serves as both an incentive for other prisoners to behave well in prison and, more importantly, should serve as a mechanism to reintegrate the prisoner into society."

Key security laws to be scrapped

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

KEY security laws will have to be scrapped or amended when South Africa's proposed open democracy bill becomes law

A 146-page draft bill spelling out how the public will be entitled to greater freedom of information

ET 17/8/95
concerning government documents was discussed by the assembly's communications portfolio committee yesterday.

The schedule attached to the draft legislation envisages that at least 16 major pieces of legislation — a number of them throwbacks to the "total onslaught" era of the 1970s and 1980s — would have to

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be amended or repealed

Many of these laws contained clauses designed to restrict or prevent public access to information on the grounds that this could jeopardise the security of the state

Aspects of these laws are seen as being unconstitutional under the new dispensation. The bill is expected to become law in 1996

NP stand on legal officers rejected (252)

ND 17/8/95

CAPE TOWN — The NP position on the accountability of SA's attorneys-general to Parliament was rejected by justice committee ANC MPs yesterday

Earlier this month committee chairman Johnny de Lange summoned the attorneys-general to appear before the committee later this session, saying they could also be asked to account for specific prosecution decisions

De Lange, supported by Willie Hofmeyr (ANC) asserted it was Parliament's right to ask the attorneys-general to account for individual decisions.

Although the NP was in favour of the attorneys-general being accountable to Parliament, it was essential that the prosecution authorities were seen to be above party political influence, Dannie Schutte (NP) said at yesterday's meeting of the committee

It would be "very wrong" to involve Parliament in the specific decisions taken by the attorneys-general who already reported annually to Parliament in terms of existing legislation, while the justice minister was empowered to ask for the reasons on certain prosecution decisions taken by attorneys-general

The attorneys-general should be asked to expand on their annual reports when they appeared before the committee, Schutte proposed

"They prosecute in the name of the public. We the representatives of the public have the right to hold them accountable... we should be entitled to ask why the Gauteng police reporting officer is being denied access to police dockets," Hofmeyr said

It was "quite difficult" to accept Schutte's suggestion that the executive had the sole prerogative, and that Parliament should be excluded from questioning the attorneys-general, De Lange said

Parliament had the constitutional right to call anyone to appear before it.

If the attorneys-general failed to prosecute, Parliament was entitled to ask why, although it could not force an attorney-general "to go back and prosecute" as this would amount to interfering with their independence

Nor was it a question of Parliament demanding to have access to court dockets, he said.

A date for the public hearing has yet to be determined. — Sapa

Radical new Bill will protect consumers

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How complaints will be dealt with

The consumer court proposed in a new draft Bill will allow for severe measures to be taken against shoddy business practices, reports **Pat Sidley**

Pat Sidley

A FAR-REACHING Bill giving provinces the power to fine businesses and jail executives for harmful business practices is being drafted by the nine provincial governments

The Consumer Protection Bill will strengthen the rights of South African consumers, creating powerful institutions to protect individuals from shoddy business practices. The provinces have co-operated to ensure that all consumers have the same rights and that businesses and other institutions around the country all play by the same set of rules. If passed, the Bill will

- create a consumer court in each province, with the power to levy fines of up to R200 000, pass stiff sentences of up to five years' imprisonment, and even ban a firm or business engaging in harmful practices,
- give powers of search and seizure to the investigating officers in the provincial consumer affairs office,
- introduce "class action" suits for consumers to join with others similarly affected and bring a single legal action in the consumer court. A major advantage is that this will be free for consumers.

The mere discussion of such legislation is likely to send a strong message to commerce and industry that the days are numbered for those who have taken advantage of the lack of protection for consumers, particu-

RIPPED-OFF consumers would redress their problems in the future in the following way if proposed laws are enacted

Let's say you have just bought a car from a second-hand dealer. When you arrive to collect it, you find you have been given a different one to the car you thought you had bought, it has cost you more than the agreed amount, and it gets you home, but it won't start again.

When you confront the dealer, he shows you documents you signed which purport to represent your consent to all this abuse. Then he threatens you with violence.

Shortly after, the dealer disappears and then pops up in other places, pulling the same scam, but setting up different companies everywhere he does this.

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You will call in at your local advice office where you will find somebody who understands the law, can cope with the problems, and, what's more, knows of several others who have been ripped off by the same dealer.

The advice officer will see if the issue can be resolved between you, the consumer, and the dealer, but he soon sees he's dealing with a major scam and it needs a more serious look. He refers the issue up the chain and it lands in the offices of the director of inspection services whose staff will investigate the problem.

They pounce on the dealer's latest business premises shortly before he opens for business one Tuesday morning (they have the relevant paperwork to make their raid legal).

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They search his premises and in his safe find enough to back up a case against him to support your claim and all your fellow-sufferers. This case is then brought before the new consumer affairs court which is in turn presided over by a retired supreme court judge or lawyer who has been around a while, has some standing and knows the territory.

After hearing the case — with your costs borne by the province — he then pronounces that the dealer should either go to jail for five years or pay R200 000 from his ill-gotten gains, and he may order the business and the particular practice banned for all time.

A curator will be appointed by the court to seize the crooked dealer's assets which may then be frozen and redistributed among his victims to compensate them for their losses at his hands.

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Places where decisions are made which will affect consumers, ● the right to safety — to be protected against unsafe products and services,

● the right to choose To bring this about, the provinces' consumer desks hope to

- enact the relevant legislation,
- get the relevant information for consumers and educate them,
- promote the use of plain language,
- carry out inspections in terms of existing laws which cope with credit, weights and measures, etc,
- establish mechanisms so that businesses are accountable to consumers

A major hurdle on the way to this Utopia has been crossed the will to protect consumers is part of provincial government policy in all provinces and represents a major break from the past

"The previous government empowered consumers by giving very little support to consumer protection agencies, the promotion of consumer education or the dissemination of information," says a discussion document on policy used by the provinces' consumer committee

In a section referred to as "the legacy of apartheid", the document refers to a "tidal wave of corruption and incompetence" and adds "Dealing with corrupt, incompetent, illegitimate and unaccountable government administrators and unscrupulous businesses became a part of life" for most consumers

Existing legislation which may have protected consumers was scattered, watered down and remote from the people it ought to have protected. While these laws will remain, the structures, policies and proposed new laws will bolster the ability of consumers to have problems dealt with closer to home — and much more effectively

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Law Society secrecy slated

BARRY STREEK
POLITICAL STAFF

THE Cape Law Society was criticised last night by the Speaker of the National Assembly, Dr Frene Ginwala, for taking secret disciplinary action against its members

"We have learnt with amazement that lawyers are helping to cover up the activities of their colleagues who paid money to an offi-

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cial in the deeds office who is facing charges of accepting bribes

"The law society considers it sufficient that they have investigated, in secret, and fined a number of their members," she said at the annual Open Society Lecture.

"My right to know whether the person to whom I entrust my legal affairs was ever guilty of unprofessional conduct or of paying money to a public official is not consid-

ered to be important"

CT 18/8/95
"They investigate in secret, charge members and hold hearings behind closed doors, impose fines and, but for some investigative journalism, we would all have remained in the dark"

The Speaker also challenged the media, asking whether society could be informed through channels owned and controlled by a small number of large corporations

Lawyers covered up 'for years'

By KEN VERNON

A FORMER president of the Cape Law Society signed an affidavit a few years ago in which he acknowledged that lawyers frequently gave "payments or gifts" to Deeds Office officials in return for "help" — and he urges in the document that the practice be hushed up.

This supports allegations — by one of 20 Cape lawyers disciplined privately by the society for the practice — that the society has for years been aware of the payments, but turned a blind eye.

The affidavit, sworn to about two years ago, came to light this week after the society denied covering up the practice by protecting the identities of 20 lawyers it found guilty of making the payments.

It indicates that the former law society president knew lawyers regularly sought "help" from officials — and paid for it.

The well-known Cape lawyer further states that such practices were also "reasonably extensively utilised over a number of years" in other parts of South Africa.

He says that the contents of this affidavit must be kept confidential.

However, law society president Andrius Landman insists no cover-up of lawyers' misdeeds is under way. The society would not name names, he said, because of its rules.

"The society's ruling council is considering asking the lawyers involved to allow their names to be made public, and if they agree we will do so."

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Society knew of 'gifts for favours'

(252) ST 20/8/95
From page 1

The paying of money to officials by lawyers was not necessarily a bribe, he said, even though an official had been charged with accepting bribes.

"If a man is paid money for doing what he would normally do, but merely for doing it after hours, that is not a bribe."

"But if more information comes out that any member has led to this society, we will hit that person hard."

"But we have no information of criminal action

source said the rot was well and truly established in the Cape Town Deeds Office. However, officials "did nothing illegal."

"It can mean big money for documents to be moved quickly," he said. "Millions of rands tied up for a few months extra can be a big problem." Every procedure was carried out according to law, but time scales could be drastically reduced by friendly officials doing a lawyer a favour — which meant a favour in return. There were no overt demands, just "a nod and a wink."

Not all of the "extra" work was carried out after normal working hours.

Other ways in which offi-

cialists did lawyers' favours" was by undertaking deeds searches, and helping to "restore" documents rejected for technical faults, without papers having to be resubmitted.

It was reported earlier this week that Western Cape Attorney General Frank Kahn was planning to investigate charges against the 20 lawyers.

Meanwhile, top Cape Town law firm, Sonnenberg, Hofman and Golombik admitted in a newspaper advert that two of its lawyers were involved in the Deeds Office irregularities. It said two of its attorneys, who had since left its employ, had acted without its knowledge.

Mr Landman said that while he had no direct knowledge of similar "gifts" being made elsewhere in South Africa, "if the rot has started here it could have started elsewhere".

The Sunday Times

Freemason on bench sparks judicial uproar

(252) ST 20/8/95

By CARMEL RICKARD

THE disclosure by a Supreme Court judge that he is a member of the Freemasons has rekindled controversy over whether judges should retain membership of secret societies once they are appointed to the bench.

Presiding in the Rand Supreme Court last week, Mr Justice Tom Cloete recused himself from a case where the matter of secret societies and their possible influence on judges or lawyers was an issue. He asked former businessman Izak Labuschagne, who appeared before him on behalf of the African Christian Democratic Party, which secret societies were allegedly involved. When Mr Labuschagne said he was referring among others to "Cabbalistic Jews and Freemasons", Judge Cloete disclosed that he was a Freemason and would therefore arrange for another judge to hear the matter.

Speaking afterwards, Mr Labuschagne said it was important that judges be seen to be "a hundred percent impartial". If they were part of a secret society they should not be appointed to the bench. He said he suspected many judges were members of secret societies but few of them disclosed the fact.

Judge Cloete's disclosure has led to

strong responses from members of the bar, human rights lawyers, the Association of Law Societies and other members of the profession who say it is inappropriate for judges to belong to any secret organisation, whether the Broederbond, the Freemasons or any other, and that they should be ineligible for judicial appointment if they refuse to give up membership.

However, Transvaal Judge President Frikkie Eloff appears not to share this view. Referring to a recent statement by the Lord Chancellor of England, that he could see no conflict between membership of the judiciary and of the Freemasons, Judge Eloff said he agreed with Lord Mackay.

Justice Minister Dullah Omar said it had to be asked whether membership of secret societies did not undermine the impartiality and independence of the judiciary. "If it does, something will have to be done about it."

Asked for comment, Chief Justice Mick Corbett had not yet replied at the time of going to press.

The matter surfaced in public three years ago when it was learnt that Mr Justice Willem Booysen of Natal was a member of the Broederbond. In the subsequent outcry, the judge resigned from the organisation and its executive.

Following this incident, the General Council of the Bar and the Johannesburg Bar Council took a strong stand against judges retaining membership of any secret organisations.

Current chairman of the GCB Malcolm Wallis SC said no-one should leave court wondering whether the judge was in any way influenced by membership of a secret body.

Association of Law Societies' president Tony Hardy said his organisation shared this position. The Legal Resources Centre urged that the Minister of Justice call on all judges to declare whether they belonged to any such society, and then to choose between the bench or the organisation.

Judge Cloete, on circuit in Lydenburg until the end of this week, was asked, through his clerk, for comment. However, there has been no response. Instead, Gerald Fotmakis, district Grand Master of English Freemasonry in the Transvaal, contacted the Sunday Times.

He said the principles of Freemasonry would require any judge who was a member to put the impartial administration of justice above any undertaking to assist fellow Masons, and fears about a judge's impartiality were therefore groundless.



TOUGH LINE ON CRIME . . . Gauteng's Jessie Duarte

No bail for the wicked

GAUTENG'S fiery safety and security MEC, Jessie Duarte, is strongly opposed to suspects in serious crime cases getting bail - and says murderers and rapists should be given life sentences with no parole.

YES, criminals have human rights - but so have their victims, says crime fighter Jessie Duarte. She tells DES BLOW why she opposes bail for serious crime suspects and wants murderers and rapists never to get parole.

She firmly backs the rejection of a general amnesty for 52 000 prisoners by the Parliamentary Portfolio Committee on Correctional Services' report tabled this week.

Duarte also backs the "shock treatment" to combat crime proposed at the conference of the Business Initiative Against Corruption and Crime held in Kempton Park this week.

She told City Press she was prepared to do battle with the country's justice system to make this strategy a reality - saying "I will not shut (my viewpoint) despite getting a lot of flak from my colleagues". Duarte said, "We are having a battle with the

justice system - not the minister, because the justice system is independent, and I agree it has to be independent, but it also has to be realistic."

In a rare 90-minute interview this week Duarte said the perception of some people - especially the media - that she was soft and couldn't handle her portfolio because she was a woman, was false.

A diminutive pocket-battleship, Duarte said that she fully backed the police in their fight against crime, that she also had the police's back, and that support of the communities for the police was growing. Duarte said although the new government had

only been in power 14 months, "we have improved community support for the police."

"I and other members of the government have been working flat-out in the communities to develop their consciousness to join the anti-crime campaign but the media don't find it newsworthy."

She has also spent a great deal of time inspecting the homes of policemen and has been shocked at how they have to live. Duarte said she was fighting for better homes and a decent minimum wage for the police.

"It is important to develop the consciousness of the community to realise that it is not acceptable for a person to ride around in a stolen car."

"They must learn that it is not all right for your neighbour to have a yard full of stolen goods and you can even go and buy from him."

"The highest crime rate in Gauteng is in Soweto, and the highest hijacking rate in Gauteng is also in Soweto." Duarte said the police did oppose bail. It was not the police who granted bail, it was the magistrates' courts. Duarte said she was not opposed to magistrates setting high bail in order to keep hardened

criminals in detention until their cases were heard.

"Bail is not only a human rights issue. I do believe that when people are arrested they have to be treated humanely - but I also believe that the victim's needs have to be given more consideration."

"I was detained without trial by the last government, and never saw a magistrate. I think that when you are arrested you should be allowed to see a magistrate within 48 hours - but that doesn't mean that you must have bail."

Duarte said Judge El-off had recently declared that magistrates should investigate a matter before they provide bail to make sure a witness is not threatened.

"I think bail should be allowed in minor cases, where a witness would not be threatened and the person is assured of standing trial."

"But for murder, rape, car hijacking, child abuse, robbery and burglary, I believe the courts must be rough and refuse bail."

"I don't agree with the death penalty. I think it is an emotional response to a situation. It is not a real response."

"But murderers and rapists must be kept in jail until they die - and other criminals who have committed serious crimes must be given long sentences, which they must serve."

"There must be a shift of the mind of South Africa away from a culture of violence to a culture of co-operation."

Get a lawyer on your

"The Independent Board of Inquiry's Piens Pignon, who has worked closely with Duarte, said although he agreed with her tough line against granting bail to hardened criminals, a joint effort by the police and the justice department was needed to effect this. "The fact is magistrates' hands are often tied because police often do not do enough investigation to get sufficient evidence to oppose bail," he said

(252) 020/8/95

DP forges ahead with new Bill

David Greybe

CAPE TOWN — DP senator James Selfe said yesterday he would proceed with a private Bill in Parliament to compensate victims of violent crime, despite indications of a similar government initiative

Selfe welcomed the news that the justice department was considering proposals for a state-controlled compensation scheme, but said the country could not afford to wait for government to enact legislation.

He said with dozens of draft Bills in the parliamentary pipeline it would take at least a year for even his Bill to become law. Selfe's "fund for victims of violent crime Bill" was

tabled in Parliament 10 days ago.

Selfe said he planned to meet Justice Minister Dullah Omar soon to explore ways to streamline his and the department's efforts. He said there was no need for any tension or competition over the matter.

Selfe said he would only consider withdrawing his Bill "if I get a copper-bottom guarantee from Omar that the justice department will produce a Bill".

He criticised the funding aspect in a report by Prof Charl Cilliers of the SA Law Commission and Unisa, that was sent to Omar. Selfe said the funding aspect was too complicated and cumbersome.

Cilliers and Selfe proposed that the envisaged compensation board would

not be funded by the state.

Selfe maintained funding would be obtained from all court fines except those paid to local authorities; all bail money forfeited to the state under the Criminal Procedure Act, and "any moneys appropriated by Parliament from time to time".

Selfe said with last year's court fines totalling around R80m it was unlikely Parliament would need to allocate extra funds to the compensation scheme.

Cilliers in turn said funding should be obtained from a 20% levy on all court fines except those paid to local authorities, plus a new R50 spot fine for every guilty verdict handed down in the criminal courts.

● Comment: Page 8

Society slams prospecting grant

Business Day Reporter

THE Wildlife Society was concerned that an "irresponsible decision" had been made by government in granting permission for minerals prospecting in the Madimbo Corridor in Northern Province, the organisation said at the weekend.

The society was worried the decision had been taken without all relevant facts being known. Alternative land use options had been ignored.

The Madimbo Corridor, in the 29 000ha Matshakatim Nature Reserve, borders the Limpopo River and the Kruger National Park and forms part of the "golden horseshoe" plan linking frontier parks in SA, Botswana, Zimbabwe and Mozambique.

The potential for environmental damage from prospecting was enormous, said the Wildlife Society. Mining would occur in the Limpopo River bed and other areas of the reserve which were of extreme ecological and archaeological importance.

The society had tried in January to alert various Cabinet ministers about the issue, but had not received replies until after the permit had been issued in June.

Environmental Affairs and Tourism Minister Dawie de Villiers said he was in favour of conserving the Madimbo area.

His department had been consulted on the prospecting application, but "no substantive reasons" could be found for calling for an environmental impact assessment in terms of the Minerals Act.

The department had requested restrictions on trenching and pitting activities but none on drilling.

Last week De Villiers was reported to be considering legal steps to halt prospecting.

The minerals lease agreement stipulates that the environmental affairs director general has to be consulted to identify environmentally sensitive areas and exclude them from prospecting activities.

To date, the company had not approached his department, said De Villiers.

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Law of the Sea provides extra 100 nautical miles

Star 21/8/95

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SA rules southern waves

BY NORMAN CHANDLER
DEFENCE CORRESPONDENT

South Africa intends to claim a huge area of the southern oceans as part of its sovereign territory

It is doing so in terms of the Law of the Sea convention, an international treaty backed by the United Nations.

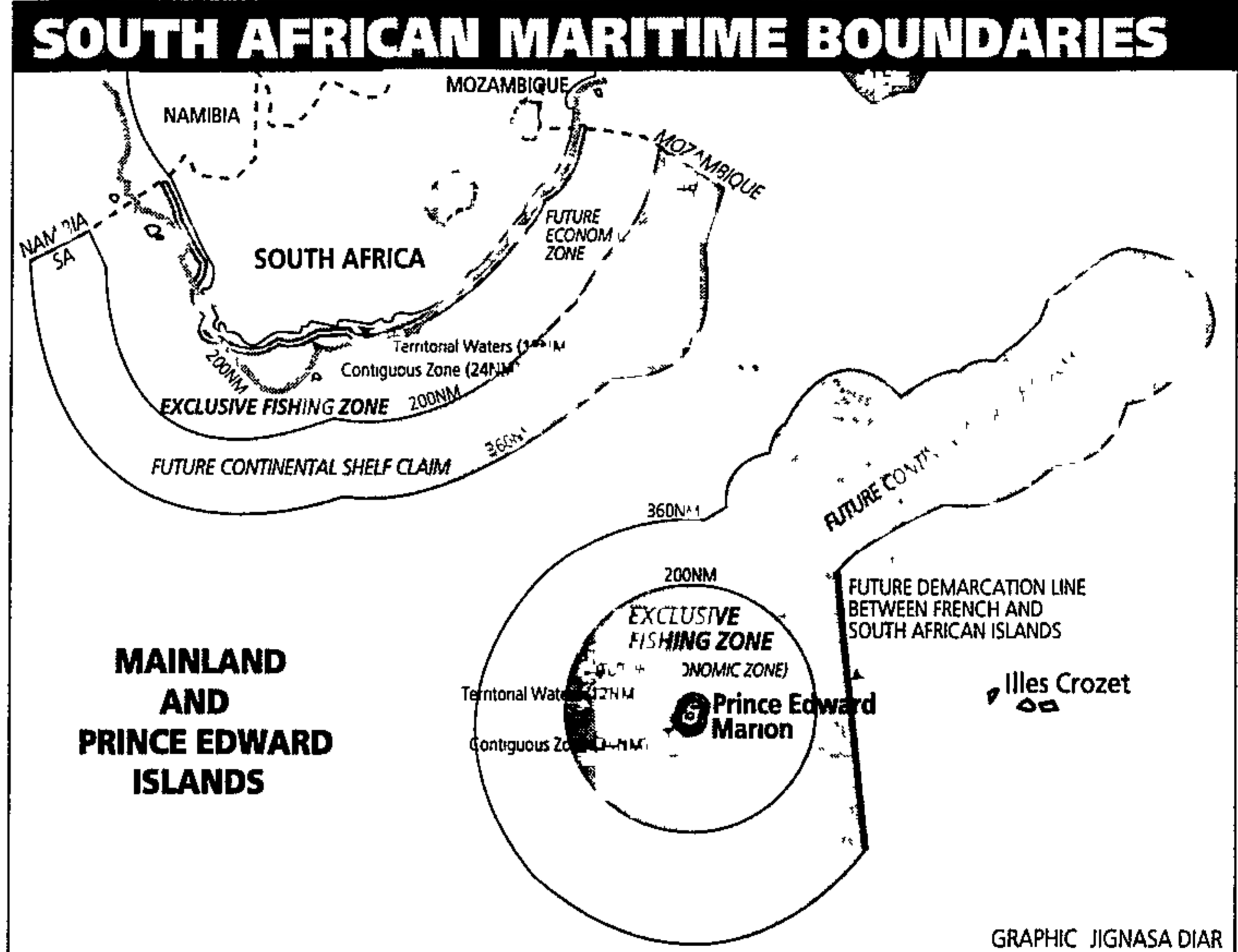
According to Commodore Neil Guy, of the hydrographic office of the South African Navy, the country has now clarified its claims to internal and territorial waters as a result of President Nelson Mandela signing into law the Maritime Zones Act.

"For the first time, a realistic assessment of the roles of the various authorities involved in the seaward areas of South Africa can be made," Guy said.

The claim currently includes territorial, contiguous, and exclusive economic zones with a future claim being lodged in respect of the continental shelf lying to the south of the country. By doing so, it has served notice of its intention to explore and exploit the continental shelf.

Territorial waters extend 12 nautical miles from the coast, the contiguous zone is double that, while the exclusive fishing zone or economic zone extends for a further 200 nautical miles. The country is now claiming another 100 nautical miles to include the continental shelf.

The total area claimed is almost 950 000sq nautical miles of



waters around South Africa and the Prince Edward island group, including Marion island. The claim forms a huge arc of the Atlantic and Indian oceans — stretching as far as 340 nautical miles (about 700km) from the coast — and a large area of sea around the islands.

Guy said that in territorial waters and internal waters —

such as False Bay — the country had total sovereignty but must allow what is known in maritime terms as "innocent passage" (shipping).

In the contiguous zone, South Africa can enforce legislation in terms of customs, immigration, emigration, sanitary and fiscal matters. In the exclusive economic zone and on the conti-

mental shelf, the country can "explore, exploit and protect its resources".

Guy said that enforcing South African law in this area was the task of the navy, which had to maintain an economically viable force to be able to fulfil this role. He believes it could be a logical and economically suitable "solution to a peacetime need".

Judges, law groups differ over new bill

TYRONE SEALE
Political Staff

(252)

DRAFT legislation making it possible for attorneys to represent clients in the supreme court has attracted sharp criticism from South Africa's chief justice and other judges

But Lawyers for Human Rights, the Association of Law Societies and the National Association of Democratic Lawyers say the judges are mistaken to believe standards will drop and client risks increase if attorneys are allowed to compete with advocates

Yesterday, a joint sitting of the national assembly and senate justice committees heard evidence on the Right of Appearance in Courts Bill, as introduced by the justice department

A departmental memorandum with the bill argues that the view that attorneys are less adequately qualified than advocates "is regarded as no longer true"

"What may be true is that attorneys may not be as skilled litigants in the supreme court as advocates — simply because they have never had the opportunity to gain the necessary experience

"Also, it is not necessary for standards to drop. If attorneys are given the opportunity to appear in the supreme court and develop experience, it is likely that they will prove to be just as skilled litigants as any skilled advocate.

"Greater competition between the professions, together with more experience, can result in rising standards and in a stronger bar and sidebar. A great deal depends on the profession itself"

Mr Justice Frikkie Eloff, judge-president of the Gauteng division, dismissed the provision in the bill that would allow an attorney to appear in the supreme court, providing they had worked as an attorney or had performed community work at any law clinic for not less than five years continuously

The judge said "Working in law clinics involves low level, very elementary type of work done by volunteers"

ARG 23/8/98
This type of work did not "even come remotely close" to the type of training required to render a practitioner fit to appear in the supreme court

Greater access to the courts could be ensured by granting the rights of audience to attorneys who had the academic degrees, particularly the LLB, that were mandatory for advocates

Mr Justice Eloff said allowing attorneys who did not have an LLB to appear would be unfair to those who had taken the trouble to obtain this qualification

It was in the public interest to ensure that a lawyer was properly skilled to appear in the supreme court

In a written submission presented by Raiz Saloojee, for Lawyers for Human Rights, he said LHR supported the right of attorneys to appear on behalf of any person in any court in South Africa

"Ultimately, with the fusion of the bar and the side-bar, the formal distinction between attorney and advocate should fade, although specialities will continue to exist

"On admission, both these entities should be (classed) under the term 'legal practitioner' with exactly the same criteria applying in respect of admission to the profession"

In its submission, the National Association of Democratic Lawyers said the restructuring of the justice system had to be addressed in the context of apartheid's legacy

In a written submission, the Association of Law Societies welcomed the bill's inherent recognition of attorneys' longstanding demand to appear in the supreme court

The General Council of the Bar said parts of the bill created the substantial risk that a number of attorneys lacking the required skills might acquire and exercise rights of audience

"That is detrimental to the public who seek to make use of their services and find that perfectly good cases are lost"

The purpose of requiring qualifications, said the council, was to protect people

ANC launches campaign

BY JOVIAL RANTAO
POLITICAL REPORTER

President Nelson Mandela launched the ANC's local elections manifesto in Alexandra yesterday, calling for people to "make it happen where we live".

He also called for assistance in the implementation of the Reconstruction and Development Programme

Mandela said that through local government, communities would have the power to work with the ANC-led Government and make the RDP work for them

"Community involvement is the key to ensuring secure, stable and orderly communities

"Together, we will tackle the poverty, crime and disease that have undermined our community values and brought fear and insecurity into all our lives

"Let us come together as communities to fight crime, to identify our urgent needs and make proposals to Government.

"Together we have the power

to make the RDP a resounding success

"Together we can build a better life Together we can make it happen where we live," Mandela said.

He pledged that the ANC would work to ensure that democratic local government dealt with the basic needs of all in rural areas This would be done with sensitivity for local traditions and structures

Mandela listed the ANC's achievements — from providing water, electricity and free health care to a single education system — but said the ANC was honest enough to acknowledge that more could have been done

"The local government elections give us a chance to put this right," he said.

ANC deputy secretary-general Cheryl Carolus described the local government elections as the last obstacle to the delivery of the RDP

She said the ANC would field 12 000 candidates in about 750 areas for the municipal polls

Manifesto promises quality of life

The ANC pledged a better life for all at the launch of its local government election manifesto in Alexandra yesterday

The document said that through democratic local councils, communities could make their areas better places to live in by allowing them to decide on delivery of water, electricity,

sanitation and clinics

"Democratic councils will decide where streets will be laid, where schools, clinics and houses will be built, and how rubbish will be removed from streets and public areas They will make sure that there's a system of fair rents," the manifesto said — Political Reporter

Radio, TV blackout ahead of poll

No party-political broadcasts or advertisements would be allowed on television and radio before the November 1 local elections, the Independent Broadcasting Authority said yesterday.

"In accordance with the IBA Act, no broadcaster may broad-

cast a party election broadcast or a political advertisement at any time before or during the local government elections"

It would monitor TV and radio stations to ensure fair and accurate reporting during the election period. — Reuter.

Staff crisis at AG's office

BY ANSO THOM
CRIME REPORTER

The Witwatersrand Attorney-General's (AG) office has been forced to "temporarily" dissolve its commercial crime unit because vacant posts have not been filled for more than a year.

The office also still doesn't have an attorney-general following the retirement of Klaus von Lieres und Wilkau earlier this year

The failure to fill the posts had burdened the office advocates with untenable case loads, according to state advocate Chris Human.

He said it had been decided this week to temporarily dissolve the commercial crime unit to deal with other cases "We will prioritise the cases with the most urgent cases being dealt with first"

Commercial crime cases would not be left in the lurch, though Non-specialist advocates who normally handled murder and fraud would also take on commercial crime, Human said.

"This is not an ideal situation. We must specialise, but we were forced to institute crisis management"

He said affirmative action posts for the AG's office had been advertised last year, but had still not been filled.

"There has been no indication when these posts will be filled. I contacted head office, but they can't say. We are looking at at least four months"

The office had a 35% shortage of senior state advocates and would have a 33% shortage of attorney-generals from next month, he said.

In the Office for Serious Economic Offences (OSEO) there are two vacant senior state advocate posts and a vacant post for a deputy attorney-general. Most of the posts have already been advertised and the closing

date for applications has already passed, but the Justice Department said the posts would probably be re-advertised.

OSEO director Jan Swanepoel said the move to dissolve the unit was a step in the wrong direction "I am not criticising the AG's office. I would have done the same in their situation, but it is useless to say we want to stamp out crime if we don't have the manpower"

He said initiatives like the recent Business Initiative Against Corruption and Crime meant nothing if vacant posts were not filled.

"The Department of Justice is hampering the fight against crime by not making appointments."

He said there were several vacant posts in his office as well as the police commercial crime unit, where he said there was a 50% shortage.

Understaffed

Department of Justice spokesman Pieter du Randt said there were eight vacant posts for senior advocates and two posts for deputy attorney-generals.

He said some of the posts would probably be re-advertised on request from the minister.

A spokesman at the SAPS Johannesburg Commercial Crime Unit said the unit was operating with the minimum manpower. "If you take our workload into consideration, we are very understaffed," he said.

Statistics obtained from the SAPS commercial branch head office indicates an 8% increase in dockets handled since 1992 The monetary value involved had increased by 68,3% in the same period.

Between January and June this year the branch had handled 24 644 dockets involving R6,079-billion. Last year it had handled 22 637 dockets involving R6,856-billion.

The Government is swamped with Bills

Sowetan Correspondent

THE Government has identified about 44 Bills to be passed into law before the current session of Parliament ends next month

The sheer number of Bills and the complexity of some of them serving before Parliament will place a strain on portfolio committees which have to vet legislation before it passes through the National Assembly and the Senate

It could even trigger another session of Parliament after the November local-government elections

The Cabinet committee on social and administrative affairs considered the legislative programme yesterday

Among the Bills which the Ministers want considered are Labour Relations, Pan South African Language

(252) Sowetan 24/8/95
Board, Housing Amendment, Independent Broadcasting Authority Bill - which will bring former TBVC radio stations under IBA control, Water and Forestry Amendments, Gambling and Lotteries, three Agriculture Bills, two Constitutional Development Bills relating to local affairs and electoral commissions, National Education Policy and National Qualifications Framework, Environment Affairs and Customs and Excise Amendment

Others are Borrowing Powers of Provinces, Stock Exchange Control, Financial Markets Control, Sea Fisheries Amendment, Dumping at Sea Control Amendment, Serious Economic Offences, Judicial Matters, Criminal Procedure Second Amendment, Magistrate's Court Amendment and Magistrates Amendment

Africa's lawyers

help the continent

WITH THE TREND towards a more open government in Africa, the continent's lawyers are being called upon to take an active role in the way their countries are shaping up. However, this has not been an easy task. Many of the continent's lawyers are operating in countries ruled by military regimes, which usually curtail constitutionally entrenched provisions. But now they are not alone.

The African Society of International and Comparative Law - which is meeting in Johannesburg this week - has for the past few years been championing the cause of the continent's lawyers and law-makers.

"One of the interest areas of the Society," says its Ghanaian general secretary Mr Emile Yakpo, "is the examination of ways African lawyers could influence the law-making process during the democratisation process."

"While we do not believe that all lawyers have to become politically active, there is a contribution to be made by lawyers in the quest to protect basic civil liberties."

The Society, based in Banjul, Central African Republic, was founded in 1986 by Yakpo - who was living in London, England, at the time - as a charitable organisation promoting public education in law and related fields. Among its aims, the Society has been working towards:

- setting up machinery for educating the public on civil liberties,
- providing in each African country a legal aid system and a legal advice service, and

300 delegates at the Law Society meeting in Johannesburg this week

● Promoting the African contribution to the development of international law as a basis for achieving international cooperation.

Publications play an important part in the society's activities. A lack of materials and properly-funded research centres force African researchers to make costly trips to Europe and North America to carry out studies. As a consequence, only a

been providing a forum through which African jurists scholars and others interested in law can exchange ideas regarding Africa's contributions to the development of international law.

The Society's annual conference has been the mainstay of the organisation. For the past seven years, it has been bringing together lawyers from various legal systems in Africa with a view to establishing ties and fostering understanding of each other's legal systems.

Telecommunications problems within Africa make it difficult for African lawyers to exchange views and experiences, laments Yakpo.

"Although the society publishes a bilingual journal, which provides one forum for such exchanges," he says, "personal contact on some basis is far more effective."

This year's conference has adopted the United Nations' contributions to world peace and economic development as its theme.

About 300 lawyers and law makers from Africa, Europe and North America are attending the conference, by far the largest-ever gathering of the Society.

It is also one of the biggest meetings of an African non-governmental organisation to be held in the new South Africa. The conference acknowledges South Africa's return to the international community and recognises its role in the drafting of the UN's

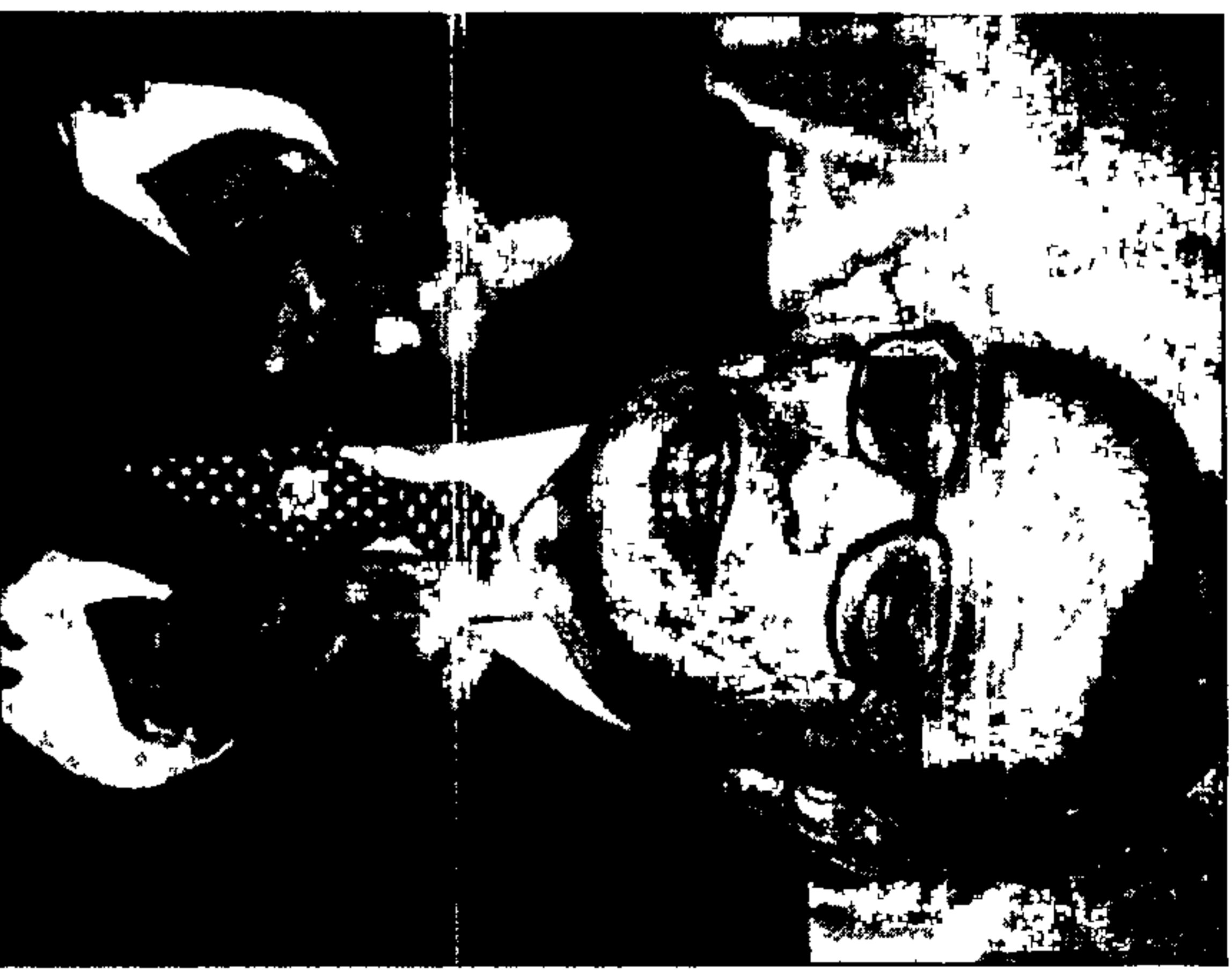
While we do not believe all lawyers have to become politically active, there is a contribution to be made by lawyers in the quest to protect basic civil liberties

handful of academics and students are able to benefit from research work.

To help solve the problem, the society plans to establish the African Institute of International Law and Human Rights to house a research centre looking into legal developments in Africa and to publish the findings.

A recurring complaint of African lawyers is the lack of accurate and regular law reporting, says Yakpo, explaining that in most countries law reports are years behind.

This is where the Society's *African Journal of International and Comparative Law* comes in. First published in 1989 - in English and French - it has



UN secretary-general Boutros Boutros-Ghali ... has been a member of the African Society of International and Comparative Law since 1991.

original charter in 1945. Three other African countries - Egypt, Ethiopia and Liberia - were also involved.

The Society has earned the praise of UN secretary-general Mr Boutros Boutros-Ghali, who has been a member of its governing body since he was Egypt's Foreign Minister in 1991.

Apart from the discussions, workshops are planned to provide assistance to lawyers on the issue of protecting civil liberties, bearing in mind, Yakpo says, that "the primacy of the state is vital to the effectiveness of law. A weak state is not in a position to protect civil liberties and human rights."

The society has indeed come a long way. When Yakpo mentioned his idea

to some of his colleagues in 1984, they were sceptical. But this did not put him off.

In 1989, the breakthrough came. He received R25 000 from a Nordic sponsor to publish the law journal on a quarterly basis.

In the same year, the society held its first annual conference in Lusaka, Zambia. Since then, it has not looked back and has become one of the few African NGOs to have observer status at both the UN and the OAU.

It aims to raise R150 million over the next five years to run a trust fund established in memory of the society's first president, Nigeria's Judge TO Elias - *German News Service*

Contracts may be purged of any unfair conditions

BY DAVID CANNING

ASSISTANT EDITOR

Millions of standard business contracts, including landlord-tenant leases in most shopping centres, building agreements and bank contracts with clients, could be purged of inequities in the next few months.

Changes to the way South Africans' contract business are to flow from the newly formed Unfair Contract Terms Committee, which is attached to the Business Practices Committee.

Abdobaker Mahommed, a Durban-based advocate and the chairman of the contract committee, said his committee would apply the concept of equity jurisprudence. This could send shock waves through business and legal circles since South African law rests on the Roman Dutch principle that contracts are to be upheld — even if they appear to be unfair.

Under equity law courts have the power to intervene if a term is unfair to one of the parties, even if both parties have consented to it in the contract.

Mahommed said one of the first matters to come before the contract committee, which reported to

Trevor Manuel, the trade and industry minister, would be an application by the Catering, Restaurants and Tea-rooms Association to review allegedly onerous conditions imposed on shop tenants. The contract committee had about 4 500 members and its ruling could have profound implications for institutions which own shopping centres.

The contract committee has launched an investigation under the Harmful Business Practices Act, requiring representatives of the South African Property Owners Association to appear before it in Pretoria on September 20.

He said that when it came to signing contracts many tenants felt they had little leverage against the power of the institutions. Standard terms of the contracts are claimed to unfairly favour landlords at the expense of tenants.

For example, distortions favouring the provider over the customer are found in many areas, like bank contracts with clients. A townhouse developer selling off plan is required to provide approximate floor areas to the buyer.

He said although building was an exact science the developer could short change each buyer, amount-

ing to large sums over the whole contract. The contract committee would also consider the case motivated by Pick 'n Pay, which had wanted to sell petrol at discount prices for some time.

"They (contracts) have put into place iniquitous conditions which will undermine the fundamental aim of the new constitution, which is socio-economic justice.

"We need to establish socio-economic justice that must be felt by the man in the street. Otherwise he will become hostile to the judicial system."

The contract committee was inundated with dozens of complaints once people had heard of its formation.

He said the contract committee was "not here to usurp the functions of the courts, nor to interfere with their existing powers". However, the functions of courts were curative whereas the contract committee had a preventative role.

Unfair, unjust or unconscionable terms of contracts would be published in the Government Gazette. Such terms would eventually filter into contracts. If legal draughtsmen persisted in using these terms it would be at the peril of their clients.

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Laws, not bills, for the top court (252)

APR 26/8/95
CLIVE SAWYER
Political Correspondent

WITH the constitutional assembly discussing the future of the national assembly, the African National Congress devoted much of its weekly caucus meeting to constitutional issues.

Among controversial proposals was one to bar parliament from referring draft legislation to the constitutional court for a ruling. In future, only legislation already signed into law will be eligible for referral to the court.

At present, the interim constitution allows the Speaker to refer draft legislation for a ruling by the court, following a petition by at least a third of the house.

Caucus spokesman Bulelam Ngcuka said a number of judges endorsed the view that it was difficult for the court to decide on an abstract issue.

The caucus postponed debate on whether to endorse or oppose the present rules which bars MPs from crossing the floor.

Cyril slates attorney general

ST 27/8/95 (262) (26)

By EDYTH BULBRING and CARMEL RICKARD

IN AN unprecedented attack on a public official, the ANC secretary general, Cyril Ramaphosa, has accused Kwazulu Natal Attorney General Tim McNally of pursuing his own political agenda in failing to enforce law and order in the province.

Mr Ramaphosa's strong criticism of the attorney general followed a visit to the province on Thursday night by an ANC delegation

which included Justice Minister Dullah Omar

"From the report that we had, it is quite clear to us that there is a complete reluctance on the attorney general's part to have effective law enforcement," Mr Ramaphosa said yesterday. "Cases are not being prosecuted and he is coming across as one of the attorney generals in the country who does not seem to be on the side of law enforcement."

"We sense that he has an

agenda of his own which could be politically motivated," he said.

Mr Ramaphosa said the national executive committee would discuss the matter next weekend.

An ANC source said that recommendations to the committee would include that concerted steps be taken to normalise the situation in the province.

These could include additional security force action, measures to strengthen the peace process and

steps to unblock efforts to thwart the judicial process.

Contacted at his Maritzburg home yesterday, Mr McNally said "I'm not a politician. I have no political agenda and I operate independently."

Meanwhile, the National Association of Democratic Lawyers (Nadel) has called for his resignation or, failing this, his suspension.

Nadel and the Legal Resources Centre in Durban have called a meeting next week at which lawyers and non-governmental organisations will be canvassed on how to deal with the situation.

Nadel said on Friday that it had no confidence that Mr McNally would do everything "necessary in the national interest to bring hit squad activities to justice."

The Durban director of the Legal Resources Centre, Richard Lyster, said "There is a crisis of confidence. He is an extremely powerful person and there are just not enough prosecutions taking place."

Mr McNally said he had no intention of resigning.

"No benefit is to be achieved by yapping at my heels with false allegations. It only serves to weaken the authority of my office, thereby adding a new dimension to the already fragile state of the administration of justice."

Street kids sentenced by people's court

ROGER FRIEDMAN, Staff Reporter

A GROUP of street children has been sentenced to attend day-time classes and sleep at a shelter for three months by a people's court.

In an advance for juvenile justice in the Western Cape, the children, who admitted to theft, were sentenced by a group of community leaders — among them lay assessors — from the Kensington/Facreton area.

The "community court" was sanctioned by the senior prosecutor and probation officer at Cape Town Magistrate's Court and could be the first such constituted court in the country.

It was joined in its deliberations by a police officer, the public defender, a probation officer and a representative of a welfare organisation for street children.

Minister of Justice Dullah Omar mooted the idea of establishing community courts at a meeting of lay assessors at parliament earlier this month.

He said the best people to administer justice were "ordinary, fair-minded people", and suggested lay assessors were perfectly positioned to play a major role in the structures he envisaged.

Mr Omar was careful to draw a distinction between kangaroo courts — which had "nothing to do with justice" — and legitimately constituted courts presided over by fair-minded citizens.

The case involving the street children was the second one heard by the Kensington/Facreton community court made up of members of the Kensington Community Centre lay assessors David Stone, Jennifer Shaik, Fred Jones, councillor Dawood Khan, Harold Holmes and attorney Yusuf Patel.

In the first case, a group of boys who admitted breaking into Windemere High School was sentenced to return to school — where their progress would be closely monitored — and perform an hour's community service a week for three months.

Zulpha Carr of the University of West-

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Street children sentenced by first people's court (252)

From page 1

ern Cape Juvenile Defender Centre held a watching brief on behalf of the children.

Cape Town Magistrate's Court senior prosecutor Alma Smith said the reason the children were not referred to Nicro's juvenile justice school was that they were considered too young.

The juvenile justice school caters for children older than 12.

"The children had already confessed to the crimes, so the cases were not referred to the community to determine guilt, only to determine appropriate 'sentences'," said Mrs Smith.

If the sentence was considered appropriate by all parties, and the children showed some willingness to reform, the prosecution would withdraw the case, said Mrs Smith.

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"I feel there are definitely cases where the community can play a role. What do you do with an eight or nine-year-old child? If we can get them to return to school, and to care for their school, it must be very positive."

"If they were not successful, we would still have the option of proceeding with the case," she said.

Every juvenile arriving at the Cape Town Magistrate's Court was assessed. Only after assessment could diversion be considered — and only for petty offences.

Mrs Smith said there were various advantages for the child if his or her case could be successfully diverted.

The child would not be lumbered with a criminal record, but would be made to learn from the experience.

Secrecy: Top lawyer quits

(252)

ET 29/8/95

THE PROTEST resignation of the Cape Law Society's vice-president has prompted the society's council to move to drop its "secrecy clause", and members will decide on this at their annual general meeting in October. **CLAIRE BISSEKER** reports.

THE council of the Cape Law Society has decided unanimously that the so-called "secrecy clause" that protects the identity of attorneys found guilty of unprofessional conduct should be dropped.

The decision, made at a meeting of the 12-member council yesterday, followed the resignation of the society's vice-president, Mr Tim McIntosh, chairman of Findlay and Tart, over the refusal of the council to publish the names of attorneys found guilty of bribing deeds office officials.

The revelation that 20 city attorneys had been fined a total of R92 000 for bribing deeds office officials caused an outcry earlier this month. National Assembly Speaker Dr Frene Ginwala expressed amazement that lawyers were "helping to cover up the activities of their colleagues", and the Democratic Party accused the society of breaching the legal system's basic principle, that justice must be seen to be done.

Society president Mr Andries Landman said the transactions were generally not bribes "in the narrow sense", but rather "improper payments for expert advice and assistance rendered by deeds office officials on their home computers or at the law firms' offices after hours".

The council had therefore decided in all but one of the cases that the offences were not serious enough to warrant an application to the Supreme Court that the offenders be struck off the roll of attorneys.

The Law Society was successful in its application to have Masterbond attorney Mr Robin Hazell struck off the roll in August 1994 after finding him guilty of three counts of bribing deeds office officials and four counts pertaining to his conduct in the affairs of Masterbond.

Dilemma

Mr McIntosh said yesterday he had received no support from the council at a meeting on August 22 when he proposed that the names of the other 19 attorneys be disclosed forthwith.

He had resigned as vice-president next day.

Mr McIntosh said he believed the non-disclosure of names was damaging the reputation of the profession and was not in the public interest.

Mr Landman said yesterday the council was "most perturbed by criticism implying that the legal profession was placing itself above the law and that the society did not allow justice to be seen to be done".

"Crucial to our profession is the trust of the public we serve. Above all we need to be seen as upholding the law and as being transparent in doing so," he said.

However, it was illegal for the council to publish the names of offending attorneys as this would contravene the society's laws.

"We find ourselves in a dilemma. On the one hand we recognise the right of the public to know and, as a council, feel strongly that the names of the offending attorneys should be made known."

"At the same time we are bound by the laws governing the society, laws we have been elected to uphold."

"At yesterday's meeting the council had agreed to do everything in its power to have the rules changed at the earliest opportunity — the society's annual general meeting in October — and all council members had agreed to canvass support for this proposal in the interim."

At the 1993 annual general meeting members turned down a council motion that the society's rules be amended to allow the disclosure of the names of members found guilty of unprofessional conduct.

Mr Landman said that since then South Africa had moved strongly in the direction of an open society. "The council believes the Law Society must move in the same direction in order to remain a trusted part of that society."

Put it on paper — Omar

(252) (211) ~~211~~ ET 29/8/95

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Publicise all attorney corruption, urges Omar

ROGER FRIEDMAN, Staff Reporter

MINISTER of Justice Dullah Omar today urged the attorneys' profession to take "urgent steps" to ensure that information relating to corrupt practices by attorneys is never "suppressed" again.

"At a time when serious economic crime and corruption is a particular problem in South Africa, those who have the task of applying and upholding the law, cannot be seen to be taking part in corrupt practices," said Mr Omar.

He was speaking a day after the announcement of the resignation of Cape Law Society vice-president Tim McIntosh over the non-disclosure of the names of corrupt attorneys.

Mr McIntosh, who was next in line to become the society's president, said yesterday the time had come to "publish and be damned".

He headed the disciplinary committee which fined 20 attorneys a total of R92,000 for bribing deeds office officials. Only one of the corrupt attorneys, Robin Hazell, was named as he was the only attorney the society had struck from the roll.

Yesterday the law society's council met formally for the first time since the outcry over the non-publication of names reached a crescendo earlier this month.

The council announced that members would "do everything in our power to have the relevant laws changed" at the next annual general meeting in October.

Mr Omar said the issue of corrupt attorneys and the non-disclosure of their names was of "great concern" to him and the general public.

Information in this regard should not be suppressed.

"I hope that the organised legal profession will ensure that the public is properly informed, and will take urgent steps to ensure that the matter is satisfactorily resolved."

Mr McIntosh revealed yesterday that he had attempted to persuade his fellow council members to publish the names of attorneys found guilty of unprofessional conduct during a telephone conference last week.

"I expressed the view that the names of the attorneys should be published immediately, both in the interests of the public and the attorneys' profession."

"Regrettably, I received no support at all and I found my position to be untenable," said Mr McIntosh, who resigned from the council the next day.

Law Society president Andries Landman said the council was "most perturbed" by criticism implying that the legal profession was placing itself above the law.

The council found itself in a "dilemma", recognising the right of the public "to know" but bound by the laws governing the society.

"Crucial to our profession is the trust of the public we serve. Above all, we need to be seen as upholding the law," said Mr Landman.

● In its July editorial, the attorneys' monthly publication, *De Rebus*, warned "The relatively secret way in which complaints are currently handled by the profession in South Africa opens the way for disgruntled complainants to elevate their original complaints to attacks on the system and the profession as a whole."

"The first step, we believe, is for the profession to face the fact that the law societies' dual function of trade union and disciplinary body is at the root of the problem."

CLIVE SAWYER
Political Correspondent

TOUGHER new guidelines for the granting or refusing of bail were tabled in parliament today.

The Criminal Procedure Second Amendment Bill, tabled by Justice Minister Dullah Omar, comes in the wake of a furore in the past year about too-easy bail allowing alleged criminals back on the streets to commit further crimes.

According to statistics tabled in parliament this year, between October last year and January 1 792 people were arrested while out on bail.

But not all were arrested for offences committed while they were out on bail.

The bill will bring into law proposals in an earlier Law Commission report which were aimed at ending confusion about bail.

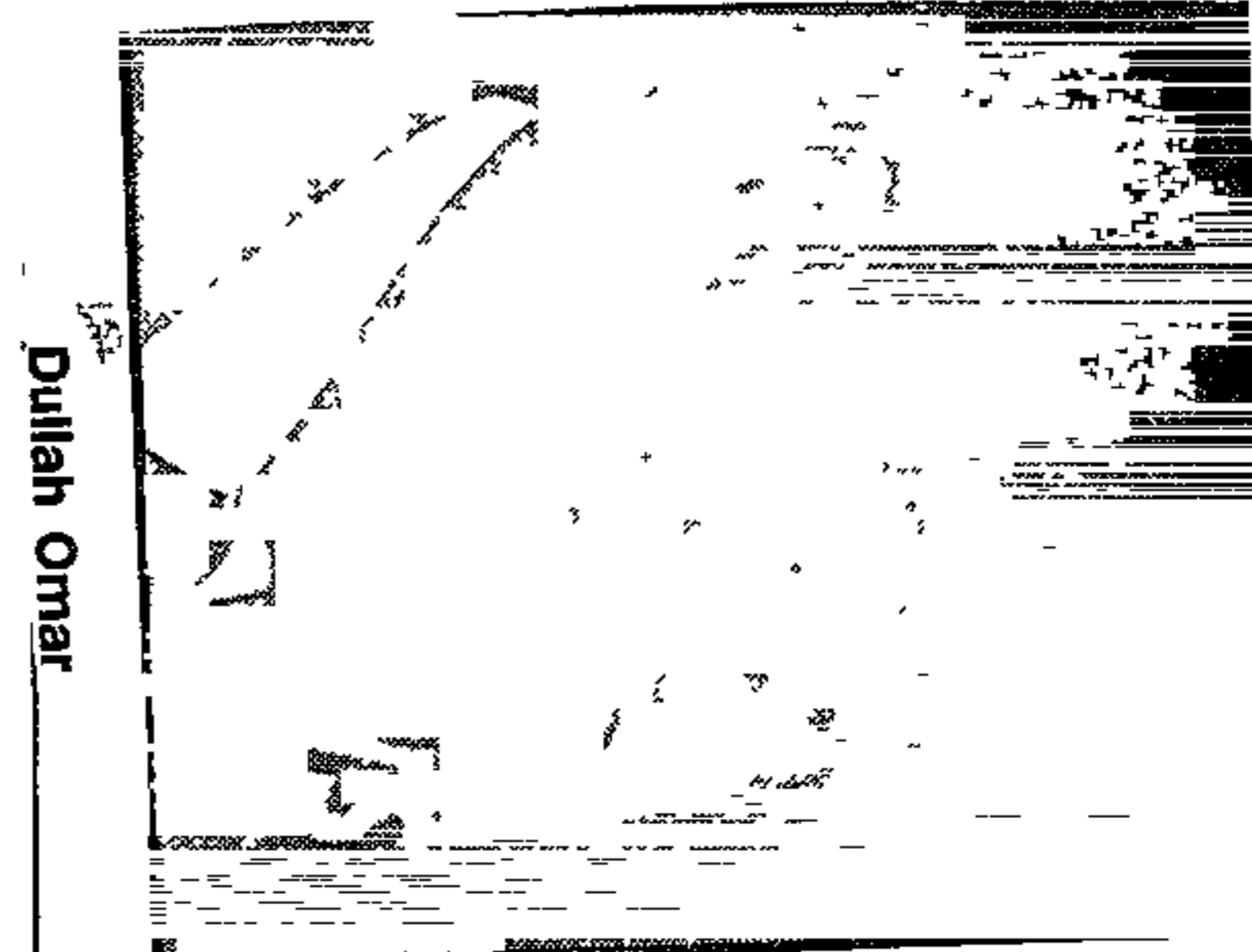
The constitution confers an automatic right on everyone who is arrested for an alleged offence to be released, with or without bail, "unless the interests of justice determine otherwise".

Guidelines set by the bill for refusing bail include the likelihood that the accused will try to evade trial, taking into account emotional, family, community or occupational ties, means available to skip the country, the seriousness of the offence and the effect and enforceability of bail conditions.

Another guideline in refusing bail is the likelihood that the accused will try to influence or intimidate witnesses or to conceal or destroy evidence. Factors to be taken into account here include:

- Whether the accused knows the iden-

(To page 4)



Dullah Omar

New guidelines

(From page 1)

tivity of witnesses and the evidence to be brought, whether witnesses would be willing to testify and whether the police investigation has already been completed.

● The relationship of the accused to witnesses, the effectiveness and enforceability of bail conditions in preventing the accused from communicating with witnesses, and whether the accused would be able to conceal or destroy evidence.

Further guidelines for refusing bail include the likelihood that the accused would, if released, endanger the safety of the public or any particular person. Factors here include:

● The degree of violence involved in the charge, whether the accused has threatened anyone with violence and any resentment the accused is alleged to harbour against anyone.

● Whether the accused has any history of violence, any disposition to violence or serious offences and previous failure to obey bail conditions.

The bill says the court will

Other factors are:

- Any financial loss which the accused will suffer because of being in detention.
- Any impediment to the preparation of the accused's defence or any delay in getting legal representation caused by the detention.
- The accused's health.

The bill gives wide powers to the court to ensure the accused will appear on the date set, saying the court can "make the release of an accused on bail subject to conditions which, in the court's opinion, will contribute to ensuring that the accused will appear on any date to which the proceedings will be postponed."

ES FOR bail (252)
29/8/95
have to weigh the sound administration of justice against the right of the accused to personal freedom.
In particular, the court will have to take into account the prejudice the accused will suffer by being kept in custody.
In deciding thus, the court will have to take into account the period the accused has already been in detention and the probable period before the end of the trial.

Brazil: Tour sign

new guidelines

(252) ARG. 29/8/95

Omar tables bill after year-long furor over 'criminals' going free

Complain and I'll act against A-G - Omar

DURBAN — Justice Minister Dullah Omar said he would act on any written complaint against KwaZulu-Natal Attorney-General, Tim McNally

Mr Omar said he had encountered criticism of Mr McNally's handling of criminal prosecutions. **252** ~~252~~

But he said he could only ask attorneys-general to comment on written complaints made against them.

Mr McNally was attacked by the National Association of Democratic Lawyers last week over his decision to use a self-confessed hit-squad leader, Daluxolo Luthuli, as a witness in a murder case. — Sapa

ARC 29/8/95

KwaZulu A-G's performance in question

(252) (27) star 29/8/95

Durban — Justice Minister Dullah Omar has called for complaints against KwaZulu-Natal attorney-general Tim McNally to be sent to him in writing for investigation, Omar's spokesman, Sue de Vilhiers said yesterday.

McNally has recently come under criticism by the ANC and some legal organisations for the low rate of prosecutions in KwaZulu-Natal where people are killed daily in violent crime.

McNally dismissed the ANC's claims against him. "I'm not a politician and have no political agenda," he said.

He did not elaborate, but said Omar's call for complaints against him to be put in writing and for

him (McNally) to respond later appeared to be a "fair and legitimate procedure".

The National Association of Democratic Lawyers (Nadel) called for McNally's resignation last week after criticising his alleged inability to get to the bottom of hit squad killings in KwaZulu-Natal and to bring hit squad leaders to court.

"Nadel calls on McNally to resign from office. Nadel does not have confidence in McNally to do everything that is necessary in the national interest to bring hit squad activities to justice in this province," a statement said.

Nadel spokesman Krish Govender said the association and other

legal organisations would meet in Durban today to collate criticism against McNally.

The ANC has accused McNally of being "soft" on prosecutions.

"We take this as the number one factor which contributes to violence and encourages perpetrators of violence," KwaZulu-Natal ANC spokesman Dumisani Makhaye said.

But Inkatha spokesman Ed Tillett claimed the ANC wanted only to replace McNally with an "ANC-friendly appointment".

"They are calling for his removal because McNally refuses to toe the ANC line. It's politically motivated," Tillett said. — Reuter

Cape Town — A group of street children has been sentenced by a people's court to attend day-classes and sleep at a shelter for three months.

In an advance for juvenile justice in the Western Cape, the children, who admitted to theft, were sentenced by a group of community leaders — among them lay assessors from the Kensington/Factoria area about 20km from Cape Town.

The "community court" was sanctioned by the senior prosecutor and probation officer at the Cape Town Magistrate's Court.

Minister of Justice Dullah Omar put forward the idea of community courts at a meeting of lay assessors at Parliament earlier this month.

He said the best people to ad-

Move sanctioned by senior prosecutor

People's court deals with street children

Minister justice were "ordinary, fair-minded people", and suggested lay assessors were perfectly positioned to play a major role in the structure.

Omar was careful to draw a distinction between kangaroo courts "which had nothing to do with justice" and legitimately constituted courts presided over by fair-minded citizens.

The case involving the street children was the second one

heard by the Kensington/Factoria community court made up of members of the Kensington Community Centre, lay assessors David Stone, Jennifer Shaik, Fred Jones, councillor Dawood Khan, Harold Holmes and attorney Yusuf Patel.

In the first case, a group of boys who admitted breaking into a school were sentenced to re- turn to school — where their progress would be closely moni-

tored — and perform an hour's community service a week for three months.

Zulpha Carr, of the University of the Western Cape Juvenile Defender Centre held a watching brief on behalf of the children.

Cape Town Magistrate's Court senior prosecutor Alma Smith said the reason the children were not referred to the National Institute for Crime Prevention and Rehabilitation of Offenders'

(252) 29/8/95

juvenile justice school was that they were considered too young.

The juvenile justice school caters for children older than 12. "The children had already confessed so the cases were not referred to the community to determine guilt, only to determine sentences," Smith said.

If the sentence was considered appropriate by all parties and the children showed some willingness to reform, the prosecution would withdraw the case, said Smith.

Every juvenile arriving at the Cape Town Magistrate's Court was assessed. Only after assessment could diversion be considered — and only for petty offences.

The child would not be lumbered with a criminal record, but would be made to learn from experience — Sapa.

WEDNESDAY
AUGUST 30, 1995



CURBS: Mr Dullah Omar.

Strict new guidelines for bail tabled (252)

POLITICAL STAFF

AR CT 30/8/95

MINISTER of Justice Mr Dullah Omar tabled legislation yesterday to tighten up the granting of bail.

The Criminal Procedure Second Amendment Bill qualifies the guarantee of bail provided by the constitution.

Mr Omar has already directed the judiciary to examine each application for bail on its merits. The new bill formalises this approach.

The constitution says all suspects have the right to bail unless the "interests of justice" require otherwise.

The bill lists guidelines for judicial officers to follow when a suspected criminal applies for bail.

These include whether there is a likelihood that the accused will try to evade trial or to interfere with witnesses or evidence.

Reinstate death penalty — NP

(252) CT 30/8/95

THE death penalty should be reinstated under the new constitution, the NP submitted in Parliament yesterday.

In its submission to the Constitutional Assembly, the party proposed a limitation on the right to life should be built into the constitution, NP theme committee member Mr Ray Radue said.

Political Staff, Sapa

Performing arts councils

posts frozen

(262) ARU 30/8/95

Staff Reporter

POSTS with performing arts councils are to be frozen pending the establishment of new arts boards.

This was announced by Arts, Culture, Science and Technology Minister Ben Ngubane after a meeting of the Council of Culture Ministers in Cape Town.

A moratorium has also been placed on retrenchment and retirement packages.

The rationale for the ruling is that each new board should have the prerogative to make new appointments, negotiate retrenchment and retirement packages and decide on future artistic programmes.

The council has also agreed to release the second instalment of the performing arts council's funding in one lump sum immediately.

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ANC calls on A-G to quit over murder case

DURBAN. — KwaZulu-Natal Attorney-General Tim McNally should be brought before a judicial committee to account for his handling of a murder squad case in which two men were each sentenced to 75 years' jail, the African National Congress in the province has said

"It is in the interests of justice that Mr McNally resigns from his position," the ANC said

The ANC accused Mr McNally of failing to subpoena leading Inkatha Freedom Party members and police officials named during the trial

The convicted men claimed throughout the trial that the Ezikhawini murder squad had been formed by prominent IFP leaders, politicians, community leaders and police officers who had issued orders for the assassination of ANC members viewed as a threat to the IFP and KwaZulu police.

Mr Justice Nick van der Reyden said during the trial that the allegations of involvement by the IFP and KwaZulu police should be investigated.

The ANC said the allegations were serious, but Mr McNally had not issued subpoenas for those named in court — Sapa.

Law officials, government head for row

ARLT 30/8/95

(252)

(276)

ROGER FRIEDMAN
Staff Reporter

A ROW is looming between the government and the attorneys-general over allegations that Kwazulu-Natal Attorney-General Tim McNally is pursuing his own political agenda

The allegations, attributed to African National Congress secretary-general and constitutional assembly head Cyril Ramaphosa, followed a visit to KwaZulu-Natal last week by an ANC delegation which included Justice Minister Dullah Omar.

Mr Ramaphosa told a weekend newspaper that cases were not being prosecuted and Mr McNally did not appear to be on the side of law enforcement.

Mr McNally has also been accused — by the National Association of Democratic Lawyers — of not doing enough to bring hit-squad members to justice

Yesterday Mr McNally's fel-

low attorneys-general released a joint statement condemning the "recent attacks" on Mr McNally's integrity.

"The attacks are of a generalised nature, without concrete accusations, let alone concrete evidence

"This is both unfair to the individual concerned and damaging to the image and administration of the criminal justice system," the attorneys-general said

Mr Omar said yesterday that the perceptions — that Mr McNally was not doing all in his power to prosecute those waging war in KwaZulu-Natal were a matter of "grave concern .. especially when hundreds of people are dying".

Mr Omar said "serious criticisms" had been levelled at Mr McNally, and these needed to be thoroughly investigated.

"While I have expressed concern, I have indicated that I should be furnished with specific details of the allegations."

He said it was as difficult for

Minister welcomes justice initiative

ROGER FRIEDMAN
Staff Reporter

JUSTICE Minister Dullah Omar has welcomed the Cape Town Magistrate's Court's initiative in diverting minor cases involving juveniles from the criminal justice system to embryonic "community courts"

But Mr Omar has warned that anybody contemplating establishing "kangaroo courts" will face the full might of the law

The Argus reported earlier this week that, in an advance for juvenile justice — and community access to justice — a group of street children who confessed to theft were "sentenced" by community leaders to attend classes and sleep at a shelter for three months.

ARG 30/8/95
The so-called community court, made up of lay assessors and an attorney from the Kensington-Facreton area, has since heard two other cases. At this stage, the structure does not determine guilt and only sets sentences

Mr Omar mooted the idea of establishing community courts at a meeting of lay assessors earlier this month, saying the best people to administer justice were "ordinary fair-minded people".

Yesterday, he said it was "very heartening that communities are organising themselves and are prepared to play a role in ensuring crime is combated and justice is done"

But, Mr Omar said, the setting up of structures in the community could only be done in conjunc-

tion with local magistrates and justice officials.

"We don't want to see the emergence of kangaroo courts where communities take the law into their own hands. That cannot be tolerated and would have terrible effects."

"There needs to be uniform criteria, a sense of justice and rule of fair play. Kangaroo courts have nothing to do with justice."

Mr Omar said the issues of lay assessors and community courts would "come under the spotlight" at the next national legal forum, which is to be held in Durban in November.

Mr Omar envisages introducing the systems involving lay assessors and community courts "in a systematic way, throughout the country"

Racial strife at two schools

JOHANNESBURG — Racial strife has erupted at schools in Gauteng and KwaZulu-Natal

Two charges of assault were being investigated at a high school south of Johannesburg after racial clashes between pupils, a police spokesman said today

The charges arose from fights at Mondeor High School on Monday

A charge of assault was laid by a 17-year-old white boy who was allegedly stabbed by a coloured pupil armed with a screwdriver, the spokesman said. Another assault charge had been laid by a 14-year-old black against a group of white pupils who, he alleged, beat him

Many parents had withdrawn their children from the school until the matter had been sorted out. A school official said about

400 pupils had not arrived for classes today

Provincial Education Minister Mary Metcalfe ordered the Independent Mediation Service of South Africa (IMSSA) to investigate and make recommendations to prevent future clashes at schools.

Provincial government sources said Ms Metcalfe was in a cabinet meeting and was likely to raise the issue with premier Tokyo Sexwale

Meanwhile Daleview Secondary School in Phoenix, Durban, was plunged into chaos yesterday as hundreds of pupils shouted at police for arresting a suspended black pupil who came to school with a serrated knife

The standard eight pupil had earlier been suspended for allegedly stabbing an Indian pupil in class. But at 10am yesterday the

pupil again walked into the school with a knife

The school's management called in the police, who arrested the youth. But chaos broke out as the pupil fought off police who tried to wrench the knife from him. The youth went berserk and kicked out the window of a police van

More than 150 black pupils hurled abuse at the police and toy-toyed. They demanded that the pupil be released

The youth is to be charged with damage to state property and with being in possession of a dangerous weapon

A source said racial tension had been brewing at the school, but management was doing everything possible to create harmony between black and Indian pupils. — Sapa and The Argus Correspondent.

R1-m RDP office for Metro council
ARG 30/8/95
Municipal Reporter

THE Cape Metropolitan Council is setting aside R1 384 800 to set up a reconstruction and development office

An amount of R200 000 is being set aside to employ consultants and experts, a further R100 000 for public participation and R200 000 for a media campaign



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Western Cape lawyers grilled over 'political objectives'

ACT 30/8/95

(252)

ANDREA WEISS
Municipal Reporter

JOHANNESBURG — The Western Cape's legal team was accused today of introducing "clever" arguments which had political objectives, but which could not be upheld legally.

This attack came from Mr Justice Johan Kriegler, one of the 11 constitutional court judges presiding over the dispute between the Western Cape and central government.

Later Judge Kriegler acknowledged he had spoken sharply.

The case was postponed from earlier this month after the Western Cape presented a new argument relating to President Mandela's right to make proclamations amending laws.

From the outset today Milton Seligson SC, appearing for the Western Cape cabinet and

others, was grilled by several members of the Bench.

This was because he was arguing against the validity of two proclamations made in terms of amendment 16A to the Local Government Transition Act, keeping the attack on the amendment itself as an alternative argument.

But the judges wanted to know why he was not attacking the validity of amendment 16A. This should have been the main thrust of his argument, the judges felt.

Justice Laurie Ackermann said "If a party seeks to strike down an act of parliament it should be unacceptable to do that as a fifth alternative. Either one attacks an act of parliament or one doesn't."

Justice Ismail Mahomed said he understood the purpose of the postponement of the case, was because the Western Cape team wished to attack amend-

ment 16A

Constitutional court president Arthur Chaskalson said the Bench's objections to Mr Seligson's argument had been put to him "on a number of occasions".

"You must really make up your mind."

Mr Justice Kriegler said "Mr Seligson, could I be frank about my unease arising out of the question of my colleagues? What we have here is an issue of the gravest public moment. It is a major confrontation between the provincial and national government organs in this country. It looks as if the argument is cleverly devised to achieve an objective which has political advantages but is legally untenable."

Mr Seligson later agreed to elevate the attack on the constitutionality of amendment 16A to his main argument. But he added that the way in

which he had framed his argument was "certainly not an attempt at fancy footwork".

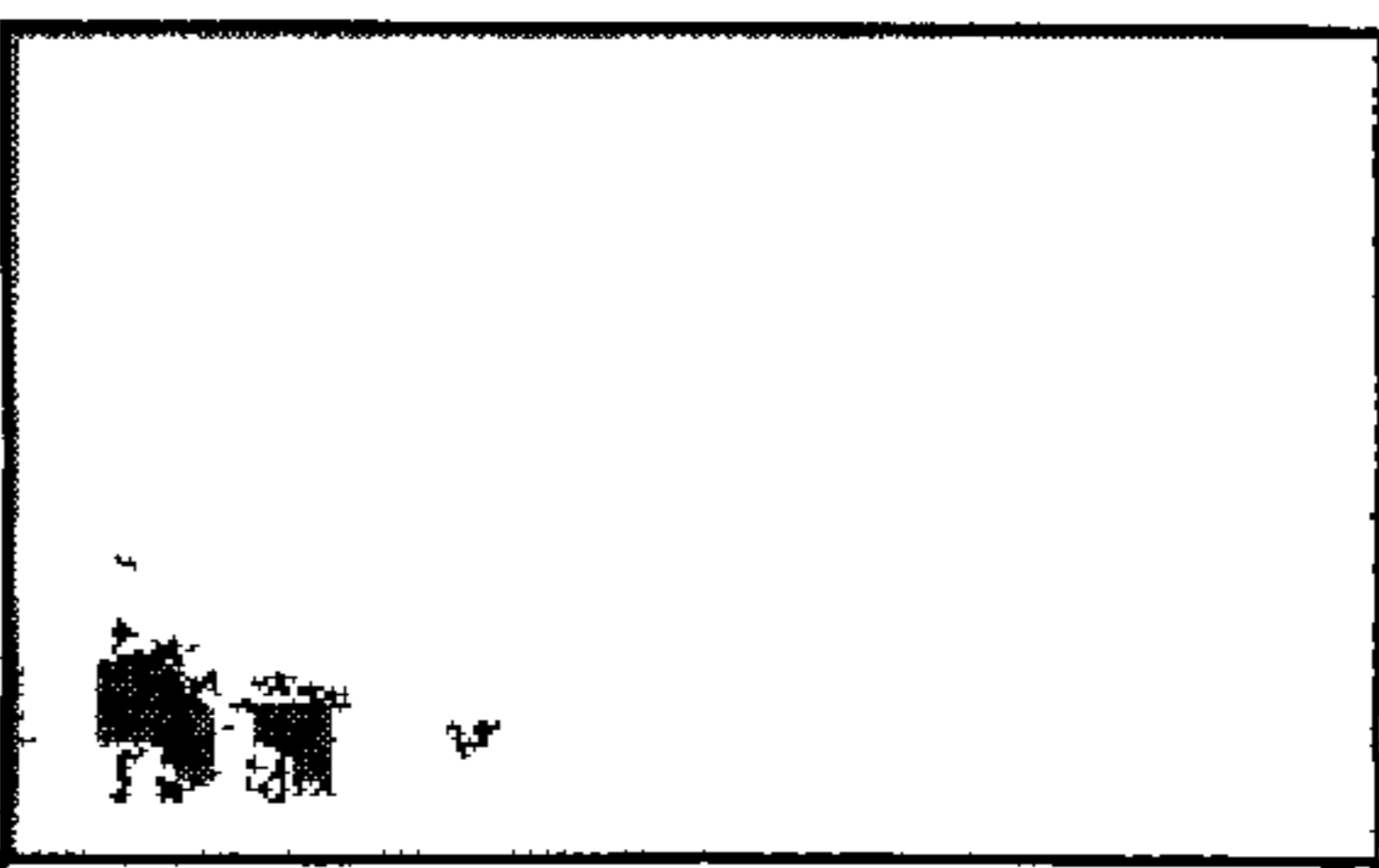
Mr Justice Kriegler said "I expressed myself sharply this morning. I accept without any qualification what you have said."

The next point on which the judges tackled Mr Seligson was whether a constitutional principle regarding the provinces had any bearing on the interim constitution.

Judge Chaskalson said that the principles essentially prescribed procedure for the drafting of a new constitution and were framed in "the language of the future".

Mr Seligson conceded that the principles were there to guide the drafting of the new constitution but felt they also had a bearing on the present status quo.

Jeremy Gauntlett SC, appearing for President Mandela,



Mr Justice Kriegler

remained silent throughout the interrogation, waiting his turn to be quizzed by the formidable Bench.

● J Gauntlett SC is appearing for the President and others, assisted by J Henris, and instructed by J P Zweigelaar of the Johannesburg State Attorney's office. M Seligson SC is appearing for the Western Cape cabinet and others, assisted by T D Polgefer, and instructed by G J Malherbe of Walker, Malherbe, Godley and Field.

NP wants debate on death penalty

By Mathatha Tsedu
Political Editor

THE NATIONAL PARTY has asked the Constitutional Assembly to reintroduce the death penalty in the new constitution

Announcing this yesterday in Cape Town, NP Senator Mr Ray Radue, said his party was not convinced that "the death penalty for the most serious and brutal crimes involving violence should be abolished

"The right to life of the innocent victims of such crimes is fundamental. Where that right is deliberately and unlawfully violated, the NP is of the view that South African society in the person of the state is justified in limiting the right to life of the perpetrator," he said

Radue said while the NP had agreed to the wording of Section 9 of the interim constitution - which guar-

Support for the NP may mean the reintroduction of the death penalty

antees the right to life, and which was used by the Constitutional Court to declare the death penalty unconstitutional - on the understanding that it would leave room for the death penalty in specific cases. It said it accepted that this was not so, and has now proposed that the right to life should be limited to allow execution of a sentence of a court of law for which the death penalty is provided by law

Radue said the NP was convinced that the high crime rate was due to the laxity of the sentences. He said the abolition of the death sentence had led to people taking the law into their own hands, and quoted the ongoing case of an Ivory Park, Midrand, leader charged with the murder of four gangsters as

proof thereof. He said a survey conducted by Markinor in February-March this year had found that 78 percent of 2 000 respondents supported the death penalty for child murderers, 63 for rape, 70 for murdering adults, 61 for serious child abuse, 65 for murdering police officers, and 35 percent for treason

The submission by the NP means that the Constitutional Assembly and its sub committees will now have to reopen the death penalty debate, and the party may call for public submissions. If the party received majority support for its call, it recommends that a new effective date should be set for the commencement of the new death sentences

(252)

same as 30/8/95

Be open about corrupt legal practices — Omar

(252) Star 30/8/95

■ OWN CORRESPONDENT

Cape Town — Minister of Justice Dullah Omar yesterday urged the law profession to take urgent steps to ensure information relating to corrupt practices by attorneys is never suppressed again.

"At a time when serious economic crime is a particular problem in South Africa, those who have the task of applying and upholding the law cannot be seen to be taking part in corrupt practices," Omar said.

He was speaking a day after the vice-president of the Cape Law Society, Tim McIntosh, resigned over the non-disclosure of corrupt attorneys.

McIntosh, who was next in line for the presidency of the society, said the time had come to "publish and be damned".

McIntosh headed the disciplinary committee which fined 20 attorneys a total of R92 000 for bribing deeds office officials.

However, only one of the attorneys, Robin Hazell, was named and struck from the attorneys' roll.

Yesterday, the law society's council met formally for the first time since the outcry over the non-publication of names.

The council announced that members would do everything in their power to have the relevant

laws of the society changed at the next annual general meeting in October.

Omar said the issue of corrupt attorneys and the non-disclosure of their names was of "great concern" to him and the general public.

"Information in this regard should not be suppressed. I hope the organised legal profession will ensure that the public is properly informed, and will take urgent steps to ensure that the matter is resolved," he said.

McIntosh revealed that he had attempted to persuade his fellow council members to publish the names of attorneys found guilty of unprofessional conduct.

"I expressed the view that the names of attorneys should be published immediately, both in the interests of the public and the attorneys' profession."

"Regrettably, I received no support at all and found my position to be untenable," McIntosh said.

Law Society president Andries Landman said the council was most perturbed by criticism implying that the legal profession was placing itself above the law.

The council found itself in a dilemma, recognising the right of the public to know but bound by the laws of the society, he said.

Lawyers bay for McNally's blood (252)

Farouk Chothia

BD 31/8/95

DURBAN — Durban lawyers have started compiling a dossier against KwaZulu-Natal attorney-general Tim McNally in a bid to force him to resign.

At the same time the parliamentary justice standing committee has asked the attorneys-general, including McNally, to appear before it next week for questioning on their performance.

McNally has been accused of not prosecuting senior IFP political figures for alleged hit squad activities.

Richard Lyster, a spokesman for the lawyers — drawn from the Legal Resources Centre, National Association of Democratic Lawyers, Black Lawyers' Association, Lawyers for Human Rights and the Community Law Centre — has established a subcommittee to find cases which indicate bias, incompetence or inability on McNally's part.

The lawyers would present "some information" to the committee ahead of McNally's appearance. A comprehensive dossier, based on "tangible evidence" against McNally, would be presented later to President Nelson Mandela, Justice Minister Dullah Omar and Safety and Security Minister Sydney Mufamadi with a view to having McNally suspended or dismissed.

However, the Society of State Advocates said there appeared to be a concerted cam-

Continued on Page 2

McNally (252)

Continued from Page 1

BD 31/8/95
paign to discredit the criminal law system in KwaZulu-Natal. The "unfounded attacks" on McNally were disturbing and would lead to the criminal law system becoming politicised.

Lyster said McNally's office had handled the trial of three KwaZulu police hit squad members in a "shocking way".

Earlier this week the Durban Supreme Court handed the policemen a combined 202-year jail term.

McNally's office prosecuted the "foot soldiers" but made no attempt to prosecute those identified as "masterminds" of hit squad operations, Lyster said. The State could have subpoenaed them to testify but failed to do so.

McNally said criticism against him was ill-informed and unfounded. "There are

good legal and strategy reasons for all the decisions I have made. These will be detailed to the minister of justice when he calls for my report."

The ANC said McNally should have summoned leaders named in the trial — IFP deputy secretary-general Zakhele Khumalo, KwaZulu-Natal social welfare MEC Gideon Zulu and safety and security MEC Rev Celani Mtetwa — to respond to the allegations against them. It demanded that McNally appear before a judicial commission to explain his handling of the trial.

On Tuesday Judge Nick van der Reyden called for a probe into allegations that senior IFP members and police were involved in hit squad activities.

McNally said he supported this call. Once the allegations had been investigated and the relevant dockets placed before him for a decision, he would do whatever he could to expedite the process.

Bail bill 'a disappointment'

Political Correspondent

ASPECTS of a proposed new law on bail are set for heavy weather in the national assembly justice committee

This emerged at a briefing yesterday by the Law Commission to the committee on the Criminal Procedure Second Amendment Bill

The bill is based on a Law Commission report proposing new guidelines for bail, providing stricter guidelines for refusing bail

Law Commission member Gideon Smit said the bill was intended to balance the rights of the individual to

personal freedom against the interests of justice

Committee members criticised the bill for giving wide powers to police to grant bail even before an accused appeared in court

Committee chairman Johnny de Lange (ANC) said it could mean the courts would be circumvented

Douglas Gibson (DP), who has tabled his own legislation to reform bail laws, said the bill was a major disappointment

Public hearings on the bill will begin next week with evidence from the police *ARLT 31/8/95*

Natal A-G defends his decision

Sowetan 31/8/95

(252) (252)

KWAZULU-NATAL Attorney-General Tim McNally yesterday defended his decision not to call senior Inkatha Freedom Party members and police officers implicated in hit squad activities to give evidence in the trial of three self-confessed hit squad members

He said criticism against him was "ill-informed and unfounded" "There are good legal and strategy reasons for all the decisions I have made These will be detailed to the Minister of Justice when he calls for my report," McNally said

Two men were each sentenced in the Durban Supreme Court on Tuesday to 75 years' imprisonment for the killing of two men and four youths in the early 1990s A third man was sentenced to 52 years in jail for his part in some of the killings

IFP leaders and senior police officers were mentioned several times during the trial as being behind the formation of hit squads in KwaZulu-Natal The convicted men and witnesses also claimed they had acted on instructions from these leaders in carrying out assassinations

The African National Congress said on Tuesday McNally should have summoned those named to respond to the allegations against them. It demanded McNally be brought before a judicial commission to explain his handling of the trial

McNally said people implicated in hit squad activities included the IFP's deputy secretary-general Mr Zakhele Khumalo, KwaZulu-Natal social welfare MEC Mr Gideon Zulu, and safety and security MEC the Rev Celani Mtetwa, who was accused of supplying weapons.

"It is known that MZ (Zakhele) Khumalo and others have already been arrested for a hit squad murder of 13 people This police docket has not yet been placed before me for decision," McNally said in his statement. - Sapa.

A hanging issue and mad bureaucrats

(252)
Sowetan
31/8/95

By Mathatha Tsedu
Political Editor

MANY people who normally do not agree with the National Party will most probably support its stand on the need for the retention of the death penalty

Some of course would also argue that the NP has in its entire life as a party based its policies on hanging people, and that when they had the power to do so they went about it in a very passionate way

And so it was that on Tuesday the party called a Press conference to speak about its intention to have the death penalty reintroduced

And the passion was there: "It will be recalled that the then state president proclaimed a moratorium on the execution of the death sentence...".

Does this mean that the Nats ordered the execution - as in the killing - of the death sentence? In which case what are they worried about?

Or was it just the copy writer gone berserk at the execution?

The other day a colleague went to the Parliamentary permit section to obtain a permanent permit

His application had been approved, he was told by an official and he needed to have his head of department fill in a specific section of the form

When told by my colleague that he was the head of department, the official then advised "Just get the person immediately below you to fill it in" Which raised a number of possibilities for the journalist

"Maybe I should just go to one of my juniors and say please confirm that I am still employed here and am your boss" The way bureaucracy works is amazing.

True enterprise

Speaking of Parliament and the immense responsibilities that it carries, many of us are awed by its presence.

Not so a woman hawker who has decided that the fence next to the Parliament Street entrance is a good place for her to hang her ties

Now with the dress code gone and ties no longer compulsory, she is not likely to do brisk business at that spot. But then who am I to say— maybe she saw that fence as a niche in the market and she may still one day own a shop on the waterfront.



ANC and AGs at loggerheads

The friction between between the attorneys-general and the ANC intensified yesterday with the ANC condemning the country's five AGs for coming out in support of besieged KwaZulu-Natal AG Tim McNally

The ANC yesterday called on Justice Minister Dullah Omar to establish a commission of inquiry into the activities of McNally

The organisation also backed these suggested public hearings by the parliamentary justice committee. The hearings are aimed at ensuring the accountability of

AGs

(252) ~~(24)~~
Referring to McNally's alleged failure to prosecute perpetrators of political violence in KwaZulu-Natal, the ANC said the AG was "undermining the effective administration of justice"

The ANC said the support given to McNally by the country's other five AGs placed serious "question marks on their integrity and neutrality"

ANC secretary-general Cyril Ramaphosa has called for an investigation into McNally's behaviour - Staff Reporter

STAN 3/18/95

McNally backs hit-squad probe

CT.

3/8/95

DURBAN kwaZulu/Natal attorney-general Mr Tim McNally said yesterday he supported probes of alleged hit-squads and would try to speed up investigations.

Mr Justice Nick van der Reyden called on Tuesday for a probe into claims by three convicted hit-squad murderers that several Inkatha leaders were behind their actions.

Mr McNally promised to "do whatever I can to facilitate the process" — Sapa-Reuter

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50 killed in people's courts ⁽²⁵²⁾ Mufamadi

CLIVE SAWYER
Political Correspondent

FIFTY people have died and 62 have been injured because of action by "people's courts" since the beginning of last year. *ARG 1/9/95*

Safety and Security Minister Sydney Mufamadi said this in the national assembly yesterday in reply to questions by Douglas Gibson (DP).

"These activities are often conducted with the approval of members of the communities because they are of the opinion that people's courts mete out punishment without undue delay," Mr Mufamadi said.

The police had always tried to bring perpetrators of people's courts to justice.

Community police forums had been set up to initiate co-operation to rid communities of the problem.

There had been 295 prosecutions as a result of the incidents.

Mr Gibson said the acceptable aspects of people's courts, of grassroots involvement in and ownership of the justice system, were to be brought into the new constitution.

These formal community courts would have limited jurisdiction, including the resolution of neighbourhood and family disputes.

They would be presided over by respected people who would not have to be legally qualified.

People would have to volunteer to comply with their mediation.

"We hope that by introducing these courts, we shall do away with the excesses where street justice turns into no justice at all."

The system had to be brought into the mainstream of justice administration.

Now lawyers face fresh scandal over auction 'kickbacks'

Star 2/9/95 (252)
By JEAN LE MAY

Further scams in the legal profession emerged this week following demands that corrupt practices by attorneys be made public after the recent scandal involving payments to Deeds Office officials

The press has revealed that auctioneers in the Western Cape are paying kickbacks out of their commission to attorneys who refer liquidation auctions to them – and the attorneys pocket the money

"The pickings can be good," said an informant

In the past 10 years, the commissions paid to attorneys by auctioneers for referral on liquidation sales has risen from 10% to 60 or even 70%

"This is the result of a price war between auctioneers who are looking for liquidation referral work," said the informant

"On a liquidation sale which brings in, say, R2-million – and this can happen when a big manufacturing concern is liquidated – the 7% auctioneer's commission is R140 000, and 70% of that is R98 000"

Asked whether the attorney paid the money back to the creditor, the informant said "It goes into his back pocket. And he doesn't declare it in his tax returns."

The Minister of Justice, Dullah Omar, this week urged the legal profession to take urgent steps to ensure that information

relating to corrupt practices by attorneys is never "suppressed" again

Omar was referring to the refusal by the Cape Law Society to publish the names of attorneys who had been fined for bribing Deeds Office officials

The Law Society has also warned attorneys that the practice of sharing conveyance fees with estate agents was in breach of the society's rules

However, the Cape Law Society appears to take an ambivalent attitude towards the practice of accepting a share of auctioneers' commission on liquidation sales, which is common in the Western Cape Law societies in Gauteng and KwaZulu-Natal have clamped down on it

Cape Law Society president Andries Landman said "Any reduction in commission would be of benefit to the creditor"

"Liquidators should sharpen up their procedures – they should shop around and find an auctioneer who does not indulge in the practice"

However, Association of Insolvency Practitioners president Brian Smith said the matter had "nothing to do with liquidators – the Law Society should sharpen up its own procedures if attorneys are getting up to something"

Liquidators were getting "a very poor service" from auctioneers and the cost of running auctions was going up by leaps and bounds, he said

Now lawyers trace 'kickback' scandal

(252)

SA ALI 2/9/95

252

2/9/95

■ Attorneys in the Western Cape get kickbacks from auctioneers in liquidation sales — and Law Society president Andries Landman says he is reluctant to comment.

JEAN LE MAY
Staff Reporter

FURTHER irregularities in the legal profession emerged this week following demands that corrupt practices by attorneys should be made public after the recent scandal involving payments to Deeds Office officials.

SATURDAY Argus can this week disclose that auctioneers in the Western Cape are paying kickbacks out of their commission to attorneys who refer liquidation auctions to them — and the attorneys pocket the money.

"The pickings can be good," said an informant "On a liquidation sale which brings in, say, R2 million — and this can happen when a big manufacturing concern is liquidated — the seven percent auctioneer's commission is R140 000, and 70 percent of that is R98 000

"The big question to be asked is Does the share of the commission paid to the attorney go back to the creditors who hired him to handle the liquidation, or does it go into his back pocket?

"It goes into his back pocket — at the creditors' cost," the informant said "And he doesn't declare it in his tax returns"

Minister of Justice Dullah Omar this week urged the legal profession to take "urgent steps" to ensure that information relating to corrupt practices by attorneys was never "suppressed" again

Mr Omar was referring to the refusal by the Cape Law Society to publish the names of attorneys who had been fined for bribing Deeds Office officials

The Law Society has also warned attorneys that the practice of sharing conveyancy fees with estate agents was in breach of the society's rules

However, the Cape Law Society appears to take an ambivalent attitude towards the practice of accepting a share of auctioneers' commission on liquidation sales

This is common in the Western Cape, although law societies in the Transvaal and Natal have clamped down on it

SATURDAY Argus was informed this week that, in the last 10 years, the commissions paid to attorneys by auctioneers for referral on liquidation sales has risen from 10 percent to 60 or even 70 percent

"This is the result of a price war between auctioneers who are looking for liquidation referral work," said the informant

Cape Law Society president Andries Landman of Victoria West, when SATURDAY Argus first referred the matter to him, said "This is news to me" He said it appeared to be similar to the sharing of conveyancing fees with estate agents and that he "condemned it unreservedly"

However, Mr Landman telephoned SATURDAY Argus a few hours later to say that, on making inquiries, he had found that the practice of accepting a share of auctioneers' commission was indeed prevalent but that "the sharing of commission is not the same as sharing a professional fee"

"I don't like it at all but I

■ To page 3

don't want to express an opinion as to the propriety," he said

"Any reduction in commission would be of benefit to the creditor" Liquidators should sharpen up their procedures — they should shop around and find an auctioneer who does not indulge in the practice"

However, if a complaint was received from a creditor, the Law Society would look into it, he said.

Brian Smith, president of the Association of Insolvency Practitioners, said the matter had "nothing to do with liquidators — the Law Society should sharpen up its own procedures if attorneys are getting up to something"

Liquidators were getting "a very poor service" from auctioneers and the cost of running auctions was going up by leaps and bounds, he said.

A liquidator who asked not to be named said the Master of the Supreme Court appointed liquidators who were approved by creditors

"But most creditors don't keep lists of liquidators. They take their attorneys' advice Two-thirds of cases are referred by attorneys, and the attorney will choose an auctioneer who pays him the biggest share of the commission"

Another liquidator pointed out that in many sales in execution of fixed property the auctioneer was appointed by the bank or other financial institution involved, which avoided the racket

A leading auctioneer, who asked not be named, said the practice of auctioneers giving kickbacks to attorneys arose when a lot of new auctioneers appeared on the scene and there was a scramble for work

A good auctioneer can get 50 to 70 percent of the retail price — not every auctioneer can do this and the creditor naturally suffers

"Auctioneers got caught up in the system," he said

'Get hit bosses or get out'

By SIPHO KHUMALO

PRESSURE is mounting on KwaZulu/Natal Attorney-General Tim McNally, to prosecute Inkatha politicians and senior police officers implicated in running hit squads in KwaZulu/Natal

This comes in the wake of a crucial judgment by Justice Nick van der Reyden which confirmed the existence of hit squads in KwaZulu/Natal. This is the first time that the Supreme Court has found that officially sanctioned hit squads have existed in the province

Sentencing three self-confessed hit-squad operatives - two of them to 75 years and the third one to 52 years - Judge van der Reyden called for an

investigation into claims that the three - Romeo Mbambo, Israel Hlongwane and Gena Mkhize - had killed under direct orders from senior Inkatha officials - including provincial cabinet ministers

These included KwaZulu/Natal Social Welfare Minister Prince Gideon Zulu; Safety and Security Minister Reverend Celani Mtetwa; Acting Commissioner of Police Brigadier Patrick Mzimela, Inkatha MP Lindiwe Mbuyazi and other police officers

If no investigation was launched into alleged involvement of officials, the judge said, he would dispatch transcripts of the court record to the national safety and security and justice ministers.

McNally's reluctance to bring to court the Inkatha officials implicated in the trial has triggered a wave of protest and calls for his resignation

The National Association of Democratic Lawyers Association (Nadel) lashed out at McNally, noting that under the apartheid government he had headed the controversial McNally Commission which probed the hit squad phenomenon

"The findings of this commission indicated that the existence of hit squads could not be established.

"He was also a prosecutor for the Harmse Commission into hit squads. This commission was also regarded as a

failure in terms of getting to the bottom of the operations of hit squads", said Nadel's Krishna Govender.

"Against this background, Nadel calls on McNally to resign from office," Govender said

ANC provincial secretary Senzo Mchunu said: "The inaction of McNally has further eroded the confidence of people in the justice system, which is overwhelmingly white and whose main function has always been to underpin the white racist status quo

"It is in the interests of justice that McNally resign from his position." In response McNally dubbed the criticism levelled against him as "uninformed and un-

CP 3/9/85

(252)

at 206

He said he supported the call by Judge Van Reyden that an investigation be instituted into the allegations

Sapa reports that six attorneys-general have rallied behind McNally.

"The allegations are of a generalised nature and are completely unsubstantiated, making it virtually impossible to respond meaningfully to them. This is both unfair towards McNally and damaging to the administration of the criminal justice system," they said in a statement

The Society of State Advocates said it appeared there was an orchestrated attempt to discredit the criminal law system in KwaZulu/Natal

It said it found it "disturbing" that criticism of an attorney-general was being conducted "in such a measure that he is now being subjected to a public hearing by the media

"There have always been procedures according to which an attorney-general can be called to account. Unfounded attacks on the occupant of such an important profession in the criminal law system can only lead to it becoming politicised and undermined

"The society gives its full support to attorneys-general who have acted independently and impartially over the years," the statement said

Speaking of rights

CP 3/9/90

By MARTIN
NTSOELENGOE

THE USE of Northern Sotho in the Vosloorus Regional Court by an East Rand lawyer has met with mixed feelings in legal circles.

Some lawyers and advocates think that lawyer Post Moloto was within his constitutional rights.

Most of the black lawyers interviewed commended him for setting the pace by introducing an African language in the local courts.

Most say Moloto exercised his constitutional rights for the benefit of his client.

Aubrey Khanyile, who has a law practice in Krugersdorp, said Moloto did a good thing because he and his client both speak Northern Sotho and his client understood him better.

"We encourage him to continue in the same way," Khanyile said.

Moloto was also praised by advocates who saw nothing wrong in what he did in court on Monday.

One of the longest serving advocates, Alexander Mlonzi, said the Constitution must be respected.

But another source in the Johannesburg chief magistrate's office said interpreters were always available anyway.



SEPEDI-SPEAKER . . . Lawyer Post Moloto

Moloto's biggest support came from the Black Lawyers' Association (BLA).

BLA executive director Pansy Tlhakula said the Constitution recognises eleven official languages, and Northern Sotho (Sesotho sa Leboa or Sepedi) is one of them.

The Constitution further grants every person the right to use the language of his or her choice and gives a party to litigation the right to use the South African language of his or her choice during court proceedings.

By conducting the tri-

al in Northern Sotho, Moloto was merely exercising his and his client's constitutional rights.

"It is a known fact that the legal system in our country lacks legitimacy in the eyes of the majority of ordinary South Africans. What Moloto did will in fact assist in restoring confidence in the system," Tlhakula said.

"Moloto should be commended for making the Constitution of real benefit to the majority of the people. We encourage the other legal practitioners to take the cue from him." (252)

Community courts set to be part of the law

(252)
APR 4/9/95

A committee formed by Justice Minister Dullah Omar to oversee the implementation of the lay assessor system in magistrate's courts countrywide, has had its mandate extended to make recommendations to the justice department on establishing community courts. The committee spoke to Staff Reporter ROGER FRIEDMAN.

THE transformation of South Africa's justice system from one that was viewed with suspicion, distrust and horror by the majority of citizens to one that invites the input of citizens is already well under way.

The country's highest court, the Constitutional Court, is a totally non-racial body, Supreme Court benches are no longer the exclusive domain of whites and lay assessors are assisting and advising magistrates in lower courts.

Now the concept of establishing community courts staffed by lay magistrates is being debated.

The idea of community courts is not new in South Africa, Constitutional Court judge Yvonne Mokgoro recently told a conference on justice.

The idea to formally incorporate them into the country's legal system is.

In the 1960s, disputes in urban areas were already being dealt with by unofficial tribunals known as "Makgotla" — to the apparent satisfaction of the parties concerned, said Judge Mokgoro.

"In the 1970s it became evident that an amazing number of such tribunals were flourishing alongside State courts, due to the perceived failure on the part of the State to provide adequate law-enforcement in the overcrowded, high-density African townships."

The activities of these early "peoples courts" were overtak-

en by a new type of lay tribunal which emerged from township political activity during the states of emergency in the 1980s.

"Unfortunately, a number of them abused their power and caused the State to criminalise them.

"This idea of lay courts has now resurfaced once more in the form of the current community courts. Managed through civic organisations, they can be used for dispute resolution through area, street, block and yard committees.

"With jurisdiction in minor juvenile, family and criminal matters, most of them now work hand in hand with police as part of the new community policing initiative.

"Though it has been shown that since their creation, the unfortunate necklacing punitive measure has never been used, State censorship still tends to foster a perspective which makes them into barbaric institutions," said Judge Mokgoro.

The "barbaric institution" label is about to change if the committee set up by Justice Minister Dullah Omar to oversee the implementation of lay assessors countrywide has anything to do with it.

The committee has had its brief expanded to include making recommendations for the establishment of officially sanctioned community courts.

Three of the four committee members — the fourth was in



Picture
COMMUNITY JUSTICE CAMPAIGNERS: Human rights lawyer Esau Dlamini of Western Cape's Gqeberha Forum and Cape Town Chief Magistrate the Cape Town Magistrate's Court Together with the Chief Magistrate Ncapayi, they form the community justice co-ordinating committee of Justice Dullah Omar

Umtata at the time — shared some of their embryonic ideas with The Argus at a meeting last week.

They stressed that the debate was still very open and urged interested parties to make written submissions to the Chief Magistrate's Office,

Private Bag 9017, Cape Town.

They also stressed that they envisaged the lay assessor system and community court system being inextricably linked.

The lay assessor scheme was introduced as a pilot project in the Western Cape last October. Respected citizens with no le-

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Picture HANNES THIART, The Argus.

COMMUNITY JUSTICE CAMPAIGNERS: Human rights lawyer Essa Moosa, the University of Western Cape's Gadeja Khan and Cape Town Chief Magistrate Bertus Jooste outside the Cape Town Magistrate's Court. Together with the Chief Magistrate of Umtata, Sizwe Ncayiya, they form the community justice co-ordinating committee appointed by Minister of Justice Dullah Omar

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The lay assessor scheme was introduced as a pilot project in the Western Cape last October. Respected citizens with no le-

gal training were invited to sit alongside magistrates as a means of making justice more accessible and acceptable to the majority of people.

In the past 11 months, the lay assessor system has spread virtually throughout the country, with the Eastern Cape and

Kwazulu-Natal lagging a bit behind the rest of the country in its implementation.

Committee member Bertus Jooste, the Chief Magistrate of Cape Town, said the previous regime tried to implement the lay assessor system in 1991. "We really tried to do it, but the communities resisted it and we could not succeed."

Fellow committee member, human rights lawyer Essa Moosa, expanded on the theme "The broader community was not prepared to participate, the reason being that in their eyes the courts were seen as implementing and policing apartheid."

The third committee member, Gadeja Khan, director of the Legal Aid Board Clinic at the University of the Western Cape, said that in the process of implementing the lay assessor scheme, the need to establish community courts where lay assessors could act as lay magistrates had come to light.

What form will community courts take?

"Our objective must be to accommodate our multi-racial, multi-lingual, polyglot society," said Mrs Khan

Obviously, the representivity of any community structures were crucial, the three committee members agreed.

The accused would have the right to ask for a member of the community court to recuse him or herself. And the structure had to incorporate a right of appeal — probably to district magistrate's courts

Magistrate's Courts could also enforce the decisions of community courts, if the accused person proved tardy in complying with a decision of the latter structure

It is envisaged that the courts will function fairly informally: they could be housed in community centres and operate at night.

"We are not thinking of involving either prosecutors or lawyers. We would like the two parties to put their case to a court, possibly comprising a lay magistrate and lay assessors," said Mr Moosa.

The constitution provided that any person was entitled to legal representation. To get around this requirement, the committee is contemplating involving "paralegals" such as people from advice offices or court interpreters "with a slight knowledge of the law".

The jurisdiction of the proposed community courts, including what fines they may impose, has yet to be discussed

Bail guidelines 'solve problems'

STAFF REPORTER

ET 4/19/95

NEW bail guidelines tabled in Parliament last week would help resolve the "most unsatisfactory situation" which prevailed over the past year law officials say

However, Regional Court president for the Western Cape Mr P J Botha said the effectiveness of the Criminal Procedure Second Amendment Bill could only be determined once the guidelines were passed into law and tested in court in individual cases

Law Society of the Cape of Good Hope president Mr Andries Landman said although the society supported the bill, there was concern over one clause which did not provide for a specified time in which police officers had to finalise their search for evidence once a suspect was arrested

"It could lead to abuse as there is no clear duty on the police to finalise their search for evidence in a stipulated time," he said

The 48-hour detention clause should also be defined to include weekends and public holidays

The new guidelines would help the courts in granting or refusing bail, Mr Landman said "It is a far

(252)
better system than we have. The interim constitution confers an automatic right on anyone who is arrested to be released, with or without bail unless the interests of justice determine otherwise

"The bill suggests that a person is entitled to bail unless it is the opinion of the court that the individual should to be detained. This goes a long way to addressing the most unfortunate situation which has prevailed over the past year"

Mr Botha said it was too early to determine what impact the new guidelines would have in the administration of justice

Too early

"It is too early to say whether the new guidelines will make it easier or harder to decide on bail. This will depend on each individual case. The court must still take note of a person's right to bail but it must be satisfied that society's interests are served"

Police spokesman Colonel Raymond Dowd said police were "grateful" for the guidelines

"Time will show how effective the bill will be. There could be teething problems"

Von Lieres defends hit squad murder accused

Farouk Chothia

DURBAN — Former Gauteng attorney-general Klaus von Lieres appeared in the Durban Regional Court yesterday as defence advocate for five IFP and KwaZulu Police members facing hit squad charges

Von Lieres said he had not been motivated by "personal feelings", and had accepted the brief after looking at the facts

Von Lieres quit abruptly as attorney-general earlier this year, citing medical reasons for his decision. SAP Witwatersrand reporting officer Jan Munnik was at the centre of a row with Von Lieres, accusing him of effectively denying him access to dockets

Now a member of the Johannesburg Bar, Von Lieres appeared in court yesterday on behalf of IFP deputy secretary-general Zakhele Khumalo and KwaZulu policemen Peter Msane, Sicelo Ndlovu, Prince Mkhize and Martin Khanyile, arrested in connection with the alleged hit squad murder of 13 people, including women and children, in KwaMakhutha on the KwaZulu-Natal south coast in 1987

Former military intelligence officer Brig John More and former security branch member Col Louis Botha also ap-

peared in connection with the murders.

Magistrate Jan Augustyn agreed to the state's request to tighten More's bail conditions, preventing him from contacting witnesses or attempting to trace them or procure information about them

It was alleged that More had attempted to make contact with former military intelligence chief Admiral Andries Putter and former SADF special forces head Gen Joop Joubert

Both were possible State witnesses, along with former defence minister Magnus Malan and former KwaZulu Police commissioner Gen Jac Buchner

Botha requested that his bail conditions be relaxed to allow him to make a 10-day trip to Germany later this month for the 50th wedding anniversary of his father-in-law Augustyn ruled that Botha would have to make a formal application before his request was considered

All the accused are on bail. An indictment is still to be served on them

KwaZulu-Natal attorney-general Tim McNally said he expected the investigation task unit to present him with the docket tomorrow. He would then decide whether to prosecute

The case was remanded to October 30

Changes for non-govt organisations

Theo Rawana

THE unbridled power of non-governmental organisations over development community projects was nearing an end with the Independent Development Trust initiating capacity-building programmes in communities, a top trust official said last week.

Naledi Tsiki, trust capacity-building and community participation director said that non-governmental organisations, as service providers largely made up of "white university-based professionals", not only identified the needs in needy areas but had the exclusive advantage of access to funding from local and foreign donors

Tsiki said the trust was working with community-based organisations to empower the people so that they became the ones who held the purse strings, and non-governmental organisations became solely what they should have been in the first place — service providers who were paid by the community

Through skills training ranging from accounting to putting out tenders, the trust enabled community-based organisations to identify projects, seek donor funding and to set up trusts which would decide who got contracts for projects, Tsiki said

Up to now, non-governmental organisations had held sway over communi-

ties and their projects. "These professionals control the purse because they have access to donors overseas, while the community does not. The community-based organisations depended on and were controlled by service providers," he said

"We are here telling the donors to be careful whom they give funds to. It is the only way the country can move forward," Tsiki said.

With the communities properly empowered, the non-governmental organisations would become what they should have been in the first place — the servants of the people to whom they had to refer in order to get the various contracts

McNally bombshell

(252) ARG 5/9/95
The Argus Correspondent

DURBAN. — KwaZulu-Natal attorney-general Tim McNally, the centre of recent controversy over his handling of hit-squad cases, has dropped a bombshell by suspending the prosecutor of the Investigation Task Unit.

He said today that his suspension of advocate Carl Koenig would have immediate effect.

Mr McNally said he had decided on the suspension because Mr Koenig — as a member of the ITU — was no longer an official of the justice department.

Mr Koenig's first loyalty was now to the department of safety and security.

Mr McNally said recent events had made it clear that Mr Koenig was no longer answerable to the Attorney-General.

"I feel it is important that my prosecutors should be answerable to me."

Property stance lauded

CT 5/9/95

BARRY STREEK

(123) (252)

The Democratic Party has
praised the lauded the
ANC's decision to support a
property right clause in the
new constitution but the
national party has demanded
it not to contain the clause
and to come within

DP leader Mr. Tony Eason
in his press conference pro-
posed that the clause be
removed from the
document of human rights

The SP spokesman on
constitutional affairs Mr. Eric
T. M. M. said the ANC
proposed to replace the clause
with a council of provinces
in an attempt to reduce the
provision

The SP spokesman for
Mr. M. M. M. said that
he noted that after their
conferencing treatment the
document should be a
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First African human rights court on cards

"SIMPLY signing a human rights charter was not enough - it had to be implemented and enforced. Justice Minister Mr Dullah Omar said yesterday

The fight for human rights in South Africa had run parallel with the rest of Africa's fight against colonialism. Mr Omar said at a meeting to plan the establishment of an African court of human rights.

The envisaged African court would be called on to review actions in those countries which subscribed to the charter.

The conference organised by the OAU and the International Commission of Jurists ends tomorrow. It is expected that the court will be established soon after the meeting.

- Sapa

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Enforce human rights - Omar

(252) Sowetan 5/9/95

Political Reporter

THE establishment of a human rights court in Africa would not be a panacea for the human rights violations on the continent, Justice Minister Mr Dullah Omar told top jurists in Cape Town yesterday

Omar was opening a two-day conference under the theme "Towards the establishment of an African Court on human rights and People's Court"

The gathering, attended by jurists and human rights activists from various countries including Nigeria, Kenya, Liberia and Zimbabwe, was

organised by the Organisation for African Unity and the International Commission of Jurists

It was important that African countries should restructure their legal systems so as to deal with issues of fostering a human rights culture in their communities, Omar said. He said the mere signing of the human rights charter was not sufficient because the rights had to be effectively enforced

Referring to the role of the planned African court, he said the institutions would monitor the activities of the signatory countries to ensure that human rights were safeguarded

This was important because the human rights culture did not come about automatically, Omar said

The OAU played a critical role in the South African struggle against apartheid. In fact, the fight for human rights in South Africa had run parallel with the rest of Africa's fight against colonialism

Omar said presently the SA government was in the process of acceding to the instruments for human rights. "The next time we meet I will not bow my head in shame - South Africa will have signed the charter," he said, to applause

BRIEFLY

**Courts reject Bill to
fix bail conditions**

(252) Stan 6/9/95

Three provincial divisions of the Supreme Court yesterday rejected DP MP Douglas Gibson's proposed amendments to the Criminal Procedure Act, saying the proposals would interfere with the courts' ability to set bail Gibson wants. It made compulsory for the courts to refuse bail to suspects convicted of two offences which resulted in their imprisonment. It also places the onus on the suspect to convince the court that his release on bail would not be contrary to the interests of justice. Gibson said it was necessary to "impress upon criminals that society disapproves of provisions in the present Act which lead to early parole or release from prison"

'Deny bail in order to protect society'

ARG 6/9/95

(252)

Political Staff

SOUTH Africa should take its lead from international law which makes it acceptable to deny bail on the grounds of protecting society, says Nico Steytler, director of the University of the Western Cape's Community Law Centre

Professor Steytler gave evidence yesterday to the national assembly portfolio committee, which is considering draft legislation on bail

He said the decisions on bail so far had been limited to the question of where the onus of proof lay. The dominant view was that there was no onus and that the court should inquire whether the denial of bail was in the interests of justice

The courts had not yet ruled on whether it was constitutional to deny bail on the grounds

of possible future offences, or whether an accused could be saddled with the onus of proof

But in comparable countries with bills of rights and a well-established human rights culture, such as demanded by this country's interim constitution, the answer to both questions was yes

In the United States it was established law that accused people charged with capital offences, or first-degree murder, were not at all constitutionally entitled to bail.

The Canadian Charter provided that "any person charged with an offence has the right not to be denied reasonable bail without just cause"

Professor Steytler noted that in South Africa police did not have the discretion to issue bail in cases involving treason, sedition, murder and rape

He proposed this schedule be

extended to include kidnapping, robbery with aggravating circumstances, unlawful possession of automatic or semi-automatic weapons, drug trafficking, except trafficking in dagga, and any Schedule 1 (serious) offence when that offence had been committed while the suspect was out on bail for a similar offence.

Police should also be denied the discretion to grant bail in cases involving conspiracy, incitement or attempt to commit any of these listed offences

Professor Steytler said the aim of the bail process should be to advance the overall objective of the criminal justice system of combating crime

An arrest or a serious offence might give some indication of possible danger. So too would further offending while the person was out on bail

In these cases the task of the

state to substantiate the grounds for refusal should be lifted

People who might pose a special danger to society would be those who were accused of already having committed offences of serious violence, serious economic offences and drug trafficking.

Two rules could help the courts

- The state should have sufficient time to investigate and produce evidence on the grounds for denying bail. A person falling within the list of dangerous offences would have no right to an immediate bail hearing

- The person accused of a dangerous offence would have to prove on a balance of probabilities that no grounds for refusal existed

The truth may not be enough

(252) Sowetan 6/9/95

The new call is for justice, not reconciliation

By Bhekis Matsebula

NOW THAT the long-awaited Truth and Reconciliation Commission Act has been passed by Parliament, its objectives – to bring about reconciliation between the victims of apartheid and its perpetrators – are in great doubt

This emerged clearly at a recent conference organised by the Institute for Multi-Party Democracy in Johannesburg. Several political parties raised doubts about the Truth Commission.

Will it convince victims of apartheid that it is a means of ending their traumatic experiences of the apartheid era?

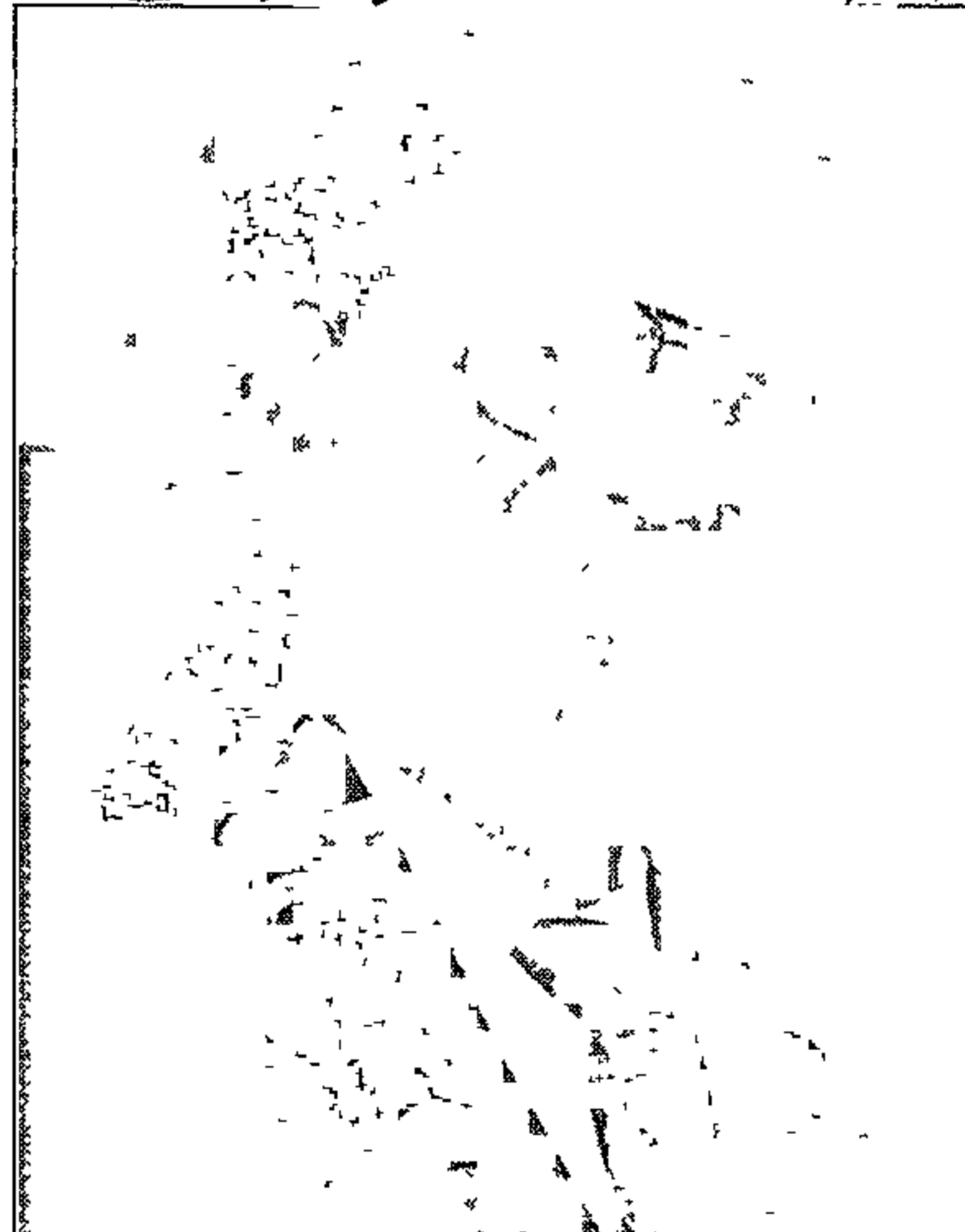
Will it address the issue of unsolved murders, kidnappings or unfair political trials that subsequently led to the imprisonment of anti-apartheid activists?

And when the truth has been discovered, what will be the next step? Are we going to have the Nuremberg-type of trials that followed World War 2?

Several political organisations, mainly those involved in the liberation struggle, doubt the Truth Commission will heal the wounds caused by atrocities committed by the National Party's apartheid regime.

Speakers from several parties – including the African National Congress, Pan-Africanist Congress and Azanian People's Organisation – recalled the days when those who opposed apartheid were either maimed, kidnapped, arrested, jailed or sentenced to death.

Now that the Truth and Reconciliation



PAC deputy president Dr Motsoko Pheko ... feels establishing the Truth Commission was useless.

Commission Act is in place, the perpetrators feel they may escape prosecution.

But with opposition from many black political parties to the Truth Commission intensifying, the perpetrators are unlikely to escape unless the Government of National Unity turns a blind eye to the mounting protests.

PAC deputy president Dr Motsoko Pheko says establishing the Commission was pointless. He says it was established at a time when the victims of apartheid were still nursing their wounds.

"The PAC feels that establishing the Truth Commission is nothing other than justice denied to the victims of apartheid," he said.

"How can a Truth Commission come into existence when some (of

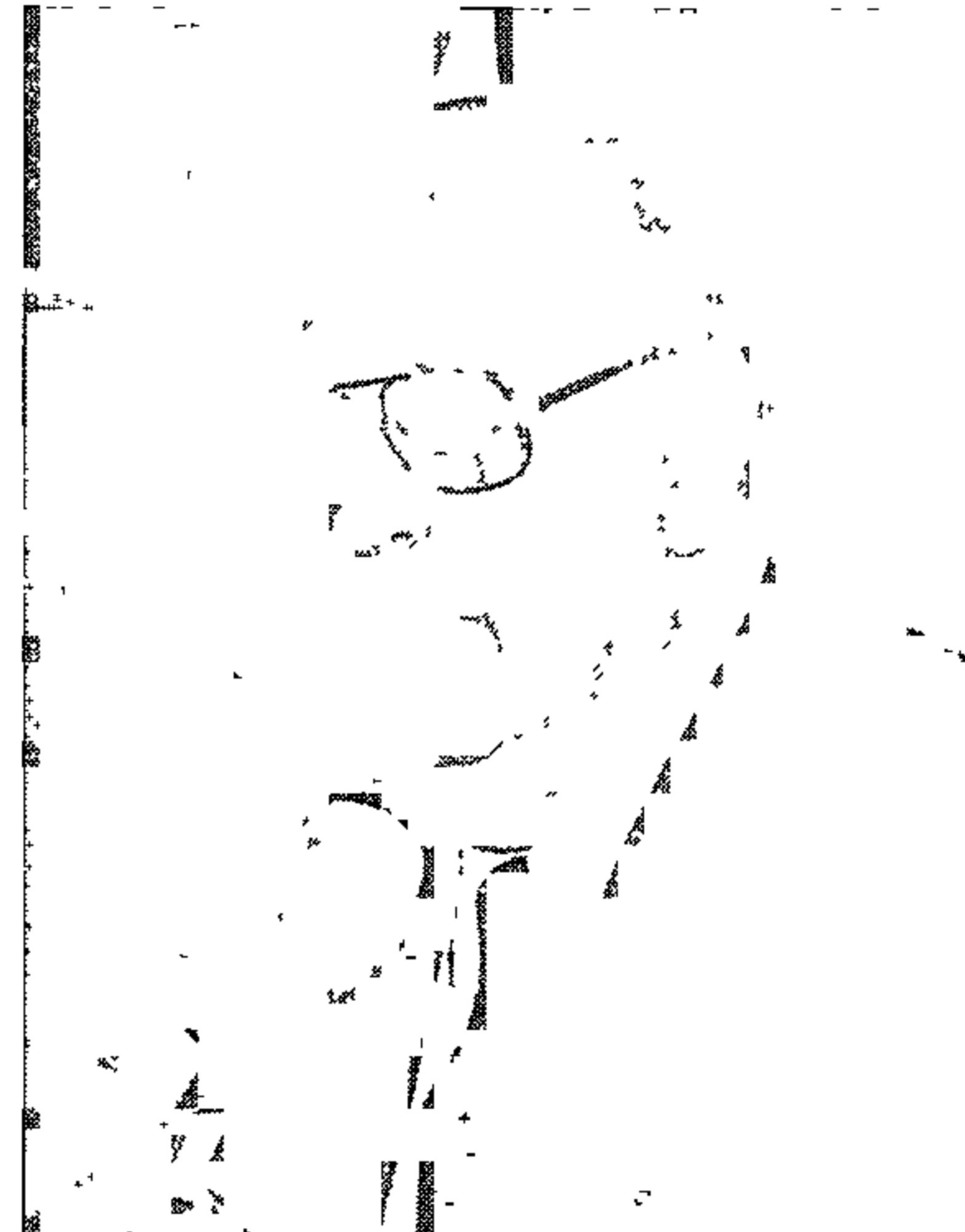
the liberation activists) are still in jail for crimes they did not create?"

As far as the PAC was concerned, said Pheko, the Truth Commission was a tool aimed at protecting the perpetrators of apartheid from prosecution.

"I don't take the people behind the Truth Commission very seriously. Apartheid is just the same as other war crimes such as genocide. The perpetrators of apartheid committed a crime against humanity and they must be prosecuted."

Pheko says instead of a Truth Commission, the Government should establish a reparations commission which will oversee the compensation of apartheid victims.

Azapo's Mr Molathlegi Tlhale reminded the conference about the brutal killing of the Jews by Germans



PW Botha ... calls by politicians that he should be tried for crimes against apartheid's victims.

during World War 2.

"The Nazis are still being traced up to today and prosecuted for the killing of Jews," he said.

"But the essence of the Truth Commission, according to our understanding, is that no wrongdoer will be prosecuted after he confesses the truth. How can this happen?"

Tlhale said Azapo does not subscribe to NP fears that the Truth Commission will be a witch-hunt. "They know what they did from the time they took over from the British."

"Now that the blacks whom they were suppressing have taken power, they want to be forgiven. To be forgiven for what?" Tlhale was against granting amnesty to the perpetrators of apartheid.

"There is no reconciliation which can come about by an Act of Parlia-

ment. It can only come from the willingness of the victims themselves – they cannot be taught by the Government how to forgive their oppressors."

The NP representative at the conference Mr Tom Gunning was upset about recent calls by top politicians (including Mrs Winnie Mandela) that former presidents FW de Klerk and PW Botha be prosecuted for crimes against humanity.

"This is likely to rekindle hate and revenge from the victims which is something that will not go together with the spirit of reconciliation and healing," Gunning said.

Mr Paul van Zyl of the Centre for the Study of Violence and Reconciliation said it would be tragic for the NP to try and wish away the incidents of the past.

Van Zyl added that although he thought the Truth Commission was a good idea, it should not only listen to evidence of the perpetrators of violence but also to the evidence of the victims.

Van Zyl also expressed the fear that the Truth Commission may have an adverse impact on certain leaders in the Government of National Unity.

He recalled that when Idi Amin took power in Uganda he was eager to have the wrongs committed by the previous government exposed.

"He therefore established a similar commission. But the commission, during its investigations, revealed that certain atrocities were committed by Amin himself."

Van Zyl said it would be advisable for the GNU to forget about getting to the truth about what happened in the past and who did what.

"We should deal with the welfare of the victims of apartheid. This could include providing medical aid for victims and bursaries for the children of victims," Van Zyl said.

The question now is will the Truth Commission achieve its goals?

NEWS NATIONAL

A-G McNally drops top prosecutor

(252) (44) Sowetan 6/9/95
McNally hints that same fate may
befall key investigator Frank Dutton

Sowetan Correspondent

KWAZULU-NATAL attorney-general Mr Tim McNally, the centre of recent controversy over his handling of hit-squad cases, has dropped a bombshell by suspending the prosecutor of the Investigation Task Unit.

He said yesterday that his suspension of ITU prosecutor, Advocate Carl Koenig, would have immediate effect. McNally is now certain to face even greater criticism of his decisions on hit-squad cases.

He said he had decided on the suspension because Koenig – as a member of the ITU – was no longer an official of the Department of Justice. Koenig's first loyalty, he said, was now with the Department of Safety and Security.

McNally said events had made it clear that Koenig was no longer answerable to the attorney-general. "I feel it is important that my prosecutors should be answerable to me." His decision to suspend Koenig was not a reflection on his ability. "I admire his qualities."

McNally said the suspension would have a number of benefits. "It will relieve Koenig of the burden of prosecutorial duties and will free him to pursue his true role as an investigator. It will make for

more objective prosecution in upcoming hit squad matters," said McNally.

But his actions were described by the Investigation Task Board, which heads the ITU, as "flagrant disregard of the natural principles of justice."

McNally's move has been called a "a knee-jerk reaction" to criticisms levelled at him for failing to prosecute provincial ministers the Reverend Celani Mtetwa and Prince Gideon Zulu after they were implicated in hit-squad activity during a recent Supreme Court trial in Durban.

ITB chairman Mr Howard Varney said McNally's decision would destroy continuity between investigations as Koenig's replacement would have to oversee several large and complex cases.

"This will be to the detriment of hit squad investigations and any subsequent prosecutions," Varney said.

He pointed out that Koenig was not suspended for his standard of work, which was high, but because of his "independent and forthright approach to the prosecution of hit squad related cases."

He also warned McNally not to tamper with ITU investigator Lieutenant-Colonel Frank Dutton's position, after the A-G hinted during a radio interview yesterday that it might be redefined.

Way cleared for trial of alleged KwaZulu hit-squad

A-G reverses decision

25 (252) 7/9/95

■ OWN CORRESPONDENT

Durban – Kwazulu-Natal Attorney-General Tim McNally yesterday backed down on an earlier decision not to prosecute provincial social welfare MEC Gideon Zulu for alleged conspiracy to murder and he also agreed to lift the suspension on hit squad prosecutor, advocate Carl Koenig

This about-face was announced after a "meeting of reconciliation" with the independent task board, appointed by central government to probe hit squads in KwaZulu-Natal

In a joint statement, McNally and the board said "perceived differences in philosophy and principle" had been amicably resolved

Last week the board publicly attacked McNally's decision not to prosecute 10 people, including Zulu and parliamentarians Lindiwe Mbuyazi and Khayelihle Mathaba on charges of conspiring to murder KwaZulu policeman Captain Alphus Masinga in 1991. The board had supplied a docket to him on the case

The board also said that in releasing details of the case to

the media he endangered people who had made statements to the police and prejudiced prospects of a successful prosecution.

McNally said at the time there was "not even the remotest of chances that a prosecution would succeed" Yesterday's joint statement said his statement of last week had been a "working document" only

The statement said McNally fully subscribed to the view that those who "recruited, trained and sent out others to kill" should be brought to book. His earlier "off-the-cuff" comment that he was

willing to prosecute "operatives" referred to anybody involved in hit squad operations

McNally had earlier suspended Koenig saying his first loyalty was with the safety and security department

Task board member David Pistorius said McNally had agreed at yesterday's meeting there was "no point" in keeping the suspension in force

This has cleared the way for Koenig to continue as prosecutor in the hit-squad trial of IFP deputy secretary-general Zakhele Khumalo

Parliament passes 'emergency Bill'

(252) Star 7/9/95

The State of Emergency Bill was passed unanimously by the National Assembly yesterday

The ANC, PAC and DP said the Bill marked the end of an era

"It is an historical moment in Parliament when we get rid of the Public Safety Act which was responsible for the greatest suffering in this country," ANC MP Wilhe Hofmeyr said

All parties expressed hope that there would never be a need to use the provisions in the Bill, which provides for a state of emergency in situations of war, invasion, national disasters and general insurrection

Reservations were re-

gistered by the NP, IFP, FF, PAC and DP.

Eight other Bills were passed by the National Assembly during the sitting

They were the Legal Succession to the South African Transport Services Amendment Bill, Non-Proliferation of Weapons of Mass Destruction Amendment Bill, National Building Regulations and Building Standards Amendment Bill, Identification Amendment Bill, Public Holidays Amendment Bill, Investigation of Serious Economic Offences Amendment Bill, Social Work Amendment Bill and Customs and Excise Amendment Bill - Sapa

CT 7/9/95

Rights education needed to combat abuses — Omar (252)

AFRICAN states would have to embark on massive human rights education programmes to counter the wide-scale abuses occurring on the continent, Justice Minister Mr Dullah Omar said yesterday

Speaking at a conference in the city on an African human rights' court, he said the states would also have to address illiteracy and the poor knowledge of rights and means of redress that hinder rights' enforcement

The conference is being attend-

ed by about 80 delegates from all over Africa, including justice ministers, members of human rights commissions, law professors and representatives of foreign affairs ministries

The conference is scheduled to finalise a report on proposals for the court next Wednesday

He said a perusal of reports by the OAU and international human rights organisations still painted a picture of wide-scale human rights abuses in Africa — Sapa

McNally to reconsider

CT 7/9/96

(252)

DURBAN: kwaZulu/Natal attorney-general Mr Tim McNally would reconsider his decision not to prosecute a number of senior officials allegedly involved in a plot to kill a Capt Masinga of the kwaZulu Police in August 1991, according to a joint statement issued after a meeting yesterday.

They include kwaZulu/Natal Minister for Social Welfare Prince Gideon Zulu and several others

Mr McNally remained adamant on Tuesday that the evidence against these people as presented to him by the Investigation Task Board was insufficient to prosecute.

A meeting to resolve differences between the board, the investigation task unit and Mr McNally was held here yesterday. After the meeting a joint statement was issued saying all issues causing division had been resolved.

"The attorney-general will reconsider his decision in the Masinga case upon receipt of further representations from the board and unit," it said — Sapa

MPs threaten to walk out

CLIVE SAWYER
Political Correspondent

(252) ARC 8/9/95

NATIONAL Party MPs are threatening to walk out of at least three parliamentary committees unless a halt is called to bulldozing legislation through parliament.

Rebelling against an avalanche of draft laws, the party has called for the extension of the present session by a week and says its MPs are willing to work through night sittings all next week.

Four parties yesterday walked out of an education committee meeting in protest against legislation being forced through.

The crisis in parliament was to have been on the agenda of a meeting of the African National Congress national working committee last night.

President Nelson Mandela was to have addressed the committee on the issue, after a scheduled meeting with the party's parliamentary caucus was cancelled.

"As is customary with NWC meetings no details of the agenda will be made public," said ANC spokesman Ronnie Mamoepa.

The intense pressure to approve the education legislation, the Labour Relations Bill and the controversial Development Facilitation Bill have MPs furious at the conveyor-belt treatment of draft laws.

After an NP caucus meeting yesterday, Western Cape leader Dawie de Villiers said there was disregard for the parliamentary process.

On Wednesday, there were 40 portfolio committee meetings as well as sittings of the houses.

MPs reeling under the strain told of being called from one committee meeting to another when votes were required.

Dr De Villiers said his caucus was infuriated by a lack of tolerance in the way some chairpersons handled meetings, with MPs expected to be no more than rubber-stamps.

Parliamentary rules allowed committees to sit during the recess and they should do so in order to scrutinise legislation properly, he said.

Speaker of the national assembly Frene Ginwala said she expected chief whips to raise with her the concerns of their members or criticisms.

In a statement issued by her office yesterday, she said "MPs are expected to be familiar with the rules of parliament."

"The Speaker assumes that chief whips keep their members informed about their discussions with the Speaker."

Responding to specific issues, she said a workshop would be held at the end of the session to discuss guidelines for the funding of committees.

Lawyers' group slams Society (52)

STAFF REPORTER 8/9/95
CJ

MEMBERS of the Cape Law Society were called on yesterday by the National Association of Democratic Lawyers (Nadel) to "adopt principles of transparency"

They were commenting on the secrecy around measures taken against lawyers found guilty of bribing Deeds Office officials to speed up certain registrations

Nadel condemned the manner in which the Law Society had conducted itself in relation to the misconduct

Nadel also said alleged kickbacks to attorneys from auctioneers in insolvencies brought the profession into disrepute

President Mr Andries Landman said the Society's annual general meeting would be in October.

It was hoped that the local judge president, Mr Justice Gerald Friedman, would address that meeting which would immediately afterwards discuss whether or not it could change its own rules to move away from secrecy

Paralegals protest against exclusion

(252)

STAFF REPORTER

CT 8/9/95

RURAL advice office staff members demonstrated outside Parliament yesterday to protest against their exclusion from the Labour Relations Bill

About 30 people from the province demonstrated against the bill which makes provision for lawyers and unions to participate in arbitration, but not paralegals

Ms Nicky Taylor, a legal adviser at the Centre for Rural Legal Studies, said this would prove disastrous for farm workers, the majority of whom are not represented by a trade union and cannot afford a lawyer

As workers cannot represent themselves, these people would remain unrepresented before the Commission for Conciliation and Arbitration

At present paralegal staff working in advice offices do a lot of work for farm workers in unfair labour issues, Ms Taylor said

McNally about-turn over hit squad prosecutions

WM 8-14/9/95

(252) ~~252~~

KwaZulu-Natal's embattled attorney general has agreed to reconsider a hit squad prosecution to avoid a major confrontation, reports **Ann Eveleth**

EMBATTLED KwaZulu-Natal Attorney General Tim McNally this week stepped back from the brink of a major confrontation with the Investigation Task Unit (ITU) probing hit squads in the province

In a remarkable *volte-face* on Wednesday, McNally backed down from a series of controversial moves which had raised tension between him and the ITU over the past week, rescinding his two-day-old suspension of the prosecutor attached to the ITU and agreeing to reconsider a hit-squad case investigated by the unit.

This "amicable" resolution was reached during a "meeting of reconciliation" between McNally and members of the ITU Board appointed by Safety and Security Minister Sydney Mufamadi, a joint statement said

Conflict between McNally and the ITU flared publicly last weekend after McNally declined to prosecute senior Inkatha Freedom Party and KwaZulu Police officials allegedly linked to the attempted murder of KZP Captain Alphus Masinga, saying there was "not even a remote chance that a prosecution would succeed"

The ITU, which lashed out at McNally's publication of details of the investigation, said it was "satisfied there was more than sufficient evidence upon which to launch a prosecution".

Tension soared further on Monday, when McNally suspended advocate Carl Koenig as prosecutor hours before he was due to represent the ITU in court in connection with the unit's first hit-squad case. McNally said he had suspended Koenig because "recent events have brought into sharper focus for me the fact that (Koenig was) no longer accountable to (me)".

Raising the stakes in the case, former Witwatersrand Attorney General Klaus von Lieres — widely seen as having displayed "old guard" sympathies during his incumbency — appeared as defence advocate for Inkatha Freedom Party deputy secretary general Zakhele Khumalo and four KwaZulu policemen arrested in connection with the 1987 KwaMakhutha massacre case.

A joint press statement released after Wednesday's meeting between McNally and the ITU Board said Koenig's suspension "has been lifted and it was agreed

that his expertise will continue to be used by both McNally and the ITU".

The statement said McNally would "reconsider his decision in the Masinga case upon receipt of further representations from the board and unit", as his press statement released last Friday had been intended only "as a working document"

The statement said the meeting had also discussed "the perceived difference in philosophy and principle" between McNally and the ITU. McNally had been speaking "off the cuff" on SAfm on Tuesday when he said he wanted to prosecute hit-squad "operatives" and that he actually meant hit-squad leaders should be prosecuted

The ITU had reacted to McNally's statement, saying that "the gulf which has opened between us .. is not the result of one decision in one case. It is a difference of principle and even philosophy".

Wednesday's joint statement said a strategy had been agreed regarding the investigation of senior IFP politicians and others ordered by Durban Supreme Court Judge Nick van der Reyden last week. Several of those implicated by the accused in the hit-squad trial, which ended last week, are also suspects in the Masinga case, including IFP KwaZulu-Natal social welfare MEC Prince Gideon Zulu, acting KZP commissioner Brigadier Petros Mzimela and former acting KZP commissioner Major-General Siphon Mathe.

Despite Wednesday's meeting, McNally remains under pressure, with Natal violence monitor Mary de Haas having challenged him this week to explain what steps he has taken to address violence and abuses of the criminal justice system occurring in the province

Among the complaints raised by De Haas was McNally's apparent failure to prosecute IFP supporter Toti Zulu for possession of a semi-automatic weapon he was televised welding on the night of IFP leader Mangosuthu Buthelezi's SABC fiasco

De Haas told McNally in a letter this week that she had "no doubt that a major degree of culpability for the continuation of violence rests with those who have been given responsibility for ensuring perpetrators are brought to justice and have failed abysmally at their task"

McNally papers over the cracks

(252) (278) ST 10/9/95

By CARMEL RICKARD

A RECONCILIATION meeting between Natal's attorney general, Tim McNally, and the Investigation Task Board, has papered over the cracks in the row between the two

Last week, Mr McNally said he would not follow the board's recommendations on prosecuting prominent people in Kwazulu Natal and the IFP allegedly involved in a plot to kill Kwazulu Police officer Alphas

Masinga.

He said the evidence available was inadequate to obtain a conviction Mr McNally also suspended prosecutor Carl Koenig, who is now part of the board's team, saying it was clear the prosecutor was no longer answerable to him.

On Wednesday, Mr McNally held discussions with members of the Investigation Task Unit — a special police unit investigating hit-squads in Kwazulu Natal — and members of

the task board, which oversees the investigation. A statement released afterwards said the issues which had "recently caused division" between them had been "amicably resolved".

According to comments published after the meeting, Mr McNally's announcement that he would not prosecute the Masinga case did not necessarily represent his final decision.

Mr McNally has agreed to consider further information from the board. He

also lifted Mr Koenig's suspension.

Mr McNally has contacted Natal Supreme Court judge Nick van der Reyden, who ordered an inquiry into hit-squad activities, to clarify whether this order was intended as a criticism of him.

The attorney general said the judge replied that his remarks were never intended as "a thinly disguised slap on the wrist" for Mr McNally, as reported in this newspaper.

JUSTICE

In the firing line

Had KwaZulu-Natal Attorney-General Tim McNally bowed to his critics' demands and called three Inkatha figures as witnesses in a recent murder case, he would possibly have jeopardised any future legal action against the three

McNally has since been under fire from Durban lawyers who called for his resignation for failing to prosecute the "masterminds" of hit squad operations

Richard Lyster, a spokesman for the lawyers (drawn from the Legal Resources Centre, National Association of Democratic Lawyers, Black Lawyers' Association, Lawyers for Human Rights and the Community Law Centre), has established a subcommittee to look for cases which indicate bias, incompetence or inability on McNally's part

Lyster maintains that in the recent case — in which three KwaZulu police members were sentenced to a combined 202-year jail term — McNally could have subpoenaed the "masterminds" to testify. Those named are IFP

deputy secretary-general Zakhele Khumalo, KwaZulu-Natal social welfare MEC Gideon Zulu and safety and security MEC Celani Mtetwa.

But McNally says "If I had called the three to testify, I would have precluded myself from possibly prosecuting them at a later stage. You cannot be a State witness and an accused in the same matter at different stages" He adds that he will send a report on his decision to Justice Minister Dullah Omar if asked to do so. He describes his working relationship with the Minister as good and says he has not been rebuked by him.

McNally has never met Lyster, but his office has regularly assisted Lyster with information "And they keep on asking us for assistance. I think that is indicative that we have been giving them excellent service"

On Friday, McNally took the unusual step of issuing a statement after his decision not to prosecute other prominent people allegedly involved in a conspiracy to murder a senior policeman

The decision was taken after McNally received a police docket from a probe by the Investigation Task Unit. The unit falls under

(252) FM 8/9/95
a board consisting of two attorneys and an advocate. It was formed as a continuation of the Goldstone Commission and is comprised of policemen and advocates

On Tuesday, McNally announced that he had suspended the appointment as prosecutor of Carl Koenig, who is a member of the task unit. Koenig had earlier been a senior State advocate on the Attorney-General's staff in Durban. The suspension would free Koenig from his prosecutorial role "and allow him to concentrate on his true role, which is the investigative role"

According to McNally, Koenig is an em-



ployee of the Department of Safety & Security and answerable to Minister Sydney Mufamadi. "My prosecutors derive their authority to prosecute from me and I expect them to be answerable to me, and because Koenig is answerable to the Department of Safety & Security, it is better for him not to be involved in the prosecutorial side."

McNally says the task unit has so far presented him with only one docket for possible prosecution. This he declined to do, because, after evaluating the case according to standard legal practice, he was convinced there was no reasonable chance of getting a conviction because the other conspirators all deny knowledge of the plot.

Conflicting statements

McNally says the case is based on a single witness, who is a co-conspirator and therefore an accomplice. Two other statements made by him are also in conflict with the statement which would have had to be relied on in a prosecution.

The unit was due to hand over more dockets to McNally on Wednesday. McNally adds that, because of the need for transparency and to rebut the possibility of al-

legations of a political agenda, he had decided to issue the reasons for his decision in a comprehensive media statement. These have been forwarded to Omar.

"I have reassured the Minister that murders are being prosecuted. We keep eight Supreme Court judges busy every day with murder cases, which we prosecute. Many of these cases have political motives."

As for the spate of criticism levelled against him, McNally says it could have been derived from a recent report in the *Weekly Mail*, in which, he alleges, a wide ranging and scurrilous attack on his integrity had been launched by the newspaper.

In the report, former Lawyers for Human Rights director Brian Currin accused McNally on his role as senior counsel for the Harms Commission into certain alleged murders.

"In the article," says McNally, "Currin accused me of protecting the wickets of the government of the day. That is ridiculous. The truth is that I had spent a year of my life away from my family to try to get to the truth. Though the commission's brief had been territorially handicapped to investigate Anton Lubowski's murder, as an example, we called all the witnesses and exposed the Civil Co-operation Bureau (CCB). As a result, the CCB was disbanded. That was a hit squad."

"The criticism aimed at me is one of the cruelties of history."

Eddie Botha

METROPOLITAN GOVERNMENT

Dump the freeloaders

(252) FM 8/9/95
The gravy train is chugging full steam ahead in the country's largest — as yet unelected — metropolitan government.

The lavish banquets described as "refreshments" that often garnish Johannesburg's metro council and executive committee meetings will cost ratepayers R900 000 this year, if the budget prevails.

Then again, ratepayers have reason to hope for a cut in refreshment expenditure, as so many councillors and executive committee members fail to turn up at scheduled meetings that less food is required. Attendance has dropped so low that a meeting of the 16-member committee had to be cancelled last month due to a lack of a quorum. Other working committee meetings have had to be cancelled for similar reasons.

Executive committee members and councillors are paid whether or not they turn up.

Azapo digs in over reopening of Biko inquest

■ BY ABBEY MAKOE

The Azanian Peoples Organisation has resolved to vigorously campaign for the reopening of the Steve Biko inquest and the transformation into a national shrine of the Pretoria Central prison cell in which Biko was died.

This was announced by Azapo's Gauteng chairman, Lybon Mabasa, during a historic visit by the organisation and the Biko

family to "the cell of death" yesterday

"We have also requested the authorities that no one be allowed to sleep in that cell from Sunday," Mabasa told hundreds of Azapo supporters who marched through the streets of Pretoria to the prison

Also present during the visit to the prison was Anna Tiro, mother of the Black Consciousness youth leader Nkgopotse Ti-

(252) (A) star 11/9/95
ro, who was killed by a letter bomb while in exile in Botswana in the 1970s

Addressing supporters at a rally held at the Medunsa sports ground after the prison visit, Azapo president Musibugi Mangena said "We are going to challenge all those house niggers and Uncle Toms who are even failing to make quorums in Parliament to bring Biko's killers to book," amid chants of "Viva Azapo"

Mangena said Azapo was gathering signatures to petition the Government for a speedy reopening of the Biko inquest

Speaking at the same rally was Steve Biko's eldest son, Nkosinathi

He said: "As a democracy that we claim to be, there is no better mechanism to determine guilt or innocence than the courts - for both the complainant and the accused are given a fair hearing."

'Abused' loopholes in constitution to be closed

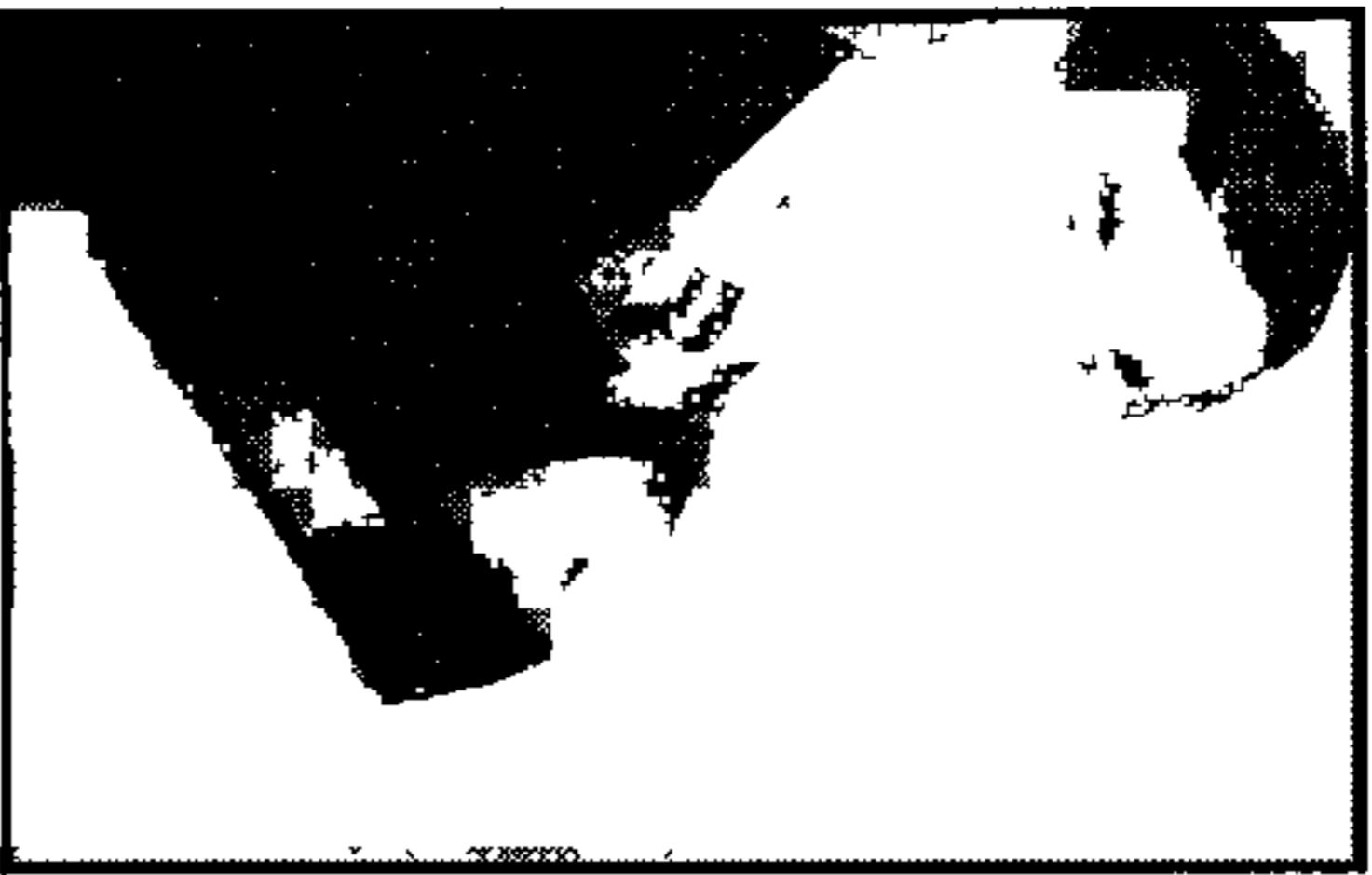
Staff Reporter

THE Department of Justice plans to close loopholes in the interim constitution which are being abused by criminals, says Minister of Justice Dullah Omar

Addressing a national workshop on crime in Bellville yesterday, Mr Omar said the interim constitution was not a holy cow and "elements that undermine the state's ability to deal with crime" should be changed

The workshop is being co-hosted by the Ministry of Safety and Security, the Policing Research Network, Micro, the Institute of Criminology at the University of Cape Town, Penal Reform International and the Western Cape Anti-Crime Forum

Mr Omar said the constitution should not be taken for granted "But, without wishing to be



Dullah Omar

melodramatic, I have been able to discern a certain amount of disillusionment among sections of our people in our constitution and bill of rights

"There is a perception that

the bill of rights favours the perpetrators of crime, not the victims — which, of course, has never been and never will be its intention or object

"But unless we deal effectively and comprehensively with crime, and unless we ensure that victims' concerns become a priority together with the safety and security of every individual, our new constitutional order and quest to build a human rights culture will founder

"In this sense we should be aware that serious crime involving violence threatens to undermine the building of a human rights culture," said Mr Omar

Immediate steps, incorporating "tough measures", should be taken to combat crime in the short-term

But this did not mean abandoning the quest for a human rights culture

One of the tough new mea-

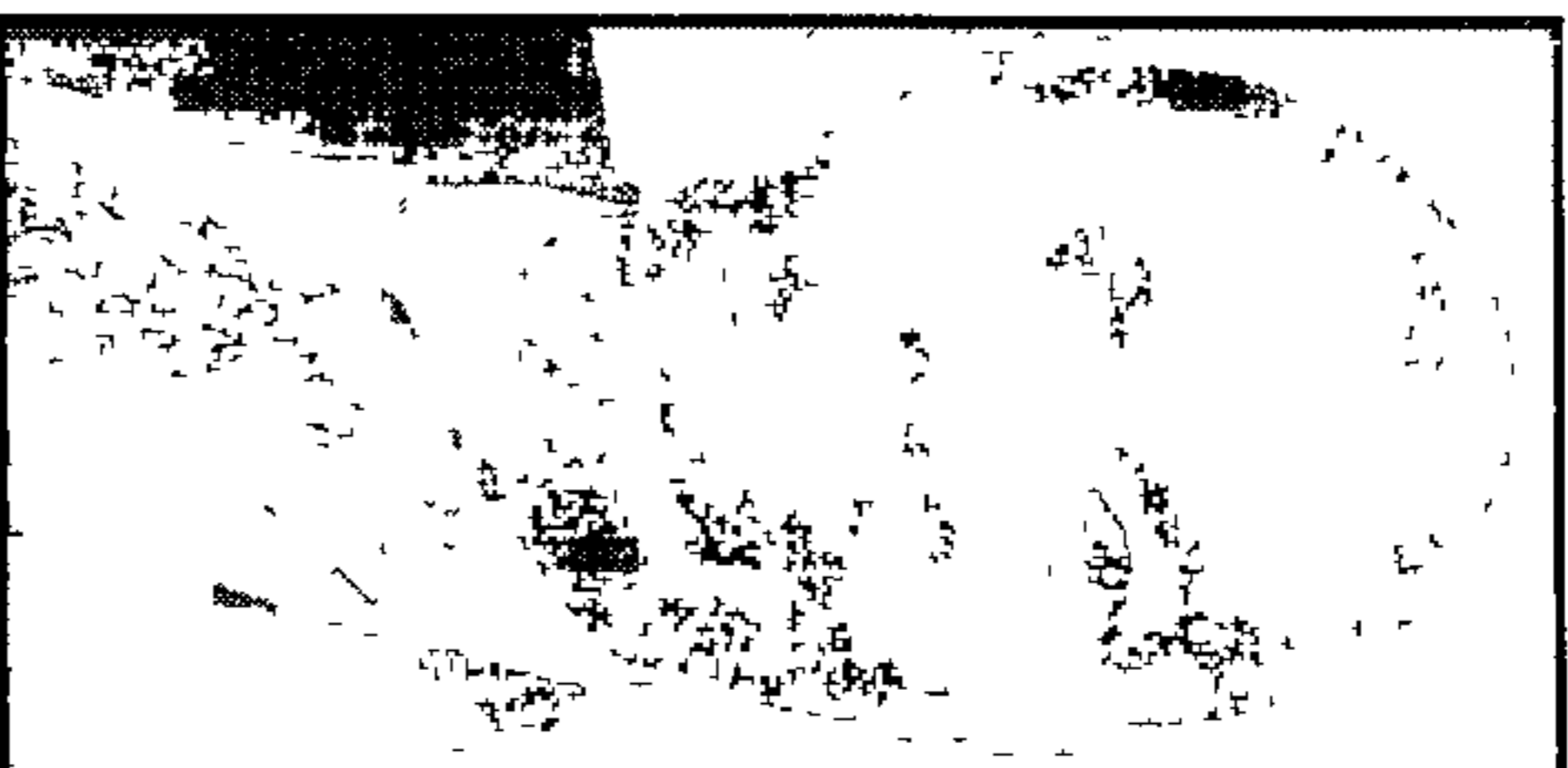
asures was the proposed new bail legislation, shifting the onus to the accused to prove it was in the interests of justice for him or her to be granted bail

"I know human rights activists will be appalled at this type of proposal, but I believe the portfolio committee must make a drastic intervention and ensure that the legislation addresses the crime problem," he said

Mr Omar said sentencing legislation should also be scrutinised

"I don't believe — and this may also disappoint human rights activists — that we must regard the constitution as unchangeable"

Mr Omar said he was not suggesting that the provision providing for legal representation should be scrapped altogether, "but if a provision in the constitution can lead to abuse, we need to re-look at that provision"



Safety and Security Minister Sydney Mufamadi:

"There are many political parties which will exploit issues around crime in the run-up to local government elections, trying to mobilise public fear of crime for their own political interests."

252 RLG 11/9/95

Omar spells out terms of proposed bail legislation

STAFF REPORTER

(252)

CT 11/9/95

TOUGH new bail legislation which puts the onus on the accused to prove that his or her release is in the interests of society, will be tabled in Parliament this week.

Justice Minister Mr Dullah Omar was speaking at the Confronting Crime, Innovating for Safety national conference in Bellville.

He also called for changes to the Constitution if it stood in the way of safety and security.

The proposed new bail legislation would put the burden of proof that an accused person is not a danger to society on that person, in contrast with present laws, which require the state to prove that a person should not receive bail, Mr Omar said.

● See Page 6

Court to rule on dagga law's constitutionality

(262) (27) BD 12/9/95

Susan Russell

PROVISIONS of the Drugs and Drug Trafficking Act which hold that anyone caught with more than 115g of dagga is presumed to be dealing in the substance will come under the scrutiny of the Constitutional Court today

The constitutionality of the provisions is being challenged on behalf of two men — Godzana Bhulwana and Joe Gwadiso — who were convicted of dealing in dagga after being arrested with more than 115g of dagga each in their possession

They are challenging the validity of section 21(1)(a)(i) on the grounds that it violates the constitution's fair trial provisions, particularly the right to be presumed innocent until proven guilty.

At present legislation places the onus on an accused arrested with more than 115g to prove that the dagga was for own use and not for dealing

Bhulwana and Gwadiso's applications are being opposed by the State which contends that section 21 does not violate any fundamental right

In written argument the State argued that if the section does limit a fundamental right then this limitation is reasonable and justified in terms of

section 33 of the constitution.

Section 33 provides for the limitation of a right provided it is reasonable and justified and does not negate the essential content of that right.

The State says the presumption provision in section 21 plays a vital role in dagga cases where there is no direct evidence of dealing or where the amount possessed is not so "huge" as to warrant an inference of dealing. If the law as it stands was abolished it would mean that many dealers operating in the grey area between 115g and a "substantial amount" would be able to ply their trade with impunity

In their written argument counsel acting for the State suggested that the Constitutional Court lay down guidelines for the application of section 21 which, they maintain, would enable justice to be done to all concerned without scrapping that part of the Act

Among the guidelines submitted by the State is that the manner of possession when a suspect is arrested, such as hidden in the false bottom of a suitcase, be taken into account. The time and place of a suspect's arrest in possession of more than 115g could also be taken into account in making a presumption of dealing

RDP adds to the legal workload

BY FRANCOISE BOTHA

Economic growth over the past year had already started to put strain on South Africa's legal infrastructure and the profession was bracing itself for a massive additional workload, said Cecil Finn, the director of Legal Computer Systems

RDP initiatives — in particular, the establishment of low cost housing — would contribute to the additional workload, he said

"We also expect growth in the area of contracts and the issuing of licences as part of the general upsurge of legal activity that accompany accelerated commercial activity"

This meant that maintaining the quality of legal services would require greater numbers of qualified staff at all levels, including executives and para-legal staff

Legal Computer Systems has donated its In-deed conveyancing program and litigation

program to the Wits Technikon to train legal administrative assistants and students

The company has also joined forces with the practical legal training section of the Association of Law Societies and the Technikon in a bid to make the profession more inclusive

A training programme will begin later this year. It was hoped that with training more work could be done by the same number of people, at a lower cost

RDP adds to the legal workload

(252)

BY FRANÇOISE BOTHA

STAFF WRITER

CT(ML)12/9/95
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Bail bill approved

CLIVE SAWYER
Political Correspondent

PEOPLE accused of murder, rape and other serious crimes will soon find it much harder to get bail

This follows unanimous approval by the national assembly of the Criminal Procedure Second Amendment Bill, which sets strict guidelines for the granting of bail

Claims of bail being given too easily, thanks to a too-generous interpretation of the constitution, have fuelled widespread concern that the criminal justice system is not

(252) AR 14/9/95
geared to help eradicate rampant crime

Minister of Justice Dullah Omar said many people had been alarmed that the new law was more drastic than proposals in this year's Law Commission recommendations for the law on bail

Steps had to be taken to protect the building of a human rights culture

For some crimes, criteria for deciding when an accused should be given bail were to be stricter

These crimes included mur-

der, treason, rape, robbery with aggravating circumstances, drug and arms trafficking and serious economic offences

Mr Omar emphasised bail should not be confused with punishment

The system had to ensure people attended their trials, and that the interests of justice were served.

"This bail law is going to work," he said.

Among legal reforms it will introduce is an end to arbitrary decisions by courts

Johnny de Lange, chairman of the national assembly committee on justice, said the bill meant "we are sending a message from all parties in this parliament that we are going to get tough on the law"

Myths about easy bail being guaranteed by the constitution were going to be destroyed

Mr De Lange said making the criminal justice system more efficient would not on its own solve the problem of rampant crime

Socio-economic reform and development were needed

Plan for Africa rights court

(252) Star 13/9/95

Cape Town - Lawyers from the International Commission of Jurists (ICJ) and Organisation of African Unity (OAU) representatives yesterday adopted a draft proposal to establish the African Court of Human and Peoples Rights to deal with human rights abuses on the continent.

ICJ representatives and officials from 27 OAU member states said after the law conference that the proposal would be

presented for ratification by the OAU at its summit in Cameroon next June.

"The practical implication is that states who are committing human rights violations will be beckoned to court and the judgment of the court is final," OAU Assistant Secretary-General Ahmed Haggag told a news conference after the closing session of the conference.

He said an annual court report would inform OAU member states if a

country, whether a signatory to the protocol or not, had not implemented judgments by the court.

"Then, of course, it is up to the heads of state to see to it that states implement this judgment," Haggag said.

The moral aspects of a judgment would be strong enough to make violators of human rights think twice before not implementing a judgment, ICJ Secretary-General Adama Dieng said.

Two to die | 200 000 pilgrims set

BY MAX GERHARDT
SPECTRUM

Transvaal Law Society moves towards transparency

The Transvaal Law Society is considering opening its disciplinary hearings and making public the findings of its disciplinary committees, law society president Dantle Oliver told Spectrum, the investigative unit of Independent Newspapers, yesterday.

The council of the Law Society of the Transvaal will be recommending to our members at our annual general meeting in October that disciplinary hearings be made more transparent and in

the with South Africa's new constitution," he said. Oliver believes members will endorse the move taken by the council.

However, if an accused member of the society or his client is able to advance convincing grounds for the proceedings to be closed, such requests will be granted, he added.

"The media must realise there is a special client-attorney relationship that needs to be protected," he said.

In June, Spectrum published a series of investigations into public anger at what was believed to be "secret" hearings that protected the interests of lawyers at the expense of the public.

There was also anger at alleged inadequate treatment of public complaints against attorneys.

De Rebus, the journal of the Association of Law Societies, said in its July issue the legal profession would be better served if law societies held open disciplinary hearings.

A weekend publication recently alleged that the Cape Law Society had closed ranks to cover up details of a racket in which 20 attorneys had bribed state officials to register property transfers.

Oliver believes the Transvaal Law Society's move is an opportunity to sell the profession to the public and that other law societies will follow suit.

Oliver says he sees this as an opportunity by the Transvaal Law Society to restore the confidence of the public in the law profession which has in recent

months taken a number of knocks after exposes in the press of corruption in the law societies.

"I don't see what has been happening with the Cape Law Society as negative, rather as positive," Oliver says.

According to Oliver the council of the Transvaal Law Society has been debating for a number of months how best to achieve greater transparency within the

society.

He said it was pure coincidence that the open doors decision came in the wake of corruption charges against the Cape Law Society.

However, some critics believe the proposed new policy is a facade and will merely be sidestepped by holding on to exceptions to the rule.

Andres Landman, president of the Cape Law Society, said the council of the Cape Law Society also proposes to put forward a motion at its annual general meeting in October to involve the public at all levels of disciplinary inquiries in an effort to give a new openness and transparency to their hearings.

At the moment, he said, there was no plan to open the doors of hearings to the public and the media, though this could change in the near future.

Other law societies could as yet not be contacted for comment on the the latest developments

(252) Star 13/9/95

African court for city?

(252) @ CT 13/9/95
CAPE TOWN has been mooted as the site of the proposed African Court of Human and Peoples' Rights

This was disclosed yesterday by an assistant secretary-general of the Organisation of African Unity (OAU), Mr Ahmed Haggag, at the end of a meeting of government legal experts on the establishment of the proposed court.

He said "an informal poll" of the experts had decided Cape Town would be the best place for the court.

The formation of the court could take up to five years — its protocol has to be ratified by 11 of the 53 members of the OAU before it can be formally established, secretary-general of the International Commission of Justice Mr Adama Dieng said yesterday. But he hoped this would only take two years because of "the commitment of many African leaders to human rights"

The Justice Department said the government was eager for the court to be established in SA — Political Staff

Mother City may deliver people's court

Cape Town - This city looks set to become the human rights capital of the continent with the proposal that an "African Court on Human and People's Rights" be set up here.

Legal experts representing a host of African governments spent eight days at the Waterfront fine-tuning a draft protocol for the proposed court.

It will be presented to the

Star 14/9/95

Assembly of Heads of State and Government of the Organisation of African Unity for approval.

This week, at the conclusion of the summit, OAU Assistant Secretary-General Ahmed Haggag unveiled the draft protocol to the press and disclosed that delegates had strongly support-

ed seating the court in Cape Town.

Haggag said it was impossible to project how long it would take for the protocol to be adopted and the court established - anything from one to five years.

But, he said, the draft proto-

col included the "very specific" directive that the process should not be delayed.

The question was how many countries would be party to the protocol, and would judgments of the court be enforceable?

Haggag said "All states party to the protocol should

undertake to implement judgments of the court. If they do not, the court will inform the OAU assembly.

"Then it would be up to the heads of state to see how they can make states implement judgments. The OAU would encourage member states - 53 of the 54 countries in Africa, excluding Morocco - to become parties to the protocol."

Parliament tries to pass 36 bills in final three days

ET 14/95

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PARLIAMENT is trying to pass 36 bills during the last three days of the 1995 session. The bills were still outstanding on Tuesday, and MPs hope to finish around 8pm today.

The national assembly is sitting concurrently in two chambers from 2.15pm to 10.30pm, and the senate is processing legislation as it passes the first stage.

Voting was conducted in batches yesterday, and this will continue today. Bills up for debate are the:

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|--|--|--|
| Water Amendment Bill | Pan South African Language Board Bill | Truth and Reconciliation Amendment Bill |
| Forest Amendment Bill | Electricity Amendment Bill | Space Affairs Amendment Bill |
| Labour Relations Bill | Eskom Amendment Bill | National Supplies Procurement Amendment Bill |
| Development Facilitation Bill | Defence Special Account Bill | Credit Agreements Amendment Bill |
| Audit Matters Rationalisation Bill | Defence Amendment Bill | Sale and Service Matters Amendment Bill |
| Stock Exchanges Control Amendment Bill | Dumping at Sea Control Amendment Bill | Usury Amendment Bill |
| Financial Markets Control Amendment Bill | Sea Fishery Amendment Bill | Restitution of Land Rights Amendment Bill |
| Independent Electoral Commission Bill | Local Government Transition Bill | Transport Second General Amendment Bill |
| Liquor Amendment Bill | Criminal Procedure Amendment Bill | Air Services Licensing Amendment Bill |
| South African Police Service Bill | Criminal Procedure Second Amendment Bill | Judicial Matters Amendment Bill |
| National Education Policy Bill | Right of Appearance in Courts Bill | Interception and Monitoring Prohibition Bill |
| National Qualifications Framework Bill | Aliens Control Amendment Bill | South African Citizenship Bill — Reuter |

NATIONAL NEWS

Human rights court for Cape Town?

(252) some as 14/9/95

The Cape Town Human Rights Commission is considering the possibility of setting up a human rights court in the city. The commission, which was established in 1994, has been dealing with a large number of human rights cases since then. It is now looking at the possibility of setting up a court to deal with these cases. The court would be a permanent body and would have the power to hear and determine cases of human rights violations. It would also have the power to award compensation to victims. The commission is currently consulting with the legal profession and the public on the possibility of setting up such a court. It is expected that a decision will be made in the next few months.

MPs get through 88 new laws

(257) stan 15/9/95

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town - The 1995 session of Parliament ended yesterday having passed 88 Bills, including some far-reaching transformation legislation.

The session was also mired in controversy resulting from poor attendance of MPs. Yesterday the Assembly engaged in a heated debate on the institution's poor public image.

National Assembly Speaker Frene Ginwala told the debate

that Parliament would receive an extra R82-million to help it function more effectively. The committee section would receive an extra R9-million and support services for MPs would receive R15,7-million.

Ginwala said Parliament had dealt with 88 Bills and that five had been held over until next year.

The session reached a climax in the early yesterday morning as MPs engaged in bitter debate on Education Minister Sibusiso Bengu's National Education Poli-

cy Bill

The Bill has been referred to the Constitutional Court for it to decide whether it contravenes the constitution.

It was one of several pieces of legislation that will have far-reaching consequences.

Also passed during the session was the Labour Relations Bill, the third major legislative initiative in this field this century.

Other important legislation included the Police Services Bill and the Development Facilitation Bill.

stantiated," unfair and — most important — "damaging to the administration of the criminal justice system"

McNally himself has dismissed the charges against him as "false allegations" calculated to undermine the authority of his office and thereby add "a new dimension to the already fragile state of the administration of justice"

On the question of political bias, it is pertinent to note *en passant* that the special task force established by Safety & Security Minister Sydney Mufamadi to investigate hit squads in the province appears to have shown greater aptitude in identifying alleged Inkatha-led assassins than their ANC counterparts. The assassination of scores of Inkatha leaders and cadres is *prima facie* evidence that death squads operate on both sides of the political fence. It is partly for that reason that the National Party (NP) has called for an independent and permanent judicial commission to investigate ongoing violence in the province.

Meanwhile, there is no clear answer to the question of whether the ANC-initiated criticism of McNally has crossed the dividing line and become an attempt to intrude on the discretion accorded to the AGs by the Attorney-General Act of 1992, underwritten by the interim constitution.

In the interim, McNally must stand firm and not succumb to pressure to resign. To do so would establish a dangerous precedent. It would encourage present and future political activists to similarly attempt to constrict the autonomy and discretion of the AGs. Their autonomy is only marginally less important to the administration of justice than that of judges. As the AGs have noted in a memorandum "The public must know that the AG is not subject to the influence of any political, economic or power grouping"

To encourage McNally to stand his ground is not to argue that either he or his peers should not be accountable. They should be and they are.

They have to account to parliament and, equally important, to the parliamentary committee on justice. They have to submit an annual written report to parliament and, in a new, post-apartheid development, can be called before and questioned by the parliamentary committee on justice. As the Democratic Party's Douglas Gibson has noted, the AGs will appear before the justice committee — on which all main parliamentary parties are represented — at open hearings in Pretoria on September 26-28. There is thus no question of McNally or

any of his associates not having to account for their decisions.

Justice Minister Dullah Omar has so far reacted with admirable restraint and balance to the attacks on McNally. He has called for the complaints against justice officials to be sent to him in writing. He has also undertaken to investigate them and give McNally a chance to reply. He is thus asking McNally to account for his decisions — as the parliamentary committee will almost certainly do in Pretoria — without attempting to dictate to him who he should or shouldn't prosecute.

The situation is complicated by another development: the recommendation by the ANC national executive that provision should be made in the constitution being drafted by the Constitutional Assembly for a National AG. There are fears that the proposal represents an attempt to establish a quasi-legal commissar whose function will be to direct and supervise the provincial AGs and reduce them to functionaries of the ruling party.

The ANC's Willie Hofmeyr recognises that these fears exist. He insists that the ANC is opposed to interference by the executive in the day-to-day affairs of the provincial AGs and, in particular, in the exercise of their prerogative to decide, on judicial grounds, who should be prosecuted. He emphasises that the ANC advocates the

when to prosecute should be prohibited.

Predictably, the provincial AGs are opposed to the establishment of a National AG. They note that the Attorney-General Act of 1992 provides the Minister of Justice with scope to communicate government policy to the provincial AGs. He has first-hand knowledge of State concerns and there is "no need whatsoever for a middle man" or national or super AG, they contend.

However, political and legal observers, including Hofmeyr, find the opposition of the AGs to the notion of a National AG ironic. They observe that their predecessors accepted a situation under the NP in which the Minister of Justice functioned as a *de facto* "super AG," one who, they contend, interfered actively in critical decisions relating to prosecution.

Control — as distinct from consultation — by the Minister of Justice, first provided for in the General Law Amendment Act of 1935 and re-established in the Criminal Procedure Act of 1977, is specifically negated in the 1992 Attorney-General Act. As the AGs note of the 1992 law in their memorandum to the Constitutional Assembly's theme committee on justice, "The AGs were taken out of the Public Service and Ministerial or executive control was abolished."

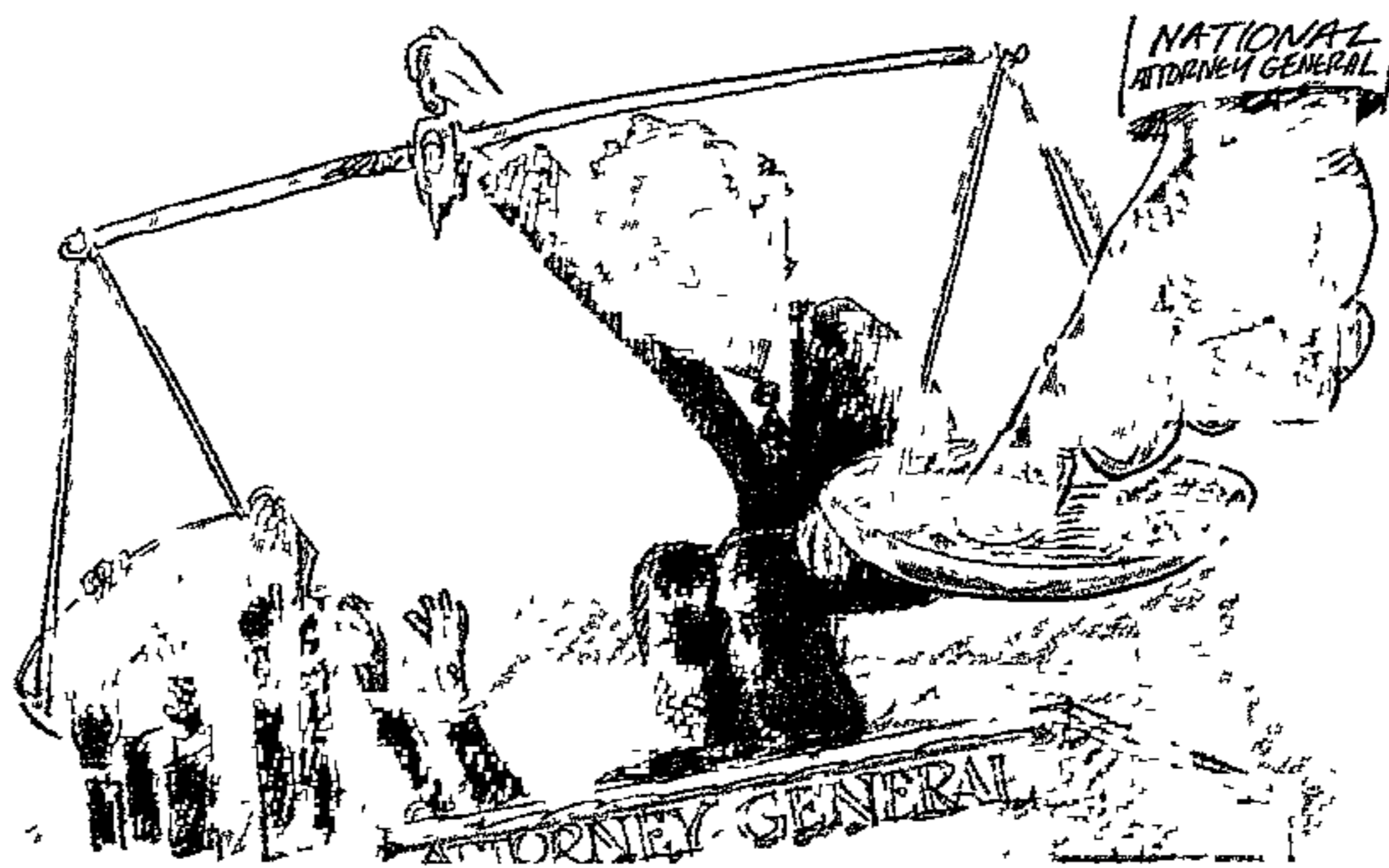
It may be true that the NP only discovered the virtue of defending the autonomy of the AGs in its last years of office, more specifically, that, having eroded their autonomy during its years in power, it now wants to protect them from a future ANC-dominated government.

But that does not mean that the AGs' autonomy should not be protected now and in the future. Quite the opposite: it should be jealously guarded. As the Hoexter Commission has noted "The proper administration of justice requires that AGs should enjoy statutory protection."

If the ANC persists in its drive to establish a National AG, every endeavour should be made to ensure that adequate safeguards are provided in order to prevent him (or her) from serving as a conduit for political decision by the government of the day.

Instead of being appointed by the President, after consultation with the Cabinet, he should be appointed on the advice of the politically independent Judicial Services Commission after open hearings.

The choice of provincial AGs should be left to the Judicial Services Commission too. As they note in their memorandum, it will underpin their autonomy. ■



establishment of safeguards to prevent the ruling party being unduly influential through a compliant National AG.

The ANC envisages the proposed National AG will focus primarily on co-ordinating policy and ensuring that it is implemented uniformly. Hofmeyr cites the example of using radar to trap speeding motorists: it is used only in some provinces. He believes a uniform policy should be adopted in this regard. He argues that guidelines should be established by the National AG to facilitate uniformity in broad policy. However, he insists that attempts to usurp the responsibility of provincial AGs for deciding who or

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AG autonomy vital to justice

The sustained attack on KwaZulu-Natal AG Tim McNally has serious implications

The fierce and, at times, polemical censure of KwaZulu-Natal Attorney-General Tim McNally for his alleged reluctance to prosecute suspected Inkatha Freedom Party death squad leaders, raises an important question: When does legitimate criticism of a high-ranking judicial official degenerate into an insidious political attempt to undermine his autonomy and influence the course of justice? It's a question which is easier to pose than answer.

There's a strongly held view that McNally's failure to act against Inkatha leaders suspected of having orchestrated political

assassinations in the province merely reinforces their belief that they are immune to legal retribution. ANC spokesman in the province Dumisani Makhaye fulminates that McNally's perceived disinclination to prosecute "encourages the perpetrators of violence." ANC secretary-general Cyril Ramaphosa has added his influential voice to the chorus of criticism: "There is a complete reluctance on the part of the AG to have effective law enforcement... We sense that he has an agenda of his own which could be politically motivated."

Similar criticisms have emanated from

influential lawyers in the province, most of whom are ANC-inclined. The National Association of Democratic Lawyers has called for McNally's resignation or, failing that, his suspension. Lawyers from several organisations, including the Durban office of the Legal Resources Centre, have formed a subcommittee to identify cases which they consider to indicate bias, incompetence or inability on McNally's part.

In contrast to that McNally has been defended by six of the eight remaining provincial AGs. And they have labelled the accusations against him "completely unsub-

TIM McNALLY

Prosecutor turned accused

Controversial Natal Attorney-General Tim McNally intends confounding his critics and staying in office until normal retirement in nine years' time. Quietly spoken McNally (55) vows to resist attempts at forcing his dismissal, early retirement or resignation.

His guarded response to questions is understandable, given his unfamiliar role as prosecutor turned accused. Indeed, much of McNally's time is currently devoted to parrying hostile media queries over his alleged political bias — the result of a decision not to prosecute, on grounds of insufficient evidence, senior Inkatha and KwaZulu police officials linked, by the Investigation Task Unit probing KwaZulu-Natal hit squads, to a conspiracy to murder a police captain.

McNally stresses that he has no political affiliations. "This would be improper for an AG." His philosophy is simple: if the evidence exists in terms of the law, it is his duty to prosecute, if not, he won't.

It is this belief which made him choose a

prosecutorial legal career rather than one in private practice. It is also why he refused candidacy for the bench and is now one of the country's longest-serving silks.

"I've developed management skills which would be wasted on the bench," he says. "Whereas a judge only manages his court and secretary, I'm responsible for 43 advocates and 300 prosecutors. Besides, a judge simply tries cases brought before him, but I prefer the active role of deciding which cases go to trial. As AG, my service is to the people and justice — a constant principle, irrespective of political trends."

But he admits that, as an AG and believer in nonracism during apartheid, he was sometimes in a position to "ameliorate the impact of discriminatory law." This was on the basis that an AG has the discretion not to prosecute on humanitarian grounds. Not that he makes any apology for prosecuting terrorists under the previous regime.

McNally was on the AG legal team



McNally stresses he has no political affiliations

which argued, and failed, in the Constitutional Court against the abolition of capital punishment — though he's not part of the campaign to have it reinstated. It seems a contradiction, therefore, that though he advocates stiff deterrent sentencing, he is an active member of Nicro, the prisoner welfare organisation, and has garnered its highest accolade — the Lorna Slater award.

"Sentencing is getting tougher within the context of available options," he says. "Previously, when capital punishment was allowed, 25 years' jail was severe. Now terms of 50 to 75 years are handed down."

"My Nicro activities complement my work. While 50% of KwaZulu-Natal Supreme Court cases end in acquittal, the families of those who are punished should not suffer."

Born in India of Irish extraction, McNally belongs to a family steeped in legal tradition. His grandfathers were, respectively, Master of the Rolls on the Dublin High Court bench and a magistrate. His brother is a Zimbabwean Appeal Court judge.

He was educated at St Aidans, Grahamstown, and became a clerk in the office of the Registrar of Durban's Supreme Court, Durban. He studied part-time at the University of Natal, graduating with a BA in 1960 and an LLB in 1962. After service as a State advocate in Maritzburg and senior State advocate in Johannesburg, McNally became deputy Transvaal AG (1974), Free State AG (1984) and Natal AG (1992).

McNally is married and has three adult daughters. Interests include education, economics, gardening and social tennis.

LOTS OF GRAVY, LITTLE MEAT

Well before Eugene Nyati (see *Current Affairs*) made headlines, allegedly having received up to R15 000 a day to investigate waste and inefficiency in three Mpumalanga public corporations, he was considered a dark horse.

This is not to say he didn't command respect — especially since black economists are not exactly thick on SA ground. What's more, he was a black economist — he claims he has an MA in economics from the University of Pittsburgh in the US — who was prepared to criticise government.

It has even been suggested that the well-paid task of creating a single, lean body out of the former KaNgwane, Kwa-Ndebele and Agriwane development corporations was government's way of silencing him.

Nyati responded that he was a victim of a slur campaign. Using the far-fetched analogy of an interior decorator, he insisted the sum was divided among a number of subcontractors.

What makes many suspicious is Nyati's quick rise in the transitional envi-

ronment. He burst on the scene about six years ago, set up the Centre for African Studies, and operated shrewdly. With arrogance in inverse proportion to openness — he strives to keep his history obscure — he nonetheless made an excellent living out of economic and political analysis here and abroad.

"There was no way he was keeping the wolf from the door in Mpumalanga," says a peer. "He is intelligent and well-versed in economic matters, if far less so in political ones. But the idea that he is a hard worker who does serious academic research is nonsense."

Nyati's English is excellent. That he was controversial and uncompromising in written and spoken debate gave him credibility. In other words, if he is an opportunist, he is a convincing one.

Biographical information is skimpy. It appears Nyati, now in his late 30s, cut his teeth as a financial journalist and investment researcher. He was born in Natal but grew up in Zimbabwe, returning to SA in 1983.



McNally sues M&G over hit squad reports

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WM 215-21/9/95

THE Attorney General of KwaZulu-Natal, Tim McNally, is suing the *Mail & Guardian* for R250 000 over reports published last month detailing criticism of his handling of investigations into hit squad activities. McNally, charging that the reports "cut at the very heart of his reputation and dignity", has demanded publication of a "complete, unconditional and unequivocal retraction and apology" in this edition of the newspaper. The M&G has instructed its

lawyers to oppose the action, raising as part of its defence the United States Supreme Court judgment in the case of the *New York Times v Sullivan*. The judgment, delivered in 1964, established that a public official cannot sue for libel in regard to the exercise of his official duties unless it can be proven that allegations were published without an honest belief that they were true, or with reckless disregard as to whether they were true or not.

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Omar sends a tough message to the criminals

STAFF REPORTER (252)

Tough new bail conditions introduced in Parliament this week were designed to "send a message to criminals," says Justice Minister Dullah Omar

The purpose of the Criminal Procedure Second Amendment Act was to provide clear guidelines to courts when considering bail applications

"It is necessary to send a clear message to criminals that crime, particularly crime with violence, will not be tolerated," Omar said in a statement issued yesterday

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◆ Omar's warning (252)

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The law was in line with the chapter on fundamental rights in the constitution, yet introduced a number of important clarifications. Some important features of the legislation included the right of the court to postpone bail proceedings

In respect of very serious offences, the court was now empowered to order that the accused satisfy it that the interests of justice did not require his or her detention

This relates to offences narrowly defined in the legislation, such as treason, murder involving the use of a dangerous weapon or firearm, rape, robbery with aggravating circumstances and robbery of a motor vehicle, dealing in dangerous dependence-producing drugs and money laundering, arms trafficking and serious economic offences. The law also allows for the right of appeal and the cancellation of bail

"I would like to stress that the new bail legislation is just one element of the overall strategy to combat crime. Legislation with regard to the treatment of juveniles and the issue of sentencing is presently being considered," Omar said

The prof who has the courts in a legal spin

(252) 09/17/95

THE EXECUTIVE director of the Human Rights Centre in King William's Town is not a registered attorney or advocate in SA, according to the Cape Law Society – but this has not prevented him representing legal aid clients in the Eastern Cape

And, in a dramatic development this week, the man in question – Professor Mbuyiselo Jozana – stormed out of the Grahamstown Supreme Court after informing a judge that he was “racially biased”

Numerous members of the legal fraternity in Grahamstown packed the court to witness the exchange

Cape Law Society director Ingrid Hoffmann stated this week that Jozana was “neither a practicing attorney nor an advocate” and said the society “was looking into the matter”

Investigations by the East Cape News Agencies indicate that neither the General Council of the Bar nor the Department of Justice in Pretoria had any record of Jozana, who was formerly a law professor at Fort Hare

Deputy Director of the Legal Aid Board, Tony Hutchinson, confirmed that the board funded Jozana's legal aid clinic in King William's Town and that he had requested magistrates in the area to refer cases to the clinic

Hutchinson explained

THE CONTROVERSY surrounding Prof Mbuyiselo Jozana is being followed with interest in legal circles in Eastern Cape. He claims he is allowed to represent clients but there are those who regard him as not entitled to act in court. This week Jozana stormed out of court, accusing a judge of being “racially biased”.

the Legal Aid Board's involvement with Jozana's former Institute for Peace and Human Rights by saying Jozana had claimed to have been exempted from admission requirements for advocates in South Africa due to “overseas qualifications”

Hutchinson said the board had also appointed an attorney, Luvo Tetyana, as its legal representative

Agreement

“We established an agreement with the institute to jointly get the clinic going. We fund the expenses, salaries and running costs,” said Hutchinson

Several candidate attorneys work under Tetyana. However, Hoffmann said none of them had had their articles registered with the Law Society, which meant that “they too were not entitled to appear in court”

Jozana has been criticised on more than one occasion for what judges have described as his “ignorance of court procedure”

Back in 1985 when

Jozana applied to be admitted to the Transkei Bar, his application was reportedly so flawed and his behaviour in court so bad that he earned the criticism of two senior judges and the Transkei Society of Advocates

The then-Chief Justice Van Reenen and Judge Davies found his conduct during the application proceedings to be “unbecoming of a would-be member of the Bar” and ruled that “he was not a fit and proper person to be admitted”

Jozana's application, according to Judge Van Reenen, contained “fatal deficiencies” including a failure to provide authenticated documentation proving his claimed foreign qualifications

Jozana has also claimed to be an international expert on industrial relations but was recently taken to the industrial court for unfairly dismissing two employees at his institute

He failed to appear to defend the matter and in a default judgment was ordered to pay them a total of about R25 000 compensation

This was the beginning

of the end of his institute as his failure or inability to pay resulted in the seizure of its property

Creditors began to line up to take the institute's property and it came to light that over R30 000 was owed on rental alone

But Jozana merely moved his headquarters a few doors down the road to the offices of the legal aid clinic, where the Legal Aid Board is now meeting the rental costs

He also then changed the name of the institute to the Human Rights Centre

Discharged

It was while he was challenging the seizure of the institute's property that his right to appear in the Supreme Court was challenged

Jozana responded in court: “This is not the first court I have been to. I have appeared before. I have practised both in the US and Britain

“We have a community law centre which is attached to the institute

and I have been employed by the Legal Aid Board to represent the clients in the institute – as well as by the community law centre as an advocate. We have attorneys working for me

“I have represented the institute in the Constitutional Court”

On Thursday this week Jozana again caused a stir in the Grahamstown Court – where he is representing himself in his divorce

He filed an exception to his wife's particulars of a claim in the divorce case – essentially objecting to her reasons for divorce, which he claimed were vague and embarrassing

After Judge Jennet had first refused to grant Jozana a postponement and later refused to recuse himself, Jozana stormed out, muttering that the judge was “racially biased”

The judge's aid Jozana's charge that he was biased “had no merit and he would not recuse himself”

Said Jozana “You refuse to stand down, then I refuse to stay”

He then noisily packed his briefcase and stormed out of court.

Repeated attempts to get comment from Jozana this week were not successful – Eena

Bill heralds an end to easy bail

(252)

CP 17/9/95

By RAFIQ ROHAN

THE COURTS granting bail to people charged with committing serious crimes like murder and drug trafficking has seriously hampered the control of crime by the police

That's all about to change soon after the government approved the Criminal Procedure Second Amendment Bill this week.

Justice Minister Dullah Omar said that while the law on bail was being tightened up it should not be seen as a further punitive measure.

"This bail law is going to work," he said and it would see to it that people attended their trials and that the interest of justice was served.

"It is necessary to send a clear message to criminals that crime, particularly crime with violence, will not be tolerated and that the right of communities to safety is paramount," he said.

Crimes falling into the "serious crime" category include treason, murder, rape, robbery with a dan-



NOT FURTHER PUNISHMENT ... Omar says the new legislation is only one element in the strategy to combat crime.

gerous weapon, trafficking in drugs, firearms and money laundering, fraud, corruption and theft involving more than R500 000

Serious cases of child abuse and gang and syndicate related crimes have not been listed as serious

crimes but their inclusion is being investigated

The additional measures added in the bill to tighten bail provisions are.

■ In the event of a serious crime charge the bill demands that the onus is on the accused to prove it

is in the interests of justice that bail be granted;

■ A bail application can be remanded by the court for a reasonable period for police to investigate an offence further,

■ A new ground for refusing bail has been added, for instance, where an accused had broken previous bail conditions or had supplied false information during bail proceedings,

■ The court can now also be able to consider the prevalence of the crime in the community as a deciding factor;

■ The prosecution, in the same way as the defence, can request a new bail hearing if new factors come to light.

Omar emphasised that the new bail legislation was only one element in the strategy to combat crime.

"Legislation with regard to the treatment of juveniles and the issue of sentencing are presently being considered, and the Department of Correctional Services is looking at the question of parole and release," he said

To appear or not to appear?

By BENISON MAKELE

WEDNESDAY'S passing of the Right of Appearance in Courts Bill into law has received mixed reactions from lawyers' associations

"It is a new chapter in the administration of justice," said the Association of Law Societies (ALS)

"What a waste of time and energy", exclaimed the Black Lawyer's Association (BLA)

But Lawyers for Human Rights' law reform director, Lucrecia Seafeld, welcomed the

new law

"We support the law, as it provides greater access to justice to the man on the street," she said.

Lawyers for Human Rights wants a fusion of the Supreme Court and the lower courts, and sees the new law as a step in this direction

The vice-president of the Association of Law Societies, Dr Tony Geldenhuis, said the law was passed with the "common man" in mind, as it enabled ordinary citizens to choose an attorney or an advocate

without having to pay double litigation costs

Puli Molamu, deputy director of the Black Lawyers Association, disagreed. He sees the change as cosmetic

Molamu also expressed the concern that, while the new law would benefit attorneys who have previously not been allowed to act in the Supreme Court, it would put advocates, particularly junior black advocates, at a disadvantage. "Advocates who have been relying on attorneys for litigation jobs will be out of work."

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CP 17/19/95

Bill heralds an end to easy bail

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CP 17/9/75

By RAFIQ ROHAN

THE COURTS granting bail to people charged with committing serious crimes like murder and drug trafficking has seriously hampered the control of crime by the police.

That's all about to change soon after the government approved the Criminal Procedure Second Amendment Bill this week.

Justice Minister Dullah Omar said that while the law on bail was being tightened up it should not be seen as a further punitive measure.

"This bail law is going to work," he said and it would see to it that people attended their trials and that the interest of justice was served.

"It is necessary to send a clear message to criminals that crime, particularly crime with violence, will not be tolerated and that the right of communities to safety is paramount," he said.

Crimes falling into the "serious crime" category include treason, murder, rape, robbery with a dan-

NOT FURTHER PUNISHMENT ... Omar says the new legislation is only one element in the strategy to combat crime.

gerous weapon, trafficking in drugs, firearms and money laundering, fraud, corruption and theft involving more than R500 000.

Serious cases of child abuse and gang and syndicate related crimes have not been listed as serious

crimes but their inclusion is being investigated.

The additional measures added in the bill to tighten bail provisions are:

■ In the event of a serious crime charge the bill demands that the onus is on the accused to prove it

is in the interests of justice that bail be granted;

■ A bail application can be remanded by the court for a reasonable period for police to investigate an offence further;

■ A court should for refusing bail be added, for instance, where an accused had broken previous bail conditions or had supplied false information during bail proceedings;

■ The court can now also be able to consider the prevalence of the crime in the community as a deciding factor;

■ The prosecution, in the same way as the defence, can request a new bail hearing if new factors come to light.

Omar emphasised that the new bail legislation was only one element in the strategy to combat crime.

"Legislation with regard to the treatment of juveniles and the issue of sentencing are presently being considered, and the Department of Correctional Services is looking at the question of parole and release," he said.



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Panel to help truth come out

(252) CP 17/9/95 (110)

PRESIDENT Nelson Mandela in consultation with the Cabinet will select the commissioners to sit on the Truth Commission from a 25-member short-list prepared by a selection panel, Mandela announced yesterday.

Between 11 and 17 commissioners would be appointed before the end of the year, he said.

Mandela first outlined how commissioners would be appointed in a speech at the University of South Africa in Pretoria — where an honorary law degree was conferred on him — and later expanded on it in a statement.

He said the selection panel would have nine members, ranging from politicians to lawyers and churchmen.

"Though the President was given powers to appoint the commissioners, we consider it crucial that the process should be as open and as legitimate as we want the final product to be," the statement said.

■ Mandela named the panelists as Professor Nicholas Haysom, panel chairman; Brigalia Bam of the South African Council of Churches, Baleka Kgositsile, a member of parliament; Senator R. Radue; Senator Rossier de Ville, Methodist bishop Peter Storey; Jody Kollapen of Lawyers for Human Rig-

hts, and Jayendra Naidoo of Nedlac.

Denzil Potgieter, a member of the Cape Bar, will manage the process and ensure that it keeps to its time frames.

Mandela later added Inkatha MP Professor Harriet Ngubane's name to the panel.

"Though the panel will soon make announcements about its mode of operation, it is important, as early as now, to call on members of the public to submit their nominations for the commissioners."

"The names and curriculum vitae of the nominees will be made public for all interested citizens to comment," Mandela said.

Nominations would close at the end of the month, he said.

"We are confident that through this process, we will emerge with a commission made up of individuals of moral integrity who are committed to human rights, reconciliation and disclosure of the truth, non-partisan persons who will be able to make impartial judgement," Mandela said.

■ Nominations should be sent to Denzil Potgieter care of the Ministry of Justice, Private Bag X256, Cape Town, 8000 — or faxed to him at (021) 461-6560 — Sapa

Nominations invited for truth body

(252) Star 18/9/95

■ BY MONDLI MAKHANYA
POLITICAL REPORTER

The public can today begin submitting nominations for the Truth Commission to the Ministry of Justice.

President Mandela kick started the process at the weekend by appointing a nine member pre-selection committee to choose members of the body.

The Truth Commission will be appointed before the end of the year and will most likely begin to investigate apartheid crimes early next year.

Mandela announced the committee at the weekend after an intensive consultation process with political party leaders.

The panel is chaired by presidential legal adviser Fink Haysom and senior Cape Bar member Denzil Potgieter. Political party appointees are ANC deputy chief whip Baleka Kgositsile, National Party senator Ray Radue, the IFP's Harriet Ngubane and Freedom Front Senator Rossier de Ville. South African Council of Churches secretary general Brigalia Bam and Methodist Bishop Peter are also on the panel.

The human rights lobby is represented by Lawyers for Human Rights director Jody Kollapen (who has also been widely tipped as a potential commissioner), Veteran trade unionist and Nedlac executive director Jayendra Naidoo is also sitting on the committee.

However, presidential spokesman Parks Mankahlana stressed that although the panel was representative of South African society, panelists would not necessarily represent their respective parties and organisations.

This week the body will receive nominations from the public.

Names of nominees and their CVs will be available for public scrutiny. Shortlisted candidates will be subjected to public hearings.

Mandela, in consultation with the Cabinet, will then select between 11 and 17 commissioners from the short-

Nominations begin for Truth Commission

PRESIDENT Nelson Mandela at the weekend announced the panelists who will process the appointment of commissioners for the Truth and Reconciliation Commission

The panelists are Professor Nicholas Haysom, panel chairman, Ms Brigalia Bam of the South African Council of Churches, Ms Baleka Kgositsile, a Member of Parliament, Professor Harriet Ngunane, an MP,

Senator R Radue, Senator Rossier de Ville, Methodist bishop the Reverend Peter Storey, Mr Jody Kollapen of Lawyers for Human Rights, and Mr Jayendra Nandoo of Nedlac. Mr Denzil Potgieter, a member of the Cape Bar, will manage the process and ensure that it kept to its time frames.

Kollapen said at the weekend he was humbled and honoured to be chosen to serve his country in this way

Mandela said the commissioners would be appointed in consultation with the Cabinet before the year end.

Mandela outlined how commissioners would be appointed in a state-ment. "We are confident that through this process, we will emerge with a commission made up of individuals of moral integrity who are committed to human rights, reconciliation and dis-

closure of the truth, non-partisan per-

sons who will be able to make impartial judgement"

After the closure of nominations, the selection panel will draw up a short list based on the following criteria

- An ability to make impartial judgments,
- Should have moral integrity with a known commitment to human rights,
- Should not be a high-profile member of a political party,

Should not be an applicant, for amnesty in terms of the legislation.

"We intend to appoint the commission by the end of the year," Mandela said. Nominations should be sent to Mr Potgieter, care of the Ministry of Justice, Private Bag X256, Cape Town, 8000, or faxed to him at (021) 461-6560

Nominations will close at the end of the month

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Sowetan 18/9/95

Truth commission selectors named

POLITICAL STAFF

ET 18/9/95

(252)

A PANEL of Truth and Reconciliation Commission selectors — ranging from right-wing politicians to trade unionists — was named by President Nelson Mandela at the weekend.

Speculation that Anglican Archbishop Desmond Tutu would be named as president of the commission was rife at the weekend.

Mr Mandela's legal adviser, Professor Nicholas "Fink" Haysom, will chair a panel of nine people who will call for nominations and publicly select 40 candidates for a shortlist of 25, from which the cabinet will choose early next year.

They are former SACC president and Life Line founder Bishop Peter Storey, trade unionist and National Economic Development and Labour Council chief Mr Jayendra Naidoo, FF senator Mr Jacobus Rosier de Ville, IFP MP, Ms Harriet Ngubane, ANC deputy chief party whip Ms Baleka Kgositsile, SACC general secretary Ms Brigaha Bam, NP senator Mr Ray Radue, Mr Jody Kollapen of Lawyers for Human Rights and city advocate Mr Denzil Potgieter.

Balancing bail

ARLT 19/9/92 (252)

Some liberal academics and human rights activists are concerned that elements of the new bail legislation could infringe on the rights of accused people. But the Ministry of Justice argues the new legislation is necessary to protect the rights of victims. A report by ROGER FRIEDMAN.

THE time has arrived to send a clear message to criminals that crime, particularly crime involving violence, is intolerable, and the right of communities to safety is paramount, says Minister of Justice Dullah Omar.

The new bail legislation — passed by the National Assembly and Senate last week — was just one element in the government's overall strategy to combat crime.

Legislation pertaining to the treatment of juveniles and the issue of sentencing was presently being considered, while the Department of Correctional Services was looking into the questions of parole and releases.

And the new bail legislation also had to be viewed in the context of the work being done by the Department of Safety and Security to involve local communities throughout the country in programmes designed to build safety and security as part of the RDP, Mr Omar said

Criminal trials in the old South Africa were, pretty much, straight contests between accused people and the State. The new bail legislation was necessary so that the rights of victims and communities could also be taken into account

The new legislation contains three fairly drastic departures from the old

- The court will have the right to postpone bail proceedings in certain cases,

- The onus on the State to prove that refusing bail was in the interests of justice has been shifted to the accused person or persons in certain specified categories of crime, and

- The State now joins the accused in enjoying the right to appeal against bail decisions.

Postponements:

The new legislation allows the court to remand bail applications "for a reasonable period"

Specific grounds for remanding bail applications are set out.

- To allow time for further investigation of the offence, whether it be to conduct searches or identity parades, or get statements from witnesses.

- To allow the prosecution sufficient time to obtain or verify information such as previous convictions; and

- The court itself must remand the application if it lacks sufficient evidence to make a balanced decision.

This provision is subject to a maximum of seven days between postponements.

Onus:

"The court is now empowered to order that the accused satisfies the court that the interests of justice do not require his or her detention," Mr Omar explained.

The onus relates to a list of offences, narrowly defined in the new legislation, which are deemed particularly serious.

Offences include treason, murder involving a dangerous weapon, rape, robbery with aggravating circumstances including theft of motor vehicles, drug trafficking and money laundering, firearm trafficking or the possession of explosives, and economic offences involving more than R500 000

Additionally, the onus relates to persons arrested for an offence carrying a sentence of more than six months while already on bail for such an offence.

It does not specifically relate to gang and

syndicate-related crime and serious cases of child abuse at this stage, but the Justice Ministry has been asked to consider adding these offences to the list.

Right of appeal:

Previously, while the accused had the right to appeal in respect of a decision affecting his or her release, the State had no such right. The new legislation gives the State the right to appeal against a decision to grant a release, with or without bail

Also, while under the previous legislation a court could cancel bail if it had information under oath that the accused was about to evade justice or abscond, the grounds for cancellation of bail have been extended.

The State can now appeal or request a new bail hearing if new evidence or information justifies it

Other significant changes to the legislation:

- The role of the judicial officer has been changed to an "inquisitorial" one — they will now have to satisfy themselves that bail is justified and will not be bound by agreements between the prosecution and defence,

- The new legislation clearly sets out grounds for refusing bail and makes it clear that the right of the individual to freedom must be balanced with the right of the community to safety and security;

- The court should consider the prevalence of the offence in the community in deciding whether to grant bail; and

- A new ground for refusing bail was created, namely, if the release of the accused on bail would undermine the functioning of the bail system, for example, if the accused had previously broken bail conditions or had supplied false information during bail proceedings

Criticism of the new legislation:

While the new legislation has, largely, been welcomed, two areas of concern have been raised. The issue of the reversed onus and the exclusion of gang-related offences from the list of serious offences

- National director of Lawyers for Human Rights, Jody Kollapen, said he had "difficulty" with the reverse onus as the majority of accused persons appeared in court without legal representation. Lay people could not, reasonably, be expected to be in a position to discharge this onus.

The logical answer to this conundrum would be that all those facing serious charges had to be represented. But this had practical implications, including cost.

Mr Omar conceded that reversing onus may seem a "drastic step".

"But it is one which is necessary in view of the increase in brutal crime and the lack of respect for human life and property. This criminal environment, clearly a legacy of our past, cannot be allowed to destroy the human rights culture we are at pains to build"

Mr Omar said the right to be granted bail remained entrenched in the constitution

- On gang-related crime, both the Western Cape Anti-Crime Forum and Western Cape police management have argued for its inclusion in the list of serious offences.

According to senior officials in the Department of Justice, extreme caution had to be exercised to ensure that all the proposals fell within the framework of the constitution.

Transparent law-making likely to reduce ill-considered legislation

By FRANÇOISE BOTHA

STAFF WRITER

The adoption of a transparent law-making process has greatly reduced the possibility of ill-considered legislation being passed by parliament, says David Clegg, a tax partner at Ernst & Young

This would increase the level of certainty regarding the continued existence of current legislation and

would permit substantial changes to be debated fully, he said

Clegg said that increasingly complex tax legislation was anticipated, however, as South Africa's business environment became more sophisticated

The rate of change was also likely to increase rapidly with the lifting of exchange controls and exposure to international markets

"Among these changes will be

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the introduction of controlled company legislation and thin capitalisation rules," said Clegg

He said the life assurance and retirement industries were likely to continue to be seen as a source of revenue, while value added tax was expected to remain constant

Compared to the 14 percent contribution of the general sales tax in 1980, value added tax constitutes 27 percent of revenue

Commenting on the introduction of a section dedicated to international tax trends in the next edition of Ernst & Young's Strategic Trends booklet, Clegg said that in the international arena, based on current trends, tax rates were expected to remain relatively low for the remainder of the 20th century when compared with equivalent rates in preceding decades

Review parole - judge

(252) ARG 20/9/95
BLOEMFONTEIN. — The parole system should be reviewed urgently by the Department of Correctional Services because the numerous offences committed by criminals on parole are unacceptable, says a Bloemfontein judge.

Sentencing Jan Baartman, 37, of Heidedal, to 18 years imprisonment for committing murder while on parole, Mr Justice S P Hancke said the courts had in the past repeatedly criticised the early granting of parole to some prisoners.

Baartman was convicted of stabbing to death Arie de Wee during an argument on March 18.

He was also sentenced to a year in prison, to run consecutively to the 18 years, for assaulting Chris- sie Neels with the intent to do grievous bodily harm.

Hancke said the Supreme Court had limited power regarding parole because it was the Correctional Services department's prerogative.

However, an offender with Baartman's criminal history did not deserve parole.

His previous convictions included murder, four assaults with intent to do grievous bodily harm and four robberies.

"In spite of Baartman's violent history, he apparently received preferential treatment from prison authorities," Judge Hancke said. — Spa

Western Cape (262) parliament has heated debate on death penalty

MICHAEL MORRIS, Political Correspondent

PUBLIC clamour for the reintroduction of the death penalty to curb increasing violence and crime echoed in the first debate of this week's Western Cape parliamentary session as legislators traded the first blows of the local government election campaign. *ARC 20/9/95*

The African National Congress was virtually alone in defending the scrapping of the death penalty and faced a sometimes deafening barrage of criticism, chiefly from the Nationalist benches, for its right-to-life stance.

The debate presages a bitter contest in the weeks to come as parties launch their campaigns to win votes in the local government elections.

Crime and violence clearly will feature prominently in electoral promises and inter-party sparring on the hustings.

Yesterday's debate, on a private member's motion by Nationalist Ryno King — that provinces have the right to bring in capital punishment — led to fierce exchanges over just how committed the central government was to punishing criminals and stamping out violent crime.

Mr King said it was time politicians took stock of public opinion and sent an unequivocal message to criminals that they would not get away with murder.

Provincial Police Minister Patrick McKenzie delivered the sharpest attack on the ANC, saying murder and other violent crime had taken off since the party had come to power, "but they are weakest when it comes to fighting crime".

Instead of striking at crime, the government had exacerbated the problem by releasing thousands of criminals. By scrapping the death penalty, the ANC was expecting victims of violence to pay taxes to keep criminals behind bars.

"The time will come when peace-loving people will refuse to pay to keep murderers in prison," he said.

But ANC leader and Economic Affairs Minister Chris Nissen said that while the ANC was committed to the principle that no individual or government had the right to take a life, this did not mean it condoned murder.

It believed in "harsh punishment" and, in the long term, that the only effective way to fight crime was to create jobs and improve education and the quality of life of communities.

Nationalist Anwar Ismail said the ANC's adherence to its right-to-life principle in the absence of the death penalty sent a message to murderers that they could continue their deeds with impunity.

Democratic Party legislator Joe Marks said his party favoured a free vote on the death penalty. He was opposed to the penalty, but strongly criticised the government for cutting the police budget and being hesitant about cracking down on crime.

Freedom Front legislator Eleanor Lombard and African Christian Democratic Party member Michael Louis both supported the death sentence.

German example can help heal

ANTHONY JOHNSON

THE lengthy, complex and often emotionally charged soul searching that preceded the passing of the Truth Commission Bill by Parliament last week illustrated the difficulties in determining how best to deal with the dark, shameful and sometimes gruesome side of a nation's past.

The recent discussions on setting up an apartheid museum on Robben Island have similarly highlighted what a tall order it is for a new nation to find an appropriate formula to handle an extended trauma of profound proportions.

The trick is to find ways to reveal the truth, or as many versions of it as there are, about the country's messy and divided past without simply opening old wounds or sounding stock warnings about the folly of repeating grave historical wrongs.

Dealing effectively with a nation's unsavoury past also involves a great deal more than laying bare the relationships between perpetrators and victims. It should also provide a way of acknowledging the people and ideas that formed the alloy of resistance to the forces of darkness, often against seemingly impossible odds.

Properly handled, the process should help promote psychological healing, reconciliation and a measure of understanding that will ultimately lead to the building of a more unified nation.

German experts attached to institutions grappling with that nation's troubled past are keen to compare notes and co-operate more closely with their South African coun-

terparts. One such person is an historian and director of the memorial and museum at the former Sachsenhausen concentration camp, Dr Gunter Morsch.

Another is Mr Jorg Drieselmann, the director of the Norwegian Centre for Research and Memorial Centre situated in the former headquarters of the ministry for state security in the former German Democratic Republic (GDR).

Both men are passionate about their work, which they seem to regard more as a mission than a job. Both are also frustrated about the shortage of official funding despite the rapidly growing national and international interest in their institutions.

Sachsenhausen concentration camp, which was established during the 1936 Olympics in Berlin just eight kilometres from the German capital, was designed to be a model and "truly modern" camp of the Reich. Its state-of-the-art triangular shape allowed the 12 000 inmates to be vulnerable

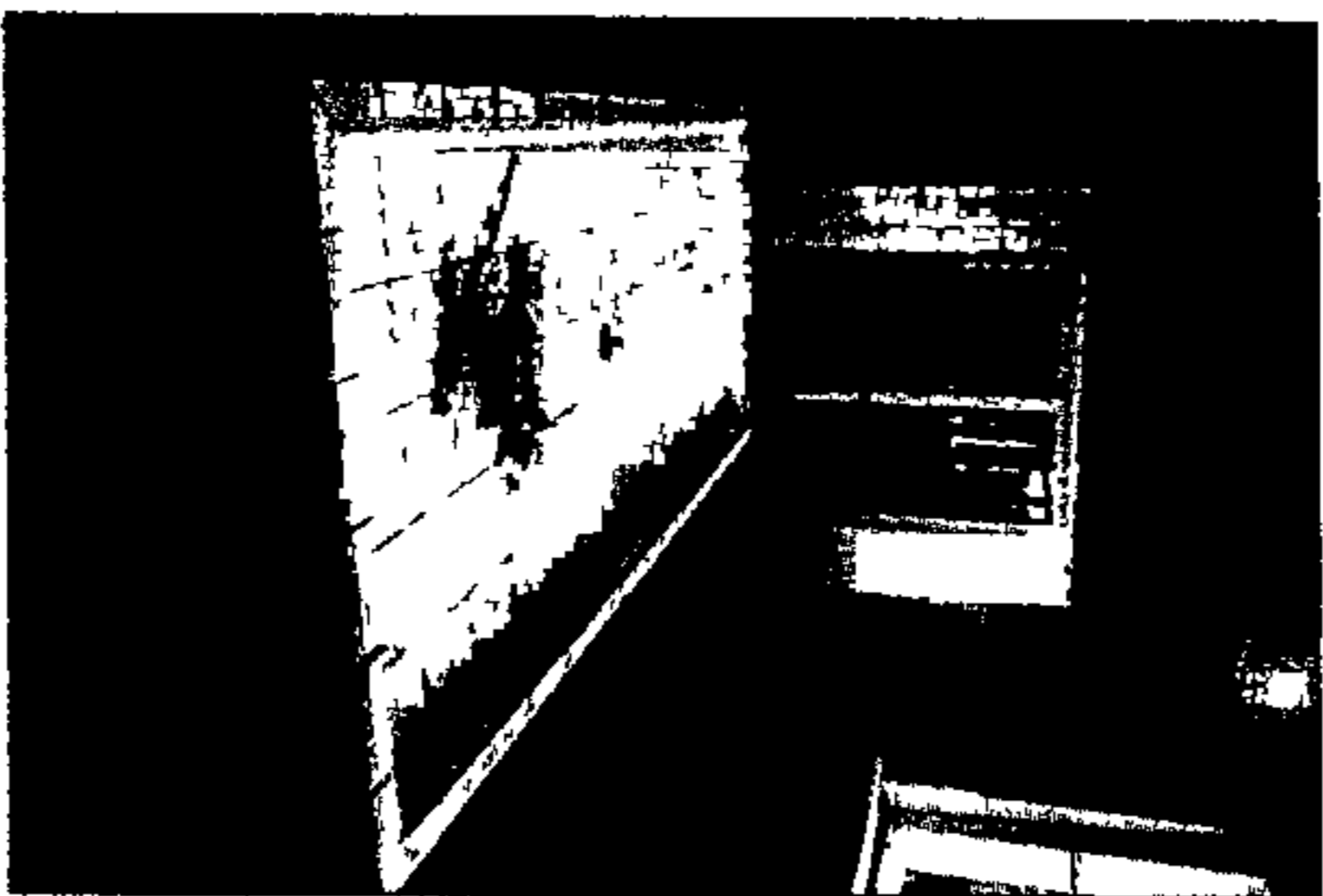
at all times from a single elevated machine-gun stand. The camp, which also served as the administrative centre of the entire concentration camp network in Europe, saw the systematic extermination of almost 100 000

of the more than 204 000 inmates from 1936-45.

The 150 000 Germans and 100 000 foreigners who visit the camp each year visit the sites where inmates died as a result of gassings, firing squads, hangings, beatings, medical experiments, hunger, exposure or simple exhaustion.

Dr Morsch, who says he has been studying national socialism since the age of 13, has the goal of turning what was designed as a truly modern concentration camp into a truly modern museum, research centre and education complex.

But he has grave doubts whether the R100-million price tag needed to do just basic restoration work will be forthcoming from the government, "the generation of the perpetrators". The memorial centre cur-



THE LAB: Part of the pathology department at Sachsenhausen used for post mortems, experiments and corpse desecrations.

rently receives official annual funding of only about R5 million.

Complicating efforts to rebuild the historical record and key sites in the camp was the blowing up by the GDR army in 1953 of the notorious Station Z crematorium and extermination complex. Right-wing German youths recently burned down the barracks that housed many of the Jewish inmates.

Dr Morsch believes that in Germany, as in SA, the advocates of the development of professional and comprehensive museums of contemporary history are facing a race against time.

Collecting the oral histories of former victims is important if holes in historical knowledge are to be plugged. An indication of this was last year's discovery, following a tip-off by a former Dutch prisoner, of a 300-person mass grave in the Sachsenhausen camp.

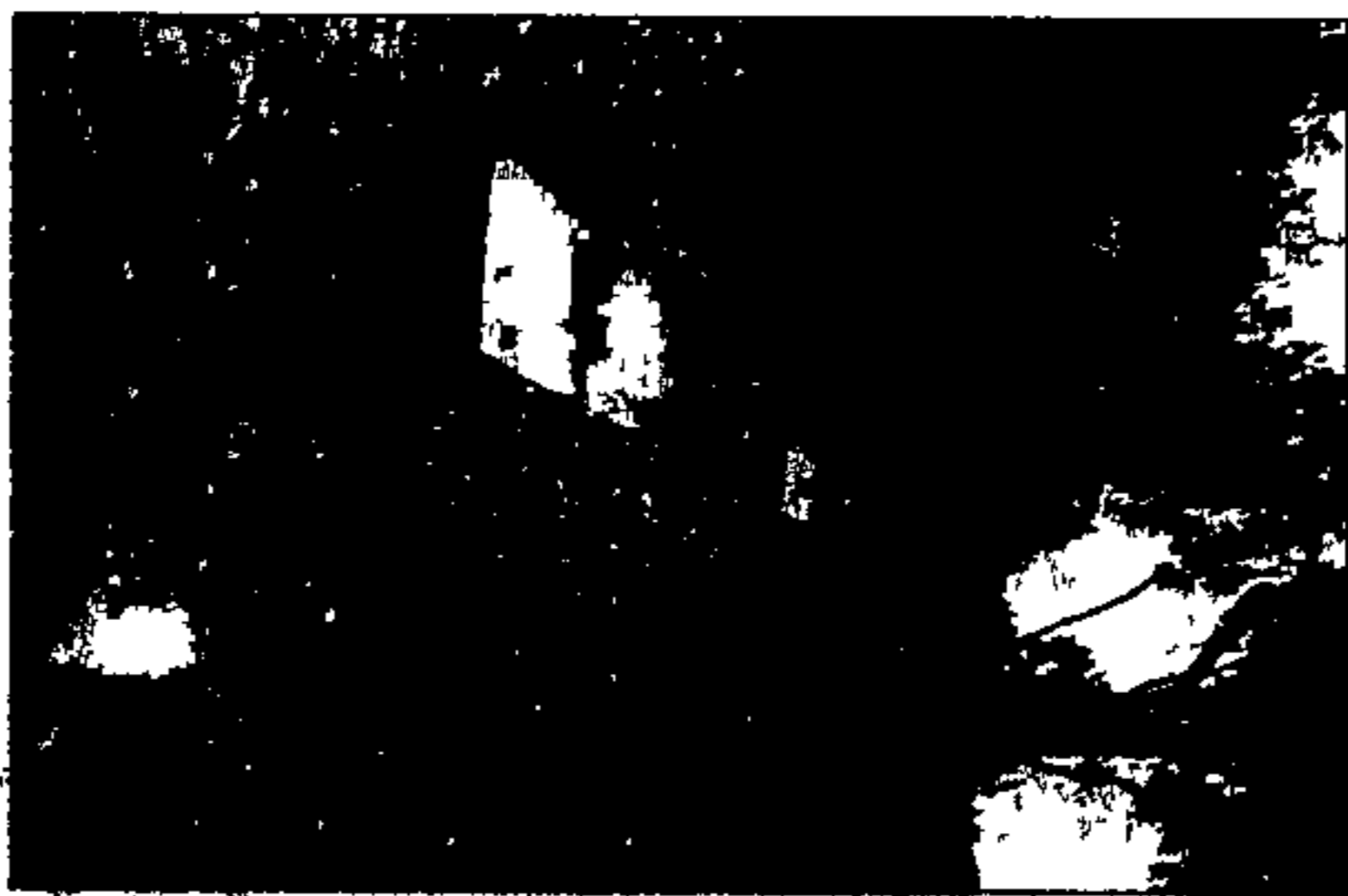
Dr Morsch says he would be "very keen" to swap ideas with SA experts, not just on

how to bring alive social history in modern museums, but also on how to build a sound future by finding the past.

These sentiments are strongly shared by Mr Drieselmann, whose Stasi museum and research centre in former East Berlin chronicles a brand of political surveillance and harassment by the GDR government on its citizens that would be chilling even to anti-apartheid activists in South Africa.

Mr Drieselmann — who was jailed as an 18-year-old in 1974 for producing pamphlets calling for the release of prisoners of conscience in the former Soviet Union — believes that it is vital to keep alive the remembrance of those who in one way or another have fallen victim to repression in Germany or SA.

South Africans committed to ensuring the proper exposure of this nation's checkered political history would do well to examine German efforts to prevent their past being swept under the carpet.



MASS GRAVE: The remains of 300 former Sachsenhausen inmates were discovered in a common grave only last year.

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(252)

Provinces should vote on death penalty'

ET 20/9/95 (252)

CHRIS BATEMAN

PROVINCES should be able to decide whether or not to reinstate the death penalty because its abolition had led to a "total breakdown" of law and order, with rapes up by 17,5% on last year, bank robberies up by 65% and murders five times the United States figure

This was said by NP provincial government member Mr Ryno King, who proposed a debate on the death sentence in the regional body yesterday. He said the death sentence was "the only way" to stop rampant crime.

Claiming South Africa should emulate the US federal system where individual states decided on the death penalty, Mr King said that if the Western Cape became the only province to "allow for the highest price to be paid for crime, then so be it".

ANC leader and Economic Affairs Minister

Mr Chris Nissen said last weekend's brutal Eastern Cape attack on foreign travellers, cited by Mr King, was not an isolated incident but a daily experience in the townships.

However, the country had had enough of brutal killing and would not officially sanction the taking of lives as Mr King wanted.

The NP had created the misconception that punishment equalled the death penalty, whereas a holistic approach was needed.

Mr Joe Marx, DP, said his party had a free vote on the issue and he, like his provincial leader Mr Henne Bester, was totally opposed to the death penalty, but colleague Professor Richard van der Ross felt it was justified "under certain circumstances".

The Freedom Front's Mrs Eleanor Lombard said it was "astonishing" that the NP was calling for the death penalty when it had introduced the moratorium five years ago.

PROF Giovanni Sartori recently argued (Business Day, August 2) that SA was faced with the prospect of "single-party government" and that therefore "the minorities (should) be given a majority" on the Constitutional Court. I disagree with his premise and his prescription.

A familiar theme animates Sartori's argument: majority rule, or at least "simple majority rule", ends up by destroying democracy itself, therefore majority rule must be constrained. I begin with the opposite assumption that majority rule is a foundational, though not the only, democratic value, and therefore that limitations on majority rule require justification.

In a nonracial democracy all individuals, regardless of race, ethnicity or any other immutable personal characteristic, are entitled to equal concern and respect. It follows that the preferences of each individual should be weighed equally in collective decision-making processes. Only majority rule ensures this. Hence, the pre-emptive normative claim of majoritarianism

Political equality and majority rule are not the only democratic values. Because we value individuals we should protect their substantive rights. Majority rule can lead to unjust outcomes, such as when individual rights of political participation, expression, religious observance and cultural association are violated. There may also be some questions, particularly those on which society has deeply divided moral intuitions (for example capital punishment and abortion), which are probably not appropriate for decision through vote-counting.

Also, since individual preferences in the real world are always, at least in part, patterned on class, gender, racial and other lines, the creation of stable democratic institutions will sometimes require that attention be paid not only to individual fairness but to effective representation of diverse groups.

This brings us to the same point as Sartori. Some limits on majority rule might be necessary. But this route raises a question Sartori does not ask: which methods of limiting majority rule are legitimate?

Minority veto in Constitutional Court an outrageous idea

FIROZ CACHALIA (252) 80 219195

Two broad forms of limitation on majority rule are distinguishable—constitutional and consociationalist. The former includes judicial review, special majorities, separation and division of powers, bicameralism, checks and balances. All these devices are nonracial, anonymous (they do not create legally privileged classes) and, most important, are compatible with the principle of equal citizenship.

The latter, minority vetoes, "current majorities", are associated with the writing of Belgian political scientist Arand Lijpard. His writings, or at least a vulgarised version of them, provided the theoretical justification for the tricameral system.

There appears to be a consensus among SA's constitutional makers that the consociationalist model should be rejected because it depends on group classification and restricts the freedom of individuals to choose their associations. Sartori agrees. He defends judicial review and criticises legislative minority vetoes as "excessive". But his suggestion that minority political parties be "given" a majority on the Constitutional Court, in effect, restores the minority veto under the guise of judicial guardianship.

This model is open to a number of objections. First, while not entirely clear, Sartori appears to suggest the purpose of judicial review is to protect

political minorities (political parties that have lost an electoral contest or a particular legislative battle).

He invokes the "affirmative action" rationale to suggest that political minorities be compensated by being given control over the Constitutional Court.

This is outrageous. The purpose of judicial review is to protect rights of political participation as well as substantive rights (for example, religious and cultural rights) of individuals who may belong to a political minority. The purpose is not to guarantee those interests that have lost a legislative contest a second bite at the cherry.

Only when constitutionally protected procedural and substantive interests have been violated is it appropriate for the constitutional court to set aside a decision of the political majority. To suggest otherwise is to violate democracy's core value—equality.

Second, Sartori's "theory" of minority protection is rather puzzling in an article which sets out to demonstrate the inadequacies of minority protection under the current constitution, he says nothing about those minorities that do require protection from majoritarian decision-making (language, religious and cultural groups). His only concern is apparently for those who have lost

out in the cut and thrust of democratic politics.

Third, there are many minority interests not mentioned by him which may be inadequately represented—groups unable to make alliances; groups that are unorganised and difficult to organise (consumers, the unemployed); and groups against which there is widespread prejudice (gay people).

Fourth, Sartori's suggestion that the purpose of judicial review is to protect "minorities" is questionable. He understands the concepts "majority" and "minority" in purely numerical terms, simply discounting the effects of unequal resources on political outcomes. Women (a numerical majority), rural communities and domestic workers may form part of an ethnic or political majority but nevertheless deserve special judicial solicitude.

Fifth, Sartori's suggestion will politicise and delegitimise the judicial function. Judges are required to balance individual interests and collective purpose by interpreting the language of the constitution and recognised sources of constitutional authority.

Also, since judicial review removes certain matters from the domain of democratic decision-making, the role of unelected judges is not uncontroversial in a representative democracy. To allow judges "representing" minority political parties to second-guess legislative

compromises would compromise both the judicial function and representative government. Sixth, Sartori draws no distinction between ethnic group and political party. As a result of the phenomenon of "block voting", he argues, some political groups may lose consistently. But is the correlation between race and political preference in SA attributable to factors other than race, that is, has it non-racial causes? We must answer this question in order to distinguish mere political defeat at the polls from systematic marginalisation of minority racial groups. To what extent, furthermore, is the ANC's currently hegemonic position an expression of successful political pluralism rather than of SA's racial composition?

Other political parties (PAC, IFP) do, after all, compete in the same constituency.

Even if his view of the correlation between race and political preference were correct, it does not follow that this pattern will endure "over the next 50 years". It is as likely we will see significant realignments of ideology, interests and party affiliation. Constitution-making has to be responsive to current political realities and the needs of future generations.

Nor does it follow that Sartori's prescription is persuasive. The framers of the US constitution responded to the problem of possible fractional control of representative bodies not by creating an external counterweight, but rather by increasing access to representation. This is also what the framers of the interim constitution have done. Six political parties are represented in the National Assembly. Two provinces are controlled by parties which are minorities in the National Assembly. This does not look like "one-party dictatorship" to me. Sartori is apparently troubled by the prospect of African or ANC pre-eminence in SA's nonracial representative bodies. This is an ordinary consequence of democratic politics, and consequently irrelevant to the design of our constitution.

□ Cachalia is an ANC member of the Gauteng legislature.

Omar denies indemnity to Trust Feeds killer Mitchell

~~(251)~~ (252)
MARITZBURG — Trust Feeds killer Brian Mitchell cannot be granted indemnity and should remain in prison for the time being, Justice Minister Dullah Omar has decided.

Mitchell, a former police captain, was sentenced to death in the Maritzburg Supreme Court for ordering the Trust Feeds massacre during the late 1980s. His sentence was later commuted to one of 30 years in prison. **BD 21/9/95**

In answer to a question in Parliament, Omar said he had taken cognisance of the Currin committee's recommendation in December last year that Mitchell should be released.

"After considering all relevant facts regarding the possible release of the person concerned, I came to the conclusion that the recommendation could not be accepted," he said.

"The recommendation of the Currin committee, as well as my view that such a recommendation could not be supported, were conveyed to the president," Omar said.

"The president is, after due consideration, not prepared to authorise his (Mitchell's) release from prison, and the president is of the view that his release will not contribute to peaceful solutions, nor will it contribute to reconciliation."

A justice department spokesman said Mitchell would probably be given the opportunity to testify before the truth commission before any further decision on his future was taken — Sapa.

BD 02

Justice system has collapsed'

~~(211)~~ (252) Star 2/19/95
KwaZulu-Natal Attorney-General Tim McNally was yesterday told by an ANC delegation that the justice system in the province had collapsed.

This was the first meeting between the two parties since the ANC accused McNally of incompetence and called for his resignation because of his alleged failure to prosecute senior Inkatha Freedom Party officials ac-

cused of hit squad activity.

The ANC told McNally that not enough prosecutions were being instituted against political criminals and said prosecutions of this nature should be pursued across the political spectrum.

McNally replied that cases would be investigated if sufficient evidence warranted it. — Political Reporter.

'Amnesty is not amnesia, reparation must be made'

(252) BO 22/9/95
Deborah Fine

IT WAS vitally important to award meaningful reparations to victims of human rights violations to ensure the truth and reconciliation commission was not perceived as an amnesty-centred "sell-out", World Council for Religion and Peace president Yasmin Sooka said yesterday.

Speaking at a conference hosted by the Centre for the Study of Violence and Reconciliation, Sooka — who is an attorney — stressed the commission must be perceived as being centred on victims and their suffering.

Because some individuals and communities could perceive the amnesty clause in the constitution's postscript as a "sell-out" and a violation of their constitutional right to justice, she said it was important to remember that the negotiation process, the elections and the government of national unity would have been derailed had the ANC not agreed to the amnesty clause.

Amnesty, however, did not mean amnesia. Because amnesty precluded victims from lodging civil claims against the perpetrators of human rights abuses, it was important to provide victims of serious abuse with some form of reparation.

Although a joint parliamentary committee was still to determine policy

according to which reparations would be made — and in which form — possible reparations could include financial awards, medical and pension schemes and even bursaries for the victims' children.

But reparation also went beyond acts of financial compensation.

Whole communities had suffered and it was necessary to restore their dignity and officially recognise the pain they had endured.

This could be achieved by assisting these communities to take their rightful place in the economy, through the reconstruction and development programme and land restitution programmes, as well as the erection of monuments, and a declaration of a public holiday, in remembrance of their suffering.

ANC MP Johnny de Lange said it was important to re-establish a moral code in SA society as well as heal the nation's psychological wounds.

He said the economic sphere could be righted through the RDP, the economic empowerment of the previously oppressed majority and the land courts.

□ Sapa reports from Kimberley that the Anglican church synod of bishops said yesterday it would nominate Archbishop Desmond Tutu for the truth and reconciliation commission.

kwaZulu justice has collapsed — ANC

SPECIAL CORRESPONDENT

(252)(284)

CT 21/9/95

MARIE BLOK The system of justice in KwaZulu Natal had collapsed, an ANC delegation led by party chairman Mphahlele told the attorney general of KwaZulu Natal, Mr Jim McNally, at a meeting yesterday.

The meeting was held at Mr McNally's invitation and came after a week of speculation about the attorney general's future for all five states, in which public but squabbling

In a press statement the ANC delegation also expressed concern that there were not enough provisions in place of a political nature.

The statement said Mr McNally continued his commitment to prosecute any matter in which sufficient evidence existed. Mr McNally supplied the ANC with a memorandum setting out his strategy and legal reasons why certain witnesses were not called in the state of KwaZulu Natal.

The ANC acknowledged that some movement had been made in the squabbling and it is hoped that the attorney general and the investigation body would be working more closely together, the statement said.

Appointments formalised

Tim Cohen

SD 22/9/95

(252)

CAPE TOWN — President Nelson Mandela formally appointed the human rights commissioners yesterday — six months after they were selected by a parliamentary committee.

Mandela appointed the commissioners, who will keep a watching brief on human rights violations, for a seven-year period with effect from October 1.

Permanent members are Max Coleman, Christiaan Jager, Rhoda Kadalie, Evangelina Mabusela, Barney Pitsoana, Anne Rouzier and Faith Thakula. Brigalia Bam, Charles Dlamini, Karthigasen Govender and Helen Suzman will be part-time.

Commission members were chosen by a special parliamentary committee on April 6. Justice spokesman Sude Viljoers said the delay had been due to negotiation of equivalent salary packages, for members on various new commissions.

Gauteng has the highest disposable income

Ingrid Salgado

SD 22/9/95

(252)

GAUTENG'S per capita personal disposable income would outstrip the national average by nearly R10 000 this year while the province would spend 35,8% of estimated total household expenditure (R326bn).

A recent report by Unisa's Bureau of Market Research said Gauteng, home to 17% of the total population and 26% of workers, had a human development index at levels comparable to Singapore and Venezuela.

However, this relatively high level, shared with the Western Cape, highlighted enormous provincial disparities with the Northern Province, which ranked among countries like Zimbabwe and Kenya.

Disposable income per capita was less than R2 500 in Northern Province, and about R4 000 in the Eastern Cape — both significantly lower than the national average of R8 056. Gauteng's per capita in-

come stood at R17 861 and the Western Cape's at more than R13 500. Whites commanded the largest share of total income (48%), followed by blacks (39,1%), coloureds (8,9%) and Asians (4%). About 32% of SA's economically active population was unemployed last year.

Ad is withdrawn

Business Day Reporter

BUSINESS Day last night
an advertisement by Martin

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Education Bill judgment was not worded as I instructed, says Judge Weyers

Typing error stops

Gauteng

22/9/95 (252)

MAJOR error crept into document when clerk was typing it, says Gauteng legislature speaker.

■ BY KARIN SCHIMKE
GAUTENG REPORTER

The entire legislative process in Gauteng was crippled this week by what appears to be gross incompetence by officials in the Pretoria Supreme Court.

Last week the legislature was prevented by interdict from tabling or debating the Schools Education Bill because it had been published in English only. This provisional judgment by Mr Justice LF Weyers was worded in such a way that it prevented the legislature from proceeding with all of its usual business.

This week, however, the judge said the judgment was not worded as he had meant it.

Speaker Trevor Fowler said yesterday his legal adviser, Nick Ndo, had been told a "major error had slipped in" when the judgment was being typed by a clerk and that the judge had not meant for the legislature to halt all its business pending the final outcome of the matter.

This message was carried over on Wednesday after Ndo had tried for almost three days to see the file so the legislature could decide how to proceed.

Fowler said "We were unable to get a full copy of the judgment - which would contain the reasons for the order - because we were told the file was lost."

The misplaced file was retrieved on Wednesday and Ndo was assured an amended version of the order - as it had originally been intended - would be on his desk by midday yesterday. The order was received at 3:30pm yesterday.

Fowler said what concerned the legislature was that it had been prevented from doing what it was expected to do for 8-million people.

He said it was of "serious concern" that the matter had not been dealt with correctly.

The legislature will today file an urgent application to have the order rescinded.

Juli Killian, NP member of the provincial legislature and chairman of the standing committee on education, said the matter was very serious.

"If a judgment by a Supreme Court judge was conveyed incorrectly, it raises deep concern about the court system," she said.

Killian two weeks ago led a bid to stop the Schools Education Bill from being passed by petitioning the Constitutional Court to test its fairness. The petition was co-signed by members of the DP and the Freedom Front.

It was revealed last week that Dame Bisschoff of the FF was the advocate acting for the applicant in regard to the court application.

Killian said "The Bill was tabled in Zulu, Northern Sotho, Afrikaans and English. It was only the working document that was published in English and this was agreed upon by all parties."

Mr Justice Weyers could not be reached for comment yesterday.

standing against each other for what they want - to put food in the community. Contralassa court action chal- hon, said Stoffie

Fivaz demands help in fighting crime

Kwazulu-Natal's political parties were not committed to assisting police fight political violence and crime in Kwazulu-Natal, South African Police Service Commissioner, George Fivaz, said yesterday after meeting IFP Safety and Security spokesman Velaphi Ndlovu.

The IFP had asked for the meeting in order to register grievances against the police.

They complained that the SAPS had not included IFP members in VIP protection units, despite the fact that former Umkhonto we Sizwe and Azanian People's Liberation Army members had been included.

The IFP also objected to the deployment of 1 000 troops in Kwazulu-Natal. Ndlovu complained to Fivaz

that the Investigations Task Unit probing hit squads was singling out IFP members, despite the fact that five cases of murdered IFP members had been put before the ITU.

The IFP has repeatedly called for the disbanding of the ITU, which it accuses of conducting a witch-hunt against the party - Political Staff and Sapa.

Suzman on rights commission

Veteran anti-apartheid activist Max Coleman and retired parliamentarian Helen Suzman were among the people who were yesterday appointed by President Nelson Mandela to serve on the Human Rights Commission.

Coleman and Suzman are part of an 11-member panel appointed in terms of the Human Rights Commission Act of 1994.

Coleman, Advocate Christian de Jager SC, Rhoda Kadalie, Evangelina Mabusele, Reverend Barney Pityana, Anne Router and Faith Tlakuila will serve for seven years.

The Anglican Church synod of bishops said yesterday it would nominate Archbishop Desmond Tutu for the commission. Tutu has agreed to his nomination - Political Reporter and Sapa.

Shareholders are advised that proposals for new equity consideration which may be considered are available for inspection at the registered office of the company at the following address: 111 Market Street, Johannesburg.

Star 22/9/95

Bail conditions tightened in crackdown on crime

RFAN 22/9/95 (252)

■ BY JOVIAL RANTAO
POLITICAL REPORTER

President Nelson Mandela and the Government yesterday took another step in the fight against serious and violent crimes gripping the country

Mandela signed the Criminal Procedure Second Amendment (Bail) Bill, which has been designed to make it difficult for perpetrators of murder, armed robberies, car hijackings, rape, serious economic offences, arms smuggling and the possession of automatic and semi-automatic weapons to be released on bail once they had been arrested

"We must take the war to the criminals and no longer allow a situation in which we're mere sitting ducks for those bent on

engaging in criminal and anti-social activities," the president said

Mandela, flanked by Justice Minister Dullah Omar and Safety and Security Minister Sydney Mufamadi, said the new legislation signalled the determination of the Government to stamp out crime, especially violent crime in the country

Good results

"We cannot and will not tolerate a situation which causes fear and suffering both among our citizens and guests to this country," Mandela said

The Government's Community Safety Plan has so far yielded good results everywhere except in some parts of KwaZulu-Natal, where additional measures have

had to be implemented

Although the crime rate was still unacceptably high and with the battle against it being a long and arduous one, the campaign against crime had already started to bear fruit

Mandela called on communities to work with the police and judiciary to ensure that criminals were brought to justice.

The president yesterday visited the East Rand site where 10 bodies of victims of a suspected serial killer were found

He also signed an official notice informing citizens - mostly from the former homelands - who still possessed state-owned guns and ammunition to surrender them by October 31

► Return those guns - Page 6

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FRIDAY
SEPTEMBER 22, 1995

GOVT GETS TOUGH WITH CRIME

Mandela signs hardline bail bill

CT 22/9/95 (252)

JOHANNESBURG: New legislation to tighten up bail conditions is seen as an indication of a tougher stance on crime.

THE government yesterday declared war on serious and violent crimes and threatened to introduce new and tough measures to bring them under control.

As a first step, President Nelson Mandela signed the Criminal Procedure Second Amendment (Bail) Bill, designed to make it difficult for people who commit serious crimes to be released on bail.

Included among the envisaged serious crimes are murder, armed robbery, car hijacking, rape, serious economic offences, arms smuggling and the possession of automatic and semi-automatic weapons.

"We must take war to the criminals and can no longer allow a situation in which we are mere sitting ducks for those in our society who, for whatever reason, are bent on engaging in criminal and anti-social activities," Mr Mandela said.

The new legislation was an indication of the government's determination to stamp out crime, especially violent crime.

"We cannot and will not tolerate a situation that causes fear and suffering among both our citizens and guests to this country," he said.

The government's community safety plan, he said, had yielded good results everywhere except in certain parts of kwaZulu/Natal, where it had been necessary to implement additional measures.

Mr Mandela said although the crime rate was still unacceptably high, and the battle would be long and arduous, the campaign against crime had started to bear fruit. He called on communities to work with the police and the judiciary to ensure that criminals were apprehended and brought to justice.

Mr Mandela yesterday visited the Boksburg site where 10 bodies of victims of a suspected serial killer have been found.

Mr Mandela also signed an official notice informing citizens of former homelands and self-governing territories, who possess automatic firearms and ammunition, to surrender them by October 30.

Safety and Security Minister Mr Sydney Mufamadi said the failure of owners of such guns, mostly traditional leaders, to hand them over would open them to arrest and prosecution. — Special Correspondent

STATE OF EMERGENCY (252) Controls against abuse

PM 22/9/95
Given the ruthless speed with which parliament last week passed a plethora of new laws, the House inevitably degenerated from a debating chamber into a rubber stamp. The Freedom Front's Joseph Chiolé spoke for many when he said "there has been no time to study the new laws"

His grievance was directed mainly, though not solely, at the ANC's dramatic use of its majority to ram through legislation. Yet what might under the previous regime have been among the most contentious Bills, that enabling the President to declare a State of Emergency, had all-party support and is accepted as a precise and even, in terms of what it sets out to do, humane Act.

Significantly, the State of Emergency Bill was mandated by that chapter of the 1993 interim constitution that deals with "fundamental freedoms". It is subject to such limitations and controls that any comparison with past laws designed to quell unrest and crush opposition is like "comparing day with night," according to the Democratic Party's Douglas Gibson.

A presidential declaration cannot be unilateral: it must occur "only where the security of SA is threatened by war, invasion, general insurrection or disorder or at a time of national disaster, and if the declaration of a State of Emergency is necessary to restore peace and order".

On the face of it, the provisos go a long way towards depoliticising any declaration. Far more significantly, as Gibson points out, there is parliamentary oversight. Any initial emergency must not be for more than 21 days and parliament will review the essential question of whether any regulations promulgated or actions taken to give it effect meet the constitutional criteria.

Superior courts, too, can question the validity of a declaration. If the emergency is achieving its objectives, it may be extended for three months — and indeed for successive periods of three months — only by a two-thirds majority of the National Assembly. Parliament also has the power to revoke regulations it thinks contravene the human rights enshrined in the constitution, though those rights are limited — not least because a State of Emergency is permissible.

The new law forbids conscription to enforce a State of Emergency, it forbids the creation of retrospective crimes, and it outlawed the indemnification of security forces that exceed their brief. Parliamentary scrutiny negates the fog of censorship that prevailed during the various states of emergency of the Eighties.

A detainee has the right of access to friends, relatives, doctors and lawyers, and his or her conditions of detention will be reviewed by a court of law no later than 10 days after the detention. In addition, the State must furnish the detainee written reasons for his detention at least two days before the review.

A Senate amendment makes provision for access to detainees by "international humanitarian organisations".

The fact that the Bill provoked so little controversy — though the committee stage was intensive — indicates the extent to which SA is returning to international norms in the sphere of human rights. It might, indeed, have been used as an example of the better kind of legislative transformation that parliament was aiming at before it became mired in inter-party friction and procedural knots.

However, it also recognises that SA remains the kind of country where states of emergency may sometimes prove necessary, whoever is governing. It may also be significant that the Bill was not held over until the next session and is in place for whatever may happen in the undoubtedly fraught run-up to the community elections.

How real soldiers and policemen will behave in any future State of Emergency will be the real test of the law — not its dutiful attention to the rights of detainees and limitations on the extent and regulations of an emergency.

The constitutional provision that a declaration may be made only in cases of "war, invasion" and so forth is a little unreal. "General insurrection and disorder" — at least in certain areas — are far more likely than the greater calamities for which the State has now girded its loins.



Gibson

Judge declares detention of debtors to be

By KURT SWART

The Constitutional Court yesterday declared invalid provisions of the Magistrates' Court Act that allowed for the imprisonment of people who had not paid civil debts.

Mr Justice Johann Kriegler said the relevant sections of the Act were clearly and manifestly unconstitutional.

The case arose when N.J. Matiso, who had been jailed for not paying debts, applied to the Supreme Court for his urgent

release shortly after the interim constitution came into operation. Matiso cited the Port Elizabeth Prison commanding officer as respondent.

He was soon followed by others in the same predicament who argued that sections 11(1) and 25(3) of the constitution made imprisonment without trial unconstitutional.

Shortly afterwards Farreda Coetzee applied to the Cape of Good Hope Provincial Division for similar relief, citing the Government, the minister of justice

and the judgment creditors as respondents.

This case was also referred to the Constitutional Court.

According to the Magistrates' Court Act, any debtors failing to satisfy their debt within 10 days of the date of judgment can be required to attend a hearing at which an inquiry will be conducted into their financial position and ability to pay.

The magistrate may authorize property to be attached in settlement of the debt. In his ruling, Judge Kriegler

said "The system does not end there, however.

"It also provides for the magistrate to issue an order to commit the judgment debtor to prison for contempt of court for failure to pay the debt.

"This last option of the magistrate is the issue which has given rise to the constitutional challenge."

He said it was clear that the law did not adequately distinguish between those who could not pay and those who could but did not want to

"The system is used most often for the collection of small debts usually from those who are poor and either illiterate or uninformed about the law, or both.

"They do not enjoy legal representation.

"Imprisonment can and has been ordered without the debtor ever having notice of the original judgment or the notice to appear at the hearing," he said.

The law, added Judge Kriegler, had been used to imprison people who were simply unable to pay their debts.

Section 11(D) states "Every person shall have the right to freedom and security of the person, which shall include the right not to be detained without a trial."

Judge Kriegler said "Certainly, to put someone in prison is a limitation of that person's right to freedom.

"To do so without any criminal charge being levelled or any trial being held is manifestly a radical encroachment upon such right."

"I accept that the goal of the

Act is to provide a mechanism for the enforcement of judgment debts.

"I also accept that such a goal is a legitimate and reasonable governmental objective. The question is whether the means to achieve the goal are reasonable. In my view, the answer is clearly in the negative," he said.

The judge added that it was not defensible to treat a civil judgment debtor more harshly than a criminal. The latter were entitled to a fair trial, including the right to legal assistance.

He said "The debtors, who face months of imprisonment, must fend for themselves as best they can."

Judge Kriegler ordered the relevant provisions of the Act to be declared invalid with immediate effect. All other provisions of the Act were to remain intact.

"With effect from the date of this order, the committal or continuing imprisonment of any judgment debtor in terms of Section 65F or 65G of the Magistrates' Court Act is invalid," he ruled.

unconstitutional (252) SW 23/9/95

Judge sets aside 'English only' order

Stan 23/9/95

(252)

Transvaal Judge President C Eloff yesterday set aside a court order which provisionally declared unconstitutional the tabling in English of the School Education Bill in the Gauteng legislature

In his judgment, Judge Eloff said the interdict should never have been granted in the first place. The Gauteng legislature would clearly suffer enormous prejudice if the Bill's tabling was stopped, whereas the rightist Afrikaner Kultuurbond, which brought the original application based on the Bill hav-

ing been tabled in English only, would not suffer significant harm if the Bill were passed.

The judge sharply criticised the Kultuurbond's legal representatives for the clumsy way in which its papers had been drafted. This had been the cause of Mr Justice L. Weyers' order, which effectively stopped discussion on all legislation before the Gauteng legislature. Later the order had to be changed to clearly refer only to the Education Bill.

The order should also have indicated a return date for final

argument as it was clearly meant to be an interim one.

The Kultuurbond could approach the Supreme Court or the Constitutional Court to challenge the legislature's language policy, the judge said, but in his opinion the constitution clearly allowed regional authorities to choose their official languages.

Kultuurbond counsel and Freedom Front MPL, Danie Bisschoff had argued that the rights of all Gauteng citizens would immediately be affected if the controversial School Edu-

gation Bill was passed into law.

The entire legislative process in Gauteng was crippled this week after Judge Weyers' provisional ruling. The judge said, however, that the judgment was not worded as he had meant it. The legislature's Speaker, Trevor Fowler, said on Thursday that his legal adviser, Nick Ndo, had been told that a "major error had slipped in" when the judgment was being typed by a clerk and that the judge had not meant for the legislature to halt all its business pending the final outcome of

the matter.

This message was carried over on Wednesday after Ndo had tried for almost three days to see the file so that the legislature could decide how to proceed. Fowler said "We were unable to get a full copy of the judgment - which would contain all the reasons for the order - because we were told the file was lost." He said that what concerned the legislature was that it had been prevented from doing what it was expected to do for 8-million people. - Sapa, Staff Reporter

Freedom for all jailed civil debtors

ADELE BALETA

Staff Reporter

ARG 23/9/95 (252)
ALL civil debtors in prisons were due to be set free last night after a ruling by the Constitutional Court abolishing imprisonment for debtors.

In a directive — a copy of which was faxed to Saturday Argus — the Commissioner of Correctional Services instructed provincial commissioners to set free any debtors imprisoned in terms of Article 65F and 65G of the Magistrates' Court Act of 1994. He also stipulated that the provincial commissioners report back by Tuesday and say how many people had been released.

Western Cape Correctional Services spokesman Mike Green said last night he had telephoned and faxed 20 commanders in the Western Cape instructing them to follow the order. He believed there were fewer than 50 civil debtors in jails in the Western Cape.

Law in any language

TRANSVAAL Judge President C Eloff set aside a court order on Friday which provisionally declared unconstitutional the tabling in English of the School Education Bill in the Gauteng legislature

In his judgment, Eloff said the interdict should never have been granted

He said the Gauteng legislature would clearly suffer enormous prejudice if the Bill's tabling was stopped, whereas the rightist Afrikaner Kulturbond, which brought the original application based on the Bill having been tabled in English only, would not suffer

significant harm if the Bill was passed

The judge criticised the Kulturbond's legal representatives for the clumsy way in which its papers had been drafted

This had been the cause of Justice L Weyers' order, which later had to be changed to refer clearly to the Education Bill only.

The Kulturbond could challenge the legislature's language policy in other courts, the judge said, but in his opinion the constitution clearly allowed regional authorities to choose their official languages. - Sapa

When legal is lethal

(252) Sowetan 25/9/95

The Constitutional Court's Friday ruling brings into question the quality of legal advice President Mandela gets, writes Political Editor **Mathatha Tsedu**

PRESIDENT NELSON MANDELA finds himself again having to backtrack on a highly publicised issue as a result of last Friday's ruling by the Constitutional Court

The first time it happened was with the firing of his estranged wife Winnie from her position as Deputy Minister of Arts, Culture, Science and Technology

The two incidents bring into question the quality of legal advice that Mandela is given by his team, headed by attorney Mr Fink Haysom. For in both instances, the question has revolved around procedural issues and not the substance of Mandela's action.

In Mrs Mandela's case, she was able to argue that the procedure of notifying leaders of parties in the Government of National Unity before dismissals of Ministers and Deputy Ministers had not been followed as Home Affairs Minister Chief Mangosuthu Buthelezi had not been informed prior to the announcement of her dismissal.

Buthelezi, seeing a political point to score against Mandela, even made an affidavit confirming Mrs Mandela's assertion.

Embarrassing spectacle

The country was then treated to the embarrassing spectacle of the President dismissing his newly-appointed Deputy Minister, re-appointing Mrs Mandela, firing her again and then rehiring Mrs Bridgette Mabandla.

His right to fire Mrs Mandela was not in dispute, it was the procedure followed that was found wanting.

Last Friday the Constitutional Court found that the procedure through which Mandela had passed proclamations dealing with the local government elections had been wrong.

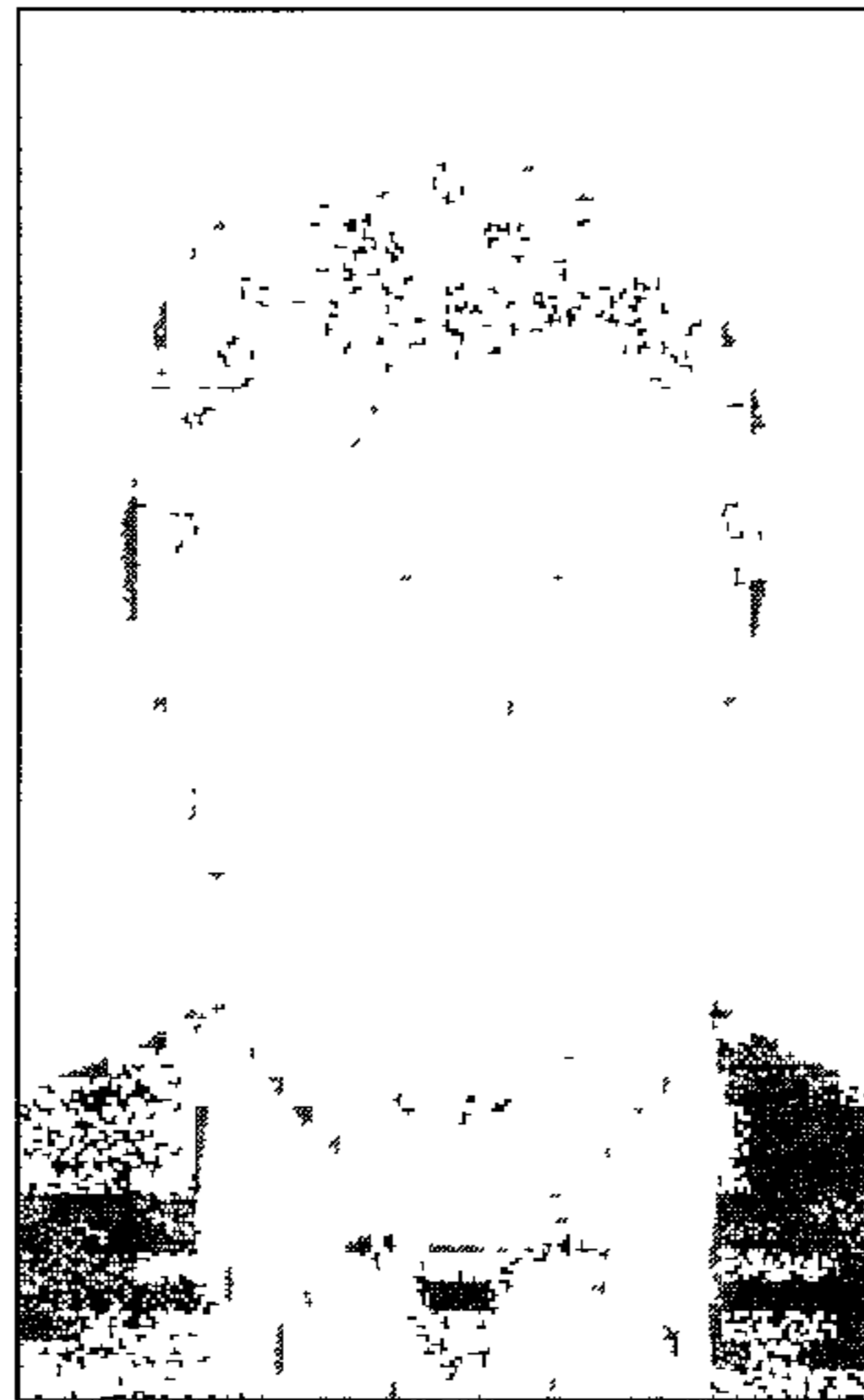
The court ruled that Cabinet did not have the power to allow Mandela to issue such proclamations, and that only Parliament could do so.

In other words, Mandela, having seen a need to intervene in the Western Cape dispute over boundaries, should have gone to Parliament to make the proclamation, and not made it himself.

This is now going to be done and Parliament may reconvene on October 4, at a cost of about R500 000 - a situation that may have been avoided if the President's legal advisors had done their homework.

A legal expert who spoke to *Sowetan* yesterday said both cases hinged on procedural issues which imply "the interpretation of the constitution on procedural issues and not substance".

"The inescapable implication is that the President is not getting proper advice on procedure on how to go about doing his job. The pro-



IN QUESTION ... Fink Haysom of President Nelson Mandela's legal team

cedure is a legal matter and the legal adviser decides the process," the expert said.

Haysom handled the issue and briefed the team of lawyers to handle the case in the Constitutional Court. The expert said once the court application was lodged, Haysom and his team should have been able to see the "obvious flaw" that has now made the President look like a "bungling old man".

Haysom was unavailable for comment yesterday. *Sowetan* learned that he had taken leave last week and was holidaying in the Cape. Messages left on his cellular phone had not been responded to at the time of going to press.

The expert, however, said Parliament had to also take responsibility for the debacle as it debated the issues but did not pass the proclamations.

But as Mandela ponders his situation and licks his wounds from the defeat inflicted by National Party Western Cape leader, Mr Hernus Kriel, it is the NP that faces the stiff and ironic test of its own victory.

This is because the victory challenges the validity of a law piloted through Parliament by the NP's own crown prince, Constitutional Development Minister Roelf Meyer. And it is going to be Meyer's unenviable task to have to push through Parliament the new measures that must nullify Kriel's victory.

Kriel has already said he will oppose Parliament's attempts to enact the proclamations by calling on NP's Western Cape senators to oppose the move unless the boundaries that he wants for Tygerberg and Khayelitsha are accepted. The senators are an integral part of the new Bill as they have to agree to its passage because it affects their province's boundaries.

Consent of majority

Section 61 of the Constitution states that laws affecting "boundaries or the exercise or performance of the powers or functions of a particular province" must have the consent of the majority of senators from the affected province.

Without the support of the majority of the 10 senators, the Bill cannot be passed, thus giving Kriel a virtual veto over Parliament.

Kriel's demand for acceptance of the boundaries has been roundly rejected by the ANC and his demand can therefore not be acceptable to Mandela. This means Meyer will have to pilot the Bill, thus forcing the NP to decide who to support between Kriel and himself.

Party leader and Deputy President FW de Klerk on Friday said the NP would oppose the proclamations if the ANC tabled them for approval, thus seemingly taking Kriel's side.

De Klerk's position confirms an emerging tendency within the NP to become more sensitive to white views, especially as elections approach.

Meyer has said Kriel is looking after the NP's Western Cape interests while he is responsible for a wider and national outlook. This precipitated "different interests", he said.

The issue is to be discussed at an emergency caucus meeting of the NP tomorrow where their common position and approach towards the new amendments will be formulated.

The cabinet meets on Wednesday in a session that should approve the draft that will go before Parliament. It is a session that could see the NP's internal fights breaking into open public warfare. And so, the victory that Kriel got over Madiba may still be the undoing of the party's unity.

Death Row Fury

By Pamela Dube and Mathathia Tsedu

MORE THAN 350 prisoners on Death Row are still languishing in the Pretoria Maximum Prison — three months after the Constitutional Court nullified the death penalty.

After the court ruling, Justice Minister Dullah Omar said he would "soon ultimeditely" with the Department of Correctional Services to arrange the removal of sentenced prisoners from death row. Three months later the prisoners are still waiting for Omar to decide their fate.

Over the weekend, five of the prisoners went on hunger strike to demand their immediate sentencing and relocation to prisons nearer to their homes.

A spokesman for the prisoners said the rest of the prisoners in that section would join the hunger strike today to form the prison and justice authorities to move them to other prisons.

"We were earlier told that we would be moved by the first week of September but nothing has happened. Many of us come from as far as Cape Town and Durban. We have been led to and we want to get out of this section immediately," the spokesman said.

Officials ignorant of strikes

Correctional Service spokesman Brigadier Chris Olicker and Omar's media liaison officer Ms Sue de Villiers both claimed ignorance of the strike. Olicker said he would have been informed of the hunger strike "if there was any".

He said, however, that his department was not to blame since the prisoners were sentencing by the Ministry of Justice. Olicker said the Department of Correctional Services had put systems in place to relocate the prisoners.

De Villiers said Omar was still "consulting" with the Attorney-General to see when the sentencing could be effected. "Otherwise nothing so far has been finalised".

De Villiers could not say how long the consulting would take, only that until then the prisoners would remain where they are.

Olicker denied the allegation that a deadline of early September had been given to prisoners. He said there was no way that the prisoners could have been guaranteed a date of removal since the decision was still in the hands of Justice.

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25/1/95
Howe

He said the prisoners were being transferred by staying in the same cells where they had faced death each day.

" irrespective of whether the two departments are still consulting, they should move those prisoners to prisons with a more relaxed atmosphere," said Nelsohnkwe.

He is based out at the Correctional Services and Justice departments, saying they were "not of order. They are using technicalities in order to keep those prisoners in that traumatic place".

Debt prisoners being released

PRETORIA: South Africa's 270 prisons were instructed to immediately begin releasing prisoners jailed for debt in line with Friday's ruling of the Constitutional Court. Correctional Service's spokesman Brig Chris Olckers said those being held for debt would be released as soon as possible.

The court declared the jailing of debtors to be unconstitutional.

(252) CT 25/9/95

Imprisonment for debt consigned to the past

(252) Deborah Fine

BD 26/9/95

PEOPLE may no longer be imprisoned for non-payment of debts.

This follows a decision by the Constitutional Court declaring invalid certain provisions of the Magistrates' Court Act which allowed courts to jail people for non-payment of debt, even for amounts below R100.

Imprisonment for non-payment of debts could be justified only in cases where the debtor had the means to pay the debt but was unwilling to do so, or was unable to pay the debt because he/she had squandered money, lived beyond their means or incurred additional debts after the original judgment date.

But in reality the Act had been used to imprison debtors who could not pay for valid reasons, but simply failed to prove this at a hearing.

Moreover, it was unjust to treat civil judgment debtors more harshly than criminal offenders, who were entitled in terms of the constitution to a fair trial with procedural safeguards, including the right to legal assistance at public expense. Such rights were denied to judgment debtors.

The court found the offending provisions unconstitutional, swept up "... those who cannot pay with those who can but simply will not".

Because it was not possible to excise only those provisions which failed to distinguish between the two categories of debtors, the court found it prudent to excise the provisions which made up the option of imprisonment. The court said the balance of the Act could usefully remain in force.

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Constitutional Court rules on TBVC laws

Deborah Fine

(252)

BD 26/9/95

PROVINCIAL or local divisions of the Supreme Court have no jurisdiction to inquire into the constitutionality of Acts of Parliament passed by the SA Parliament, irrespective of whether such Acts were passed before or after the commencement of the constitution, the Constitutional Court ruled last week.

But provincial or local divisions do have jurisdiction in terms of Section 101 (3) (c) of the constitution to inquire into the constitutionality of laws passed by any of the legislatures of the former TBVC states.

The court made this decision after hearing a matter referred to it by the Ciskei Supreme Court in a case pending in that division before the interim constitution came into operation on April 27 last year.

Ciskei resident Zanomzi Zantsi brought an application for an order invalidating section 71 of the Ciskei Defence Act on the grounds it violated his fundamental rights entrenched in the Ciskei Constitution Decree.

The Supreme Court found in his favour after holding it did have the jurisdiction to inquire and rule on the constitutionality of legislation passed before the new constitution came into effect but referred the matter to the higher court for a final ruling.

The Constitutional Court found that it was the only court with the jurisdiction to set aside an Act of Parliament. "What other purpose could there have been for ... the deliberate distinction drawn between the jurisdiction of the Constitutional Court and the Supreme Court," the court said.

But in the case of Acts drafted by the former TBVC states, none of their former legislatures had been recognised by the majority as legitimate representatives of the people

In addition, since none of the legislatures of the former TBVC states had the authority to legislate for the whole of what is now national territory, none of them could be said to have been a Parliament.

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Death sentence needed - minister

(252)
Western Cape Police Minister Patrick McKenzie said yesterday only the death penalty would serve as a sufficient deterrent for gangster crimes such as the murder of Constable Hilton Grever in Mitchells Plain on Sunday.

Grever was on patrol with Sergeant Paul Roman at about 10pm and saw a group of about 15 men whom they decided to investigate. As they got close, shots were fired, wounding Grever and wounding Roman, who dived out of the vehicle when the shooting began.

After the vehicle came to a stop, the gunmen continued firing into the passenger side of the vehicle. Grever was taken to hospital, where he was declared dead.

A woman passerby was hit in the neck. Her name and address are being withheld as she witnessed the attack and could possibly identify the killers.

Nov 26/9/95

Death row prisoners to be moved

(252)
Sowetan 26/9/95
By Pamela Dube
Political Staff

AFRICAN National Congress MP and chairman of the Parliamentary select committee on Correctional Services, Mr Carl Niehaus intends meeting Justice Minister Dullah Omar and the Minister of Correctional Service Dr Siphon Mzimela to discuss the immediate relocation of former death row prisoners

Niehaus was reacting to reports that more than 350 former death row prisoners were still languishing in the notorious Pretoria Maximum Prison three months after the Constitutional Court nullified the death penalty.

On Sunday when five of the prisoners went on hunger strike, Correctional Services shifted the blame to the Justice Department.

Correctional Services spokesman Brigadier Chris Olckers told *Sowetan* then that his department was not in a position to relocate the prisoners until the Justice department resentenced them

Niehaus said it did "not help for the two departments to continue blaming each other where people's lives are concerned."

Yesterday Olckers continued to deny that the prisoners were on hunger strike. However, *Sowetan* can confirm that the five were on strike and had put their demands to the minister through the newspaper

Niehaus, who is a leading campaigner for the improvement of prison conditions, said the prisoners should be relocated "immediately. It was tragic that people who spent so much time on death row, should have to embark on a hunger strike to secure their removal from death row prison even after the court nullified it," Niehaus said.

Reacting to the reports, Pan Africanist Congress secretary general Mr Maxwell Ndamazihhanani said it was "disappointing that the prisoners are still in limbo. We look forward to a speedy process in re-sentencing those people so that justice can take its course"

Poor pay, conditions undermining courts

CT 27/9/95 (252)

OWN CORRESPONDENT

PRETORIA: Low salaries, long hours and poor police work were creating a crisis in the judicial system which threatened to undermine anti-crime efforts

That's the message given yesterday to the national assembly's Portfolio Committee on Justice

yesterday by attorneys-general from Gauteng, Witwatersrand, North-West and Venda

Dr Jan d'Oliveira, Gauteng attorney-general, said despondency was a major problem as professional staff faced career uncertainty, were over-worked and poorly paid

Dr D'Oliveira urged the com-

mittee to give priority to salaries

President Nelson Mandela's policy concerning crime and law enforcement would come to nought unless problems in the judicial system were addressed

Witwatersrand acting attorney-general Mr Kevin Attwell said violent crime was rampant and Supreme Court cases were becom-

ing increasingly serious and complex. Poor police work sometimes necessitated involvement by the prosecution which could compromise their objectivity

The attorneys-general said they were losing competent professionals due to the poor pay and were left with inexperienced staff

The hearings continue today

Rules Board to create 'user-friendly' courts

(252) BD 27/9/95
Business Day Reporter

JUSTICE Minister Dullah Omar has announced the appointees to the new Rules Board of Law Courts, charged with the task of making rules to ensure the efficient and uniform administration of justice in the Supreme and lower Courts

The appointees are chairman Judge R Zulman, Judge H Mall, Judge E Cameron, advocates P Solomon SC, V Niles-Duner SC and D Potgieter, attorneys MT Steyn, I Ayob and B Nomjana, State attorney T Jika, Magistrate V Gqiba and Prof C Loots.

Adv V Maleka and attorney N Pillay are alternative members

Omar said the new board would shortly create rules for family courts and senior civil divisions, and amend magistrates' and Supreme Court rules.

Aspects relating to the referral of matters to the Constitutional Court would also be considered by the board.

Omar said it would pay urgent attention to the question of maintenance as many mothers suffered

great inconvenience and hardship because they did not receive regular or reliable payments

The board's mandate was to consider court rules within the framework of the needs and experiences of the citizens who approached the courts daily. Its aim was the creation of a justice system that was friendly, accessible and readily available to its users.

In a separate statement Omar announced that the present board of the Legal Aid Board would continue in office pending its restructuring and amendments to the law in this regard.

He said Section 25 of the Constitution provided for the rights to consult a legal practitioner and legal representation which meant the state was obliged to make funds available for administration by the Legal Board.

Necessary and reasonable limits had been placed on assistance because of the necessity to manage the funds in a responsible way. This did not preclude the raising of limits in exceptional cases and the board would develop criteria in this regard.

'Debt recovery needs attention'

(252)
Edward West
BD 27/9/95

CAPE TOWN — Extrajudicial and even illegal methods of debt recovery, which had already taken on alarming proportions, were expected to increase following the Constitutional Courts' decision to scrap imprisonment for the non-payment of debt.

This was the view of the Association of Law Societies of SA. Society president Tony Hardy said yesterday the attorneys' profession acknowledged that certain stipulations in current debt recovery legislation were in conflict with the constitution. However, nothing in it prevented imprisonment of a debtor should he be in a position to pay his debt.

The society had argued before the court that existing procedures should remain in force until Parliament replaced it with an Act which was not in conflict with the constitution.

Hardy appealed for the urgent introduction of legislation to establish effective measures for debt recovery.

Small debtors released from jail after ruling

(252) Star 27/9/95

The Department of Correctional Services had by yesterday released all small debtors in the wake of Friday's Constitutional Court judgment overturning provisions allowing courts to jail people for non-payment of debt. There were 39 prisoners in this category throughout the country.

But legal experts said the Constitutional Court's decision which declared invalid certain provisions of the Magistrates Court Act that allowed courts this discretion, did not amount to a reprieve for future debtors.

"There is a diversity of ways to remedy situations in which debts are incurred. Debtors can be sequestered, and businesses or corporations have the power to interrogate people and can, for instance, attach a portion of a debtor's salary," said Eberhard Bertelsmann, SC, chairman of the Pretoria Bar Council - Constitutional Court Correspondent

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POLITICS

ATTORNEY-GENERAL QUIZZED

McNally 'not reluctant' to prosecute hit-squad cases

PRETORIA: A parliamentary committee quizzed kwaZulu/Natal's attorney-general yesterday.

EMBATTLED kwa-Zulu/Natal attorney-general Mr Tim McNally has denied his office is reluctant to prosecute in hit-squad cases

He was speaking yesterday before Parliament's portfolio and justice committee at the Union Buildings

Mr McNally told the committee, chaired by advocate Mr Johnny de Lange, that since becoming attorney-general in the province in 1992, he had received only one hit-squad docket for investigation from the police

He said all hit-squad cases referred to his office were dealt with at a very high level

"In fact I am eager to prosecute anybody who has committed murder, regardless of political affiliation

"It does not matter whether the murderer is ANC or IFP," he said

CT 28/9/95
Mr McNally told the committee there was only one case in which he had declined to prosecute, and he had issued a statement to the media giving his reasons.

Asked who was involved in the political killings in the province, Mr McNally said it was the ANC and the IFP. Violence flowed from one party to the other and vice versa, he said

He said there was also faction violence within the political parties, especially in the Midlands and Richmond areas

Prodded by Mr De Lange, Mr McNally confirmed the police were also involved in some of the violence. He also said some right-wing elements were involved, although he could not identify which right-wing party they belonged to.

Mr McNally said he had been



QUIZZED: Mr Tim McNally

approached by a delegation of IFP leaders concerned at the high number of their members who were murdered and the low rate of prosecutions

He also said a delegation of the ANC had urged him to be more adventurous in his decisions to prosecute murders, even if these involved ANC members

Mr McNally said his position was that he had to

keep to the parameters of the law, and had to have a prima facie case in order to prosecute. If that was regarded as legalistic, so be it, he said.

He said inflammatory political speeches also contributed to the violence

The reasons for the low level of prosecutions were bad policing and the fear of witnesses to come forward, he said — Own Correspondent

McNally makes one concession at hearing

BD 28/9/95

26 (252)

PRETORIA — KwaZulu-Natal attorney-general Tim McNally yesterday offered to review a decision not to prosecute six policemen in the province for the death of a suspect in custody, but stood firm on other controversial cases.

Sapa reports the offer was made during a special parliamentary justice committee hearing at Pretoria's Union Buildings yesterday, in which McNally was called to account for controversial prosecutor's decisions.

In a historic first, the nine SA attorneys-general have been summoned before the committee to give substance to their parliamentary accountability.

On his reluctance to prosecute murder squad cases in KwaZulu-Natal, McNally, who is the longest serving attorney-general in the country, said that only one such case had been put before him.

It involved an alleged conspiracy to murder a KwaZulu policeman, a Capt Masinga, and the docket was prepared by the special investigation task unit.

Suspects whom McNally declined to prosecute included senior Inkatha Freedom Party officials such as Prince Gideon Zulu. In a written explanation for declining to prosecute, McNally concluded that there was no case on the face of it.

He blamed poor police investigations for the low number of prosecu-

tions that had resulted from murder dockets reaching his desk.

"It is not my role to go on to the highways and byways with handcuffs to seek out those responsible for political killings in Natal," McNally said.

Only two "hit squad" dockets had been given to him by the government-appointed investigation task unit investigating hit squad activity in the province. One had resulted in a prosecution and the other lacked prima facie evidence, he said.

However, committee members questioned him on the fact that "only 2% or 3% of political killings have been successfully prosecuted".

"It's true that we do not have a grip on the violent situation in KwaZulu-Natal because we do not have the authority to have that grip," he said.

Meanwhile, Farouk Chothia reports that US-based human rights organisation Human Rights Watch yesterday called on Justice Minister Dullah Omar to appoint an independent inquiry to investigate McNally's apparent reluctance to prosecute in certain politically-related cases.

Human Rights Watch Pretoria representative Bronwen Menby said while the organisation was pleased that McNally appeared before the parliamentary justice committee, not enough could be achieved in a one-day hearing.

Sitting of Eastern Cape legislature postponed

Kevin O'Grady

BD 28/9/95

THE second sitting this year of the Eastern Cape legislature — it has convened for only 43 days since its inception 17 months ago — was postponed again this week because Bills were not ready to be tabled.

Legislature spokesman Connie de Beer said the sitting had been postponed until early November because committees were still considering input from public hearings on the Youth Affairs and Tourism Bills.

The postponement has raised concern that five Bills introduced, including the two which caused the delay, would not be passed this year.

The legislature has passed only eight Bills since it first started sitting in May last year.

And most of those were passed down from national government or were

largely technical in nature.

De Beer said the legislature would reconvene on November 6.

The contentious Promotion of Youth Affairs Bill is expected to come under intensive debate and be subjected to a number of amendments.

The Tourism Board Bill, which will allow for the amalgamation of the former Ciskei, Transkei and Cape administrations' tourism bodies, has received the support of the tourism industry. Sapa reports from Bisho that the Eastern Cape was riddled with corruption and maladministration and likely to overspend its budget by almost R4bn this year, said a document before the province's executive council.

Author of the document and agriculture and economic affairs MEC and NP provincial leader Tertius Delport said he based his figures on data circulated by the provincial finance department.

Police slammed over probes

(216) (252) (251) star 28/9/95
KwaZulu-Natal Attorney-General Tim McNally yesterday criticised police for poor investigations into hit squads, especially in the former KwaZulu

He told a Pretoria parliamentary justice committee hearing on powers and responsibility of attorneys-general he had received only one hit-squad docket in his 2½ years in Kwa-Zulu-Natal

"The standard of police work is low, particularly in those areas that were served by the former KwaZulu Police," he told committee members

McNally recently came under fire from political parties and legal groups for not prosecuting senior Inkatha members who were implicated in hit-squad activities

The allegations were made by state witnesses under a protection programme, and by three-hit squad murderers recently sentenced to long jail terms

McNally said he had repeatedly expressed concern that too few hit-squad cases had been placed before him

"The only hit-squad case that landed before me was from the Investigation Task Board. It was the Captain Masinga case. I did decline to prosecute, but because of certain misunderstandings I have been asked to reopen my mind on the matter," he said, without elaborating further

He said the general perception that he was was reluctant to prose-

cute such cases was wrong

McNally said IFP and ANC delegations had met him over prosecutions on hit-squad deaths.

The ANC, led by Kwa-Zulu-Natal economics minister Jacob Zuma, had asked him to be "more adventurous" in deciding which people should be prosecuted

"I explained one had to have a prima facie case. One could not deviate from those standards. I told them the constitution views everyone equal before the law."

Asked who was responsible for political killings, McNally said: "This is a delicate question which I will answer as delicately as I can. The main parties involved are the ANC and IFP. There is no question about that."

"A further dimension comes in when one tends to get squabbles within the political parties, with factions attacking other factions."

Justice committee chairman Johnny de Lange said he was astounded that McNally had failed to mention the police in his answer on who was responsible for political killings.

McNally replied he did not know that that had been required of him, adding "But police are indeed involved in violence."

He also said that inflammatory political speeches definitely contributed to political killings.

- Reuter

Co-ordinate us, Kahn tells Omar

(252) CT 29/9/95

PRETORIA: Minister of Justice Mr Dullah Omar's apparent lack of prosecutorial co-ordination has been criticised by Western Cape attorney-general Mr Frank Kahn, who told a special parliamentary hearing yesterday that Mr Omar should co-ordinate South Africa's 11 attorneys-general

Mr Kahn was appearing before a joint National Assembly and Senate justice committee hearing at Union Buildings here in which the attorneys-general are being held accountable to Parliament

On calls for a national attorney-general to ensure uniformity, Mr Kahn said the present Attorney-General Act gave the justice minister that function

National co-ordination was



CRITIC: Mr Frank Kahn

necessary, "but we have our super attorney-general in the minister"

"I say as attorneys-general, irrespective of what happens to the post (of national attorney-general),

can't we expect the Minister of Justice to co-ordinate us more fully? The act makes provision for that

"While we're waiting for some other creature to be created I would like to see the Minister of Justice co-ordinating with us I miss that"

Mr Kahn said the previous justice minister (Mr Koble Coetsee) had used his co-ordinating powers

"I'm not saying those were the best of times but I miss that at the moment" Mr Kahn said it was easy for Mr Omar to say, "I'm not co-ordinating you, you're unco-ordinated, so let's have a national attorney-general"

Earlier, ANC senator Mr Bulelani Ncguka said that if there was a national attorney-general "we

wouldn't have the crisis we do in kwaZulu-Natal" Of all the attorneys-general appearing before the committee, Mr Tim McNally in kwaZulu/Natal has come in for the most criticism because of his perceived reluctance to prosecute high-profile political crimes in the province

Mr Ncguka said the arguments heard during the three-day special hearings made it "absolutely conclusive" that a national attorney-general was necessary

National Assembly justice committee chairman Mr Johnny de Langa said the country's attorneys-general differed considerably in applying the same laws, making it easy to believe they were not in the same country.— Sapa

SA water laws 'a mess'

(252) (25) (25) Star 29/9/95

■ BY PATRICK PHOSA

Delegates to a conference on ground water this week raised questions about legislation governing water use and suggested laws might be necessary to prevent exploitation of ground water through private

boreholes

South Africa's water legislation is "in a mess", said Len Abrams, special adviser to Water and Forestry Affairs Minister Kader Asmal

"The status of groundwater in the law is certainly one of the most important questions to be addressed," he said

John Tonkin, president of the Borehole Water Association of Southern Africa, said drought-stricken communities, especially in the Northern Province, might not be able to afford borehole water and were open to exploitation by individuals who could afford boreholes

My struggle to bring out the truth

WSM 22-28/9/95

(252)

Kwazulu-Natal attorney-general **Tim McNally** responds to criticism that he failed to prosecute senior IFP members for alleged hit squad activities

THE full page report in the *Mail & Guardian* (August 4 to 10) attacking my integrity is a patchwork of falsehoods which did me great harm. It

seems to me that the report has since become a springboard for further attack. Richard Lyster of the Legal Resources Centre in Durban is reported (*Business Day* August 31) as having said that a sub-committee of my critics has been established to find cases which indicate bias, incompetence or inability on my part. What arrant nonsense! Such cases are not to be found.

There is a theory that the Big Lie has more chance of being accepted by the public than the Little Truth. This is a variation on one of Hitler's more quotable quotes. (*Mein Kampf* Chapter 19) ...

The Big Lie portrays me as a person who bungles incompetently along from error of judgment to conduct shaped by political motive in breach of my oath of office.

An assessment of me by a Transvaal judge in a letter on my appointment as attorney-general gives a glimpse into the Little Truth. He wrote "Congratulations upon your appointment as attorney-general. It is indeed a well-deserved and much welcomed promotion. You will bring to that high office your erudition and ability and also your grace and dignity — something so rare these days."

The hundreds of people who have rallied to my support from all round the country profile me as a hard-working and God-fearing man who has put his not inconsiderable skills and experience at the disposal of all the people of ...

Kwazulu-Natal. My dual role as AG and national president-elect of the St Vincent de Paul Society keeps me in touch with people from all walks of life, from cabinet ministers and judges to grassroots people I work with at meetings and on visits to black and coloured townships.

Reporters of the *Sunday Times* and the *Mail & Guardian* describe me as an embattled AG. I am far from that. In between my normal duties I addressed law students at the University of Natal this week, and will be attending a crime prevention forum meeting on September 18 and delivering a lecture on expert evidence at a major seminar on September 21 in Bloemfontein. I was invited to address another national conference in Johannesburg on the same day, but could not do so due to the prior commitment.

The Minister of Justice is reported in the *Sunday Tribune* of September 3 as having said, in regard to Kwazulu-Natal, that "it is a crisis ...

that murder and such crimes are not being prosecuted". I have written to the minister to reassure him that murder and such crimes are indeed being prosecuted in those cases where police dockets disclose a *prima facie* case.

Eight supreme court judges are kept busy in Kwazulu-Natal on a daily basis dealing with such matters. Indeed, we have had some singular successes only recently with convictions and very heavy sentences being handed down in two high-profile cases, namely the hit squad case before Judge van der Reyden and the murder trial involving Mountain Rise policemen before Judge Wilson. It is business as usual in my office, with my dedicated staff and me giving our best attention to a huge through-flow of work.

The parliament, Portfolio Committee on Justice has given notice that my attendance is required to appear before it on September 27 at the Union Buildings in Pretoria. The other attorney-general have received similar notices. This process of accountability holds no fear for me. I believe it will give me a platform from which to confront and confound my critics. Meanwhile, my retirement date remains November 28 2003.

High noon at the Union Buildings

By Mimi 29/9-5/10/95 (252)

Parliamentary questioning of Kwazulu-Natal Attorney-General Tim McNally started off looking like a Wild West duel, but ended in a stand-off, writes **David Beresford**

It was 12 midday exactly — "high noon" in gunfighter parlance — when Tim McNally took his seat in Room 153 at the Union Buildings on Wednesday. A slight, grey-haired figure sporting a little pot belly and half-frame glasses perched on the end of his nose, South Africa's senior attorney-general looked more like a headmaster than a gunslinger.

But there was an air of grim determination about him as he gazed, thinned, down the room at the man who was to be his chief tormentor: the curly-haired and bubbly figure of Johnny de Lange, chairman of Parliament's Justice Portfolio Committee.

McNally's voice was slightly reedy, but he gathered confidence as he launched into his opening gambit: a recitation of the efforts he had made in the cause of affirmative action. He read proudly from a 1993 memorandum he had submitted (without success) to the then Minister of Justice, Koble Coetzee, proposing a training scheme to bring "persons of colour" into the prosecutorial system.

His non-racial credentials established, he moved on to his workload "At times we receive post from overseas to the extent of 1 000 letters a day," he said with meaningful emphasis. "Our post bag groans from the dockets and the letters that come also from South

African sources. I, as attorney-general, do not get to see anything like all that documentation. " It was to be a theme I did not see it, but "I accept responsibility for everything that goes on in my office." The battle-ground prepared, he sat back. "I now invite you to engage me in discourse."

The attack was slow in coming. An invitation to sketch the situation in Kwazulu-Natal had him groping for the emotion adequate to his indignation. "People are mourning, people are dying, blood is being spilt and, uh, people are mourning and people are digging graves for their dear ones."

The timorous-looking Douglas Gibson grasped the nettle with that air of frank naivete that is a badge of the Democratic Party. Was he aware of the negative perception in some quarters with regard to his record in political prosecutions? The AG waxed indignant. "The general perception that I do not prosecute hit squads is absolutely wrong," he declared.

The National Party's Jaco Maree tried some politicking. Which parties were behind the violence? "This is a delicate question which I will answer as delicately as possible," said the AG with the gravity and deliberation to be expected of a high-ranking judicial officer. "The IFP and the ANC."

The opening was too tempting for



Squaring up: Kwazulu-Natal Attorney-General Tim McNally (left) and parliamentary justice committee chair Johnny de Lange. PHOTOS: ROLF ASHBY

the ANC's De Lange. The AG had failed to mention the police and paramilitary forces, he challenged. McNally hastily changed tack — he had not been asked about the police, "but the police are indeed involved in the violence."

It was mid-afternoon before the first tilt in the scales of justice was recorded, by another ANC MP, Llewelyn Landers, with the case of one Thomas Majola. He sketched it briefly.

A man arrested for theft was questioned at a dam by six policemen. "According to the policemen he asked for the opportunity to have a bath in the dam. And according to the policemen while having this bath he drowned." According to the state pathologist Majola did not drown, but died by asphyxiation. The pathologist

also found injuries consistent with the administration of electric shocks. Pieces of electric cable and inner-tubing were discovered at the site. "It is said that you, Mr McNally, declined to prosecute these policemen."

"This was one of these cases which I did not deal with personally," said the AG, flicking through his papers to discover his brief. "But it does appear to me that the decision was a correct one." The inquest had found — on a "balance of probabilities" — that there had been "possible negligence" on the part of police. The judicial mind having already reached that conclusion, there was little chance of going to trial, where the test was "beyond all reasonable doubt".

Thomas Majola's bath seemed to open the floodgates, the ANC smelling

blood. There were 5 006 complaints against police in his jurisdiction last year, yet only 10 to 20 percent were prosecuted. Why did he ignore the advice of Judge Goldstone to use three hitmen as state witnesses against top-level Inkatha functionaries? Why did he dismiss Carl Koenig, his state advocate, when he was making progress in hit-squad investigations? Why did he plea-bargain with Thor Chemicals?

As the charges were hurled, squabbling broke out among the parliamentarians. It was turning into a witch-hunt, complained Maree, his voice rising in fury. "This thing is getting out of hand," protested Gibson. Witnesses should not be "badgered and hectorred and shouted at."

But through it all, the AG kept his equanimity. The police figure was familiar to other jurisdictions. Goldstone did not have all the facts at his disposal. There had been a leak and anyway he had apologised to Koenig. He had reprimanded a junior for the deal with Thor and, besides, they were lucky to get a conviction at all.

As dusk fell outside Room 153, the many parties were fleeing the battlefield, leaving the ANC and the AG slugging it out. By 6 30 pm there was an air of exhaustion.

All AGs followed the same standards, pleaded McNally.

De Lange lifted his head and growled. "McNally, we haven't had the complaints that we've had with you."

"Yes... yes," murmured the AG, with an evenness born of a lifetime of courtroom exchanges. "I'm in a rather difficult province, maybe you will bear that in mind as well. I walk a certain tightrope in my province. And I walk it to the best of my ability."

It was a stand-off at OK Corral.

With the police force grappling with change and escalating crime, and the offices of the attorneys-general

'They said they'd rather hang themselves than go to jail'

(252) WM 29/9-5/10/95

Ann Eveleth

A WOODEN ladder fashioned from tree branches leans across the trunk of the old gum tree where the lifeless bodies of Vitals Mthembu and Muzkawubanga Sitholi dangled until the police arrived on Wednesday last week.

The branch above bears no scars from the ordeal, but three rivulets of dried blood down a rock shaded by the tree's wide awning betray the lethal tale. A gaunt middle-aged man emerges from the shade of a paraffin tank at the shop across the road. Glancing back at the five wizened men still sheltering from the white-hot afternoon sun, he agrees to talk about the hanging.

Mesatshwa Dlamini says the young men had come to attack him for the second time, firing a shot through the window of his rondavel in rural Sizanenjana before his wife's screams brought the neighbours running. He says there is no politics in the area. He thinks they wanted the money he earns on the mines in Johannesburg.

Dlamini claims nobody wanted Mthembu (24) and Sithole (22) — "known rapists and house-breakers" — to die. "When the community threatened to call the police they said they'd rather hang themselves than go to jail. . . They even admitted to raping and housebreaking. They were always causing trouble."

Neither Dlamini nor the younger Bheka Mazibuko, who joined in telling the tale, could remember who Mthembu and Sithole had admitted raping or which houses they said they had burgled. But both said the two young men had spent time in jail for their deeds.

Dlamini says the neighbours chased his attackers and brought them back to face justice. "First we went to the induna (councillor) to ask him to take the case. He refused and said he didn't want to get involved." (The induna — a Mr Mazibuko — refused to speak to us.)

Dlamini's tale continues. Some 500 men, women and children gathered at the tree that fateful morning to question the suspects and decide their fate. "No one was acting as the judge. The whole community had to decide."

The "court" proceedings lasted some six hours. "We tried to get them to confess. Finally Sithole admitted to the attack, but Mthembu refused until the end. When we said we were going to call the police, Mthembu said it was better if he hanged himself. He knew he was a wanted man." Dlamini says Mthembu took the rope handed to him by the community he had known all his life, climbed the eight steps of the ladder to the lowest branch, tied one end of the rope around it and the other around his own neck — and jumped.

"His last words to his friend Sithole were, 'You sold me out.'" Dlamini says Sithole followed suit, hanging himself so close to Mthembu that his dying body kicked out at the corpse of his friend.

Sithole's mother is still in mourning. Huddled in a blanket and kneeling on a grass mat on the cement floor of her son's rondavel, a frail Thembene Shabalala stares blankly at the single white candle burning in her son's memory, in keeping with Zulu funeral tradition.

Her neighbour and sister-in-law Mafana Sithole speaks for her. She says Dlamini is "telling lies". Her nephew was in Bulwer with his girlfriend when Dlamini's house was attacked: "In the morning when he came back and went to his room, more than 100 people came to take him down to the store. They killed him there. They hit him and forced him to hang himself."

Describing the young Sithole as "a good boy — a man who behaved himself well and helped the people fetch their cattle from the hills", Sithole says neither her nephew nor Mthembu ever spent time in jail. Mother Shabalala interjects that this is the first she has ever heard of her son committing crimes.

Sithole's brother Sihambhele avers Mthembu was "at his home listening to a Radio Zulu programme when we heard the shots."

The official police statement says a "people's court" found the two men guilty of attempted murder and they were "ordered by the community to hang themselves with ropes supplied by the community in the presence of the community."

Generals avoid justice as

Communities are taking justice into their own hands as attorneys-general admit they cannot prosecute major cases. **David Beresford** and **Rehana Rossouw** report

SOUTH AFRICANS expect instant justice — if a spate of burnings, stonings, shootings, whippings and vicious assaults perpetrated by communities against alleged criminals is anything to go by.

And while vigilantes and communities are exacting their own rough justice, the agencies tasked with bringing criminals to book — a police service still grappling with the demands of change and the offices of the attorneys-general — are in a state of shambles.

One by one South Africa's grim-faced attorneys-general appeared before the Parliamentary Justice Portfolio Committee this week to recount the woes of the country's prosecutors.

The most devastating critique was offered by the most highly respected of the country's nine AG's, the Transvaal's Jan d'Oliveira, who disclosed that he is so short of resources that he is unable to prosecute "the first real Third Force case".

Although he did not identify the accused in the case, they are believed to include at least two police generals. "I have simply no-one to allocate to the trial," said the AG. "The case is ready for preparation, indictment and arrests, yet we are unable to proceed."

Outlining the crisis in the Transvaal prosecuting services he disclosed that:

- Of the 73 professional posts in his own department 12 percent are vacant, including three out of 11 positions of deputy attorney-

general

- Of the 21 registered posts of senior public prosecutor only six are "appropriately filled".

- The turnover of prosecutors is so high in his jurisdiction that in some trials they have had to be replaced four times.

- Of the two key posts of chief administration clerks one is vacant and the other is facing child molestation charges.

- The post of chief typist has gone begging since 1993.

Predicting a further haemorrhaging of staff in the face of a huge escalation in their workload caused by factors including Third Force investigations, constitutional cases and the emergence of criminal syndicates — he demanded to know how he could keep them with the salaries they were being paid.

Contrasting the earnings of state lawyers and those in private practice, he recounted how:

- A "young", former deputy attorney-general



Vigilante Harry Joshua, convicted of killing six alleged members of the Hard Living gang, is led out of the Cape Town Supreme Court

PHOTOGRAPH RODGER BOSCH

'He had just had it with the gangsters'

Rehana Rossouw

NEIGHBOURS of Cape Town gangster killer Harry Joshua believe his crime was not that heinous: he was only cleaning up a little.

"He was just ridding the area of some of the vermin," was one of the descriptions of Joshua's shooting spree last May which left five young men dead and two wounded, and which earned him a quadruple-murder conviction in Cape Town Supreme Court this week.

Residents of Delft on the Cape Flats say they understand fully what drove Joshua to take his 12-bore pump-action shotgun — described by Judge Les Rose-Innes, who convicted him, as a "lethal weapon" — and mow down youths belonging to a street gang.

Up until May 23 last year Joshua was a committed family man, employed as a supervisor at a block of flats in Sea Point and planning to renovate the neat, two-bedroomed house in Welgelegen Avenue he built for his wife and two children.

All of this changed overnight when his wife was robbed at knife-point of his hard-earned weekly wage by two youths lurking near a cafe a few metres from their home.

Desmain Joshua phoned her husband at work and told him what had happened. She also called the Delft police station to report the crime.

Four hours later, after Joshua had returned

home and eaten supper, the police had still not arrived. Joshua went to fetch a neighbour and, armed with his shotgun concealed under his overcoat and a description of the two youths, set off to make a citizens' arrest.

The two men found five youths sitting on a sports field opposite the Joshua's home, drinking beer. Two of them matched the description Desmain had given of the robbers.

He asked the men for his wife's purse. One of them denied they knew anything about it and swore when he asked again. Another, clutching a beer bottle menacingly in his hand, shouted "up" — a cry recognised by Joshua as gang slang for attack.

With the shotgun held at the hip — a stance he had practised monthly at a shooting range and at weekend paint war games — Joshua opened fire. The bullets tore through and killed Marlin Mohammed (17), Fabian Rossouw (17) and Mervin du Plessis (17). Ivan Nortjie (14), was wounded.

One of the youths ran away after the shooting started, leaping over the perimeter fence of the sportsfield and sprinting to hide in bushes across the street. Reloading his shotgun with two more cartridges, Joshua followed him. He went to a house across the street which he claimed was frequented by Hard Living gang members and asked men he found inside if a boy had run through the house.

The men denied the youth was there, and

came outside to find out what the fuss was about. Joshua asked again for the youth, and when the man set his dog on him he shot the dog, killed owner of the house Abduragman Hassan, Johannes Jacobs and wounded Moses Gouws, whom he found in a room inside.

Then Joshua went to his brother's house and reported what he had done to the police. He was arrested two days later.

"He had just had it with the gangsters, we all have just had it with them," said one of Joshua's neighbours this week, asking not to be identified for fear of reprisals.

"Why is it that decent people have to be driven to breaking the law before the police will help? Mrs Joshua called them for help when a knife was held to her throat and when did they come? Only after five people were dead."

Judge Rose-Innes acknowledged that Delft was plagued by gangsterism. As a member of the neighbourhood watch, Joshua's telephone was often used by neighbours to report incidents of crime to the police. These included assaults, robbery, housebreaking, car theft and vandalism.

"We plan on making Delft a decent, safe place to rear our children. The gangsters must get the message that we won't tolerate their behaviour anymore," said another Welgelegen Avenue resident. "I'm not saying we must all grab our guns and shoot them down, but I'm saying that after May last year, things got a lot quieter around here."

Health centre gives worker cancer

A health and safety centre has been closed after one of its employees developed lung cancer, reports **Eddie Koch**

A HEALTH and safety centre that has played a major role in highlighting the dangers of asbestos has been shut down by the government — because it failed to report that one of its workers was dying of lung cancer caused by asbestos.

Department of Manpower spokesman Francois de Vilhiers this week said officials inspected a government-owned laboratory at the National Centre for Occupational Health (NCOH) in Johannesburg last week after being informed that one of its employees had contracted mesothelioma, a rare form of lung disease caused by inhaling asbestos dust.

They were also told that health and safety regulations were being breached in the laboratory, which uses baboons to study the effects of inhaling asbestos dust.

De Vilhiers told the *Mail & Guardian* that the centre had failed to report one of its workers had contracted mesothelioma. The disease is categorised as "notifiable" and employers are required by law to report all cases to the manpower department so that these can be investigated and compensation for the victims arranged.

Staff at the NCOH have, ironically, conducted pioneering research since the 1950s which has helped victims of mesothelioma and other asbestos-related diseases to be compensated under the Workmen's Compensation Act.

"The case of mesothelioma was not reported to us as is required in terms of the law and the inspectors found numerous requirements were not being adhered to in the laboratory where asbestos experiments are con-

ducted on baboons," said De Vilhiers. "We regard this as a serious matter that could result in prosecutions. For the time being the laboratory has been ordered to close down."

De Vilhiers declined to provide details on health and safety safeguards that were not being followed in the NCOH laboratory, but other officials in the department said there was evidence that some workers were not using proper respiratory equipment. The NCOH is run by the Department of Health and the recent action shows that manpower officials are prepared to take action against other government agencies which violate health and safety laws.

Professor Tony Davies, director of the NCOH, confirmed the laboratory had been closed and that one of the centre's employees had developed mesothelioma. He pointed out that the centre had, over a number of decades, helped lay down safety standards for mines and factories which produced asbestos products. "We

don't expect to be treated any differently. We have recently defined ourselves as an industrial user and the recent inspection was valuable and instructive about what went wrong."

Davies said the case of mesothelioma had been reported to the Workmen's Compensation Commissioner, but that his officials had not notified the Department of Manpower, due to an oversight, because the NCOH had only recently come to see itself as an industrial centre subject to the same regulations as other employers.

The asbestos research unit at the centre was designed more than 25 years ago, at a time when the exact dangers of inhaling asbestos were still relatively unknown. The employee, who has not been named so that his privacy can be respected, was possibly exposed to the dust more than a decade ago, said Davies. Mesothelioma has an incubation period of between 10 and 40 years.

The research laboratory has been

using baboons and other primates since 1983 to monitor the rate at which the animals clear asbestos fibres from their lungs. The animals are not exposed to high levels of asbestos, but are kept in a dust environment that is considered to be the safe threshold for factories and mines. "The aim was to simulate a workplace environment and then test the consequences of exposure to asbestos at the legal limits for industry, which is one fibre for every cubic centimetre of air. We are satisfied that nobody has been exposed to dangerous or illegal levels of asbestos in the laboratory."

Davies said the centre had, however, decided to close the plant and terminate the experiments, although the baboons would be kept at the NCOH and monitored. "They are a valuable resource for measuring the rates at which asbestos fibres are cleared by the lungs. We are planning to get the maximum amount of information from them."

Outrage as SA treads carefully on landmines

Justin Pearce

THE Department of Foreign Affairs insists that South Africa this week became a world leader in the move away from the use of landmines — but human rights activists are outraged at the government's failure to support an outright ban on these weapons.

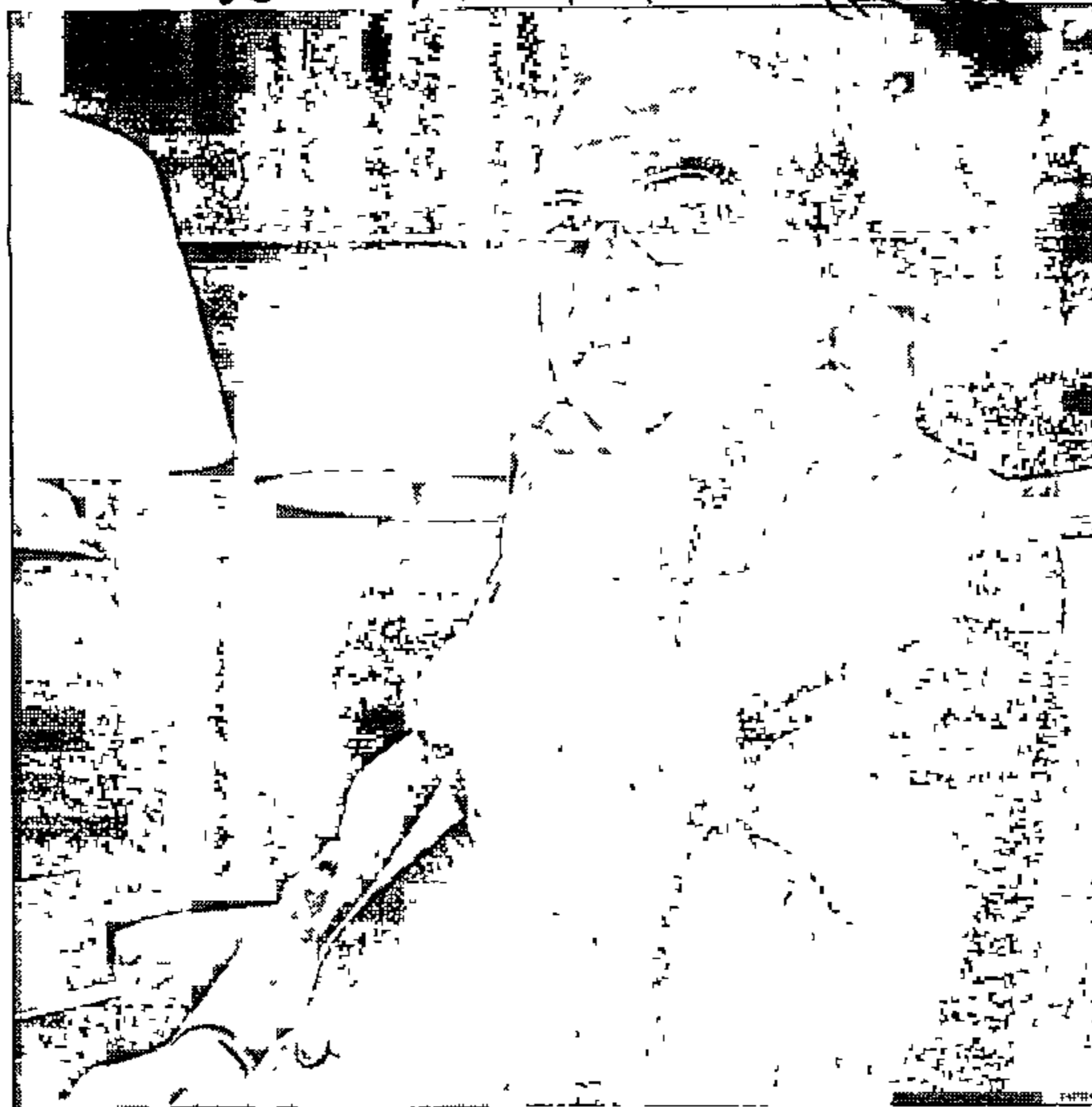
South Africa's position came as a surprise to many who had expected the country to seize the moral high ground in the wake of growing international anti-mine sentiments, and support an all-out ban. According to sources close to the Cabinet, the issue caused a rift in the ANC Cabinet caucus between those ministers favouring an outright ban, and those who supported the more cautious position which was eventually adopted.

At a conference in Vienna this week, Foreign Affairs Deputy Director-General Abdul Minty announced South Africa's proposals for amendments to the Convention on Prohibitions and Restrictions on Certain Conventional Weapons (CCW). The convention is widely considered to be inadequate following the proliferation of mines which has occurred since it was drafted in 1980, and is to be tightened up in accordance with submissions made at the present conference. Anti-landmine sentiments are growing worldwide in response to the devastating effects of mines even years after a war.

The controversy over South Africa's submission centres on its support for the development of "short-life" landmines — mines which can be timed to self-destruct after a specified period of time. South Africa has suggested that the convention require member states to phase out existing landmines and replace them with "short-life" mines.

Supporters argue that short-life mines fulfil the defence role of existing mines without posing a threat to civilians for years after the end of a conflict. This would rule out a repetition of the current situation in Angola and Mozambique, where civilians are still maimed by the millions of mines which remain in these countries and which will cost millions to remove.

Ceasefire, which represents 40 South African organisations support-



Abdul Minty: First step on the road to an outright ban on mines

PHOTOGRAPH GUY ADAMS

ing the International Campaign to Ban Landmines, argues that short-life mines have the same destructive capabilities as the mines which are currently deployed.

"Whether landmines are 'short-life' or 'long-life', they are still incapable of discriminating between their victims, be they enemy or friendly soldiers, ordinary civilians or children," said Ceasefire co-ordinator David Bruce.

Bruce warned that the continued acceptance of 'short-life' mines endorsed the acceptability of landmines in general. This would encourage the continued use of 'long-life' mines, especially by developing countries which could not afford the more technologically advanced "short-life" mines.

"The only way of reducing the use of landmines is challenging landmines as a legitimate weapon of war," Bruce said.

Minty said that since few countries had as yet acceded to the convention, it was important to have a convention worded in such a way that

would not discourage more countries from acceding, which might happen if the convention ruled out mines completely.

Minty pointed out that the South African submission contains numerous features designed to limit the use of landmines. If South Africa's proposals are accepted, it will become illegal for treaty states to sell mines to non-treaty states, and non-detectable mines will be prohibited. Proposals also include restrictions on the use of mines, so as to minimise civilian casualties, and an extension of the convention to restrict the use of mines in civil war — it was a civil conflict which left Angola among the most severely mined countries in the world.

South Africa also proposed a new protocol to outlaw the use of laser weapons, which have been developed in recent years with the intention of causing permanent blindness.

Minty's presentation to the Vienna conference makes it clear that the position articulated by South Africa should be the first step on the road to an all-out ban on landmines.

New parks board named

Eddie Koch

THE Cabinet this week appointed new members to the National Parks Board (NPB) in a move that will speed up conservation reforms designed to make the country's game reserves more relevant to the needs of the rural poor.

The appointment of the new national conservation body, made at Cabinet's meeting on Wednesday, is also likely to end a long period of intense conflict between NPB director Robbie Robinson and his chairman Naas Steenkamp, which had effectively paralysed many of the organisation's plans to reform the way in which national parks are run.

The new-look NPB replaces an old body, made up almost exclusively of white males, with a diverse group of people drawn from non-government organisations, universities and the private sector. It includes

David Fig, director of the Group for Environmental Monitoring, Farieda Khan from the Environmental Advisory Unit at the University of Cape Town, Ton Vosloo, a director of M-Net and Nasionale Pers, and Jacky Cock, a professor in the sociology department at the University of the Witwatersrand.

Enos Mabuza, former KaNgwan Chief Minister and the only black

member of the old board, replaces Steenkamp as chair. His other colleagues on the new board include Roger Collinson from the North West Province, David Crusae from Mpumalanga province, Dave Hatton of the Wildlife Society and Ian Player from KwaZulu-Natal.

The new members of the board, selected by a Cabinet subcommittee after widespread consultation with the private sector and NGOs, will be plunged into a series of heated environmental controversies almost as soon as they sit for the first time.

These include

- Intense pressure from animal rights groups on the parks board to stop the culling of a few hundred elephants in the Kruger National Park every year.

- The controversy over plans to prospect for diamonds in the Matsiatshe Reserve, one of South Africa's last stretches of unspoiled wilderness that lies on the banks of the Limpopo River, just to the west of the Kruger National Park.

- A heated debate between provincial conservation agencies and the National Parks Board over which body has ultimate authority over the national parks located in the provinces.

- Controversial plans to build a highway to Mozambique through the middle of the Kruger park.

RDP changes course

Marion Edmunds

RDP roleplayers in government met this week — without Jay Naidoo — to grapple with the realisation that the RDP is too much "pie-in-the-sky" and needs to be grounded in practical projects that promote economic growth.

Senior RDP officials, government leaders and technocrats met for three days in Cape Town to discuss ways to bring the RDP down to earth and set its projects in a context of a national economic growth strategy.

Minister of Trade and Industry Trevor Manuel opened the conference, saying the RDP needed "key choices and no jargon". (The master of RDP jargon, Minister without Portfolio Jay Naidoo, did not attend the conference because he was overseas.)

The conference comes at a time of growing doubt about the ability of the RDP office to co-ordinate the imple-

mentation of the RDP, and increasing criticism of the government for not delivering what has been promised to the people.

Discussions on economic growth at the conference link back to discussions held by a special cabinet committee on economic growth created earlier this year, and interpreted by commentators as showing a new sense of urgency in government to get the economy on its feet.

Manuel said this week the time had arrived for government to move away from a needs-driven approach to the country's problems, and to put the country on a new high-growth path.

This conference — seen as more of a workshop than a conference *per se* — will be followed up by another conference at the end of the year where, according to the RDP office, "a concrete national strategy for growth and development would be produced".

CONSTITUTIONAL COURT

(252) FM 29/9/95

Asserting its independence

The Constitutional Court has affirmed the constitution as the supreme law of the land and established itself as the guardian of the constitution against the manoeuvres of politicians

Its judgment in the dispute between the Western Cape provincial government and the central government, delivered on September 23, is a succinct answer to those who are sceptical about the court's independence and who see it as an institution designed to give the imprimatur of judicial approval to actions by the ANC-led government of national unity. The scepticism arises from the conviction that the majority of the 11 judges, including the court's president — Mr Justice Arthur Chaskalson — were ANC sympathisers during the struggle against apartheid.

But sympathy with the ANC in the fight against minority rule is not an intrinsic obstacle to the exercise of independent judgment in the post-apartheid era by judges who have sworn to uphold the constitution. Those who have fought for freedom in the past, whether in the intellectual, political or military arenas, are often best qualified to defend it against politicians of the new order.

The court's finding that proclamations issued by President Nelson Mandela under Section 16(a) of the Local Government Transition Act are invalid, will delay — rather than prevent — an ANC-led intervention in electoral arrangements in the Western Cape. But it is still significant. The ANC has been inconvenienced, perhaps even embarrassed, by the judgment.

It is true, as Stuart Woolman, of the University of the Witwatersrand observed in an interview with the *FM*, that the judgment concerns a procedural rather than a substantive issue. The proclamations have been declared invalid, not because of their content but because parliament is held to have unconstitutionally relinquished a significant portion of its powers to the President.

Leaving aside the rebuff to parliament — in which the ANC has a decisive majority — the court's finding on that point is significant for another reason: it upholds the doctrine of the separation of powers, between the legislative and executive branches of government, and — implicitly — between the judiciary and the executive. This separation is an important cornerstone of democracy, not an abstract notion of political theory.

The court's finding is all the more meritorious when one considers the circumstances of the case — Mandela, in issuing Proclamations 58 and

59, was seeking to undo gerrymandering by the National Party in the Western Cape. The sequence of events in the disputes shows that the NP changed the composition of the provincial committee on election — it dismissed an ANC representative, Andrew Boraine, and replaced him with an NP delegate — in order to forestall a demarcation proposal that Khayelitsha be included in largely Afrikaner and pro-NP Tygerberg. Powerful political reasons for Mandela's intervention come to mind readily, but the court concentrated on the judicial issues at hand.

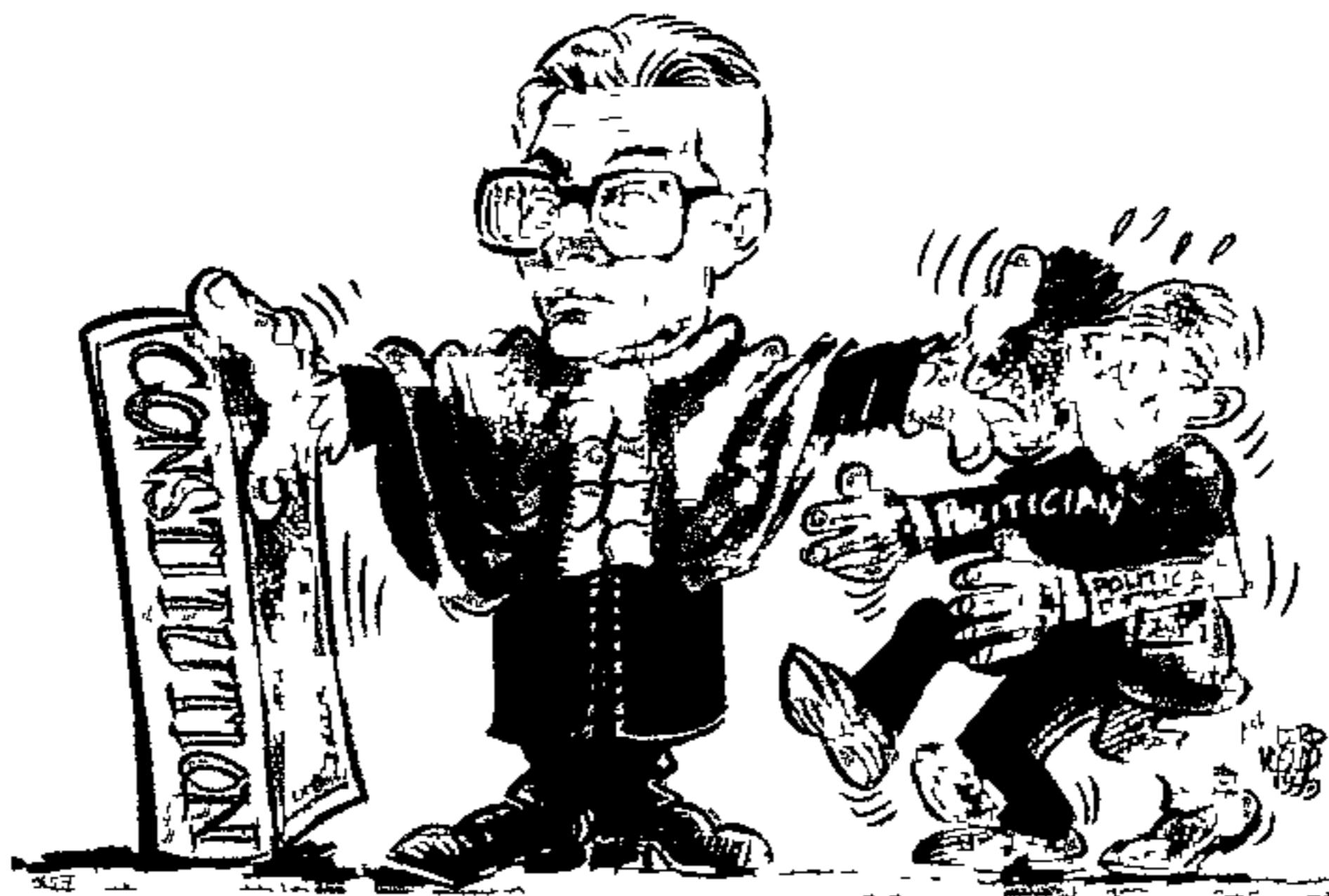
Hernus Kriel has welcomed the judgment as a victory for provincial governments against encroachment on their powers by the central government. His triumphant cries are premature and exaggerated.

The judgment has specifically given the ANC until October 25 to rectify the situation by reconvening parliament — October 4 has been mooted — to pass a law containing the same provisions as the invalid proclamations. Once that happens — the ANC's majority makes it all but inevitable — the NP's gerrymandering will be nullified.

It is important to note that a central argument by counsel for the Western Cape — that the proclamations contravened the constitutional principles enshrined in the interim constitution by encroaching on the "functional or institutional integrity" of the provinces — was rejected by the Constitutional Court. To quote an explanatory note on the judgment: "The court unanimously rejected the contention, holding that the constitutional principles governed the final constitution (the one being drafted by the Constitutional Assembly) and not the current one."

The primary importance of the judgment is that it guards against government by presidential decree, even when the exercise of that power is expressly sanctioned by parliament — as was the case in the dispute adjudicated by the Constitutional Court (Section 16(a) having been originally approved by all parliamentary parties, except the minuscule Freedom Front).

But that does not mean that the judgment is irrelevant to provinces: three judges — Justices Chaskalson, Bernard Ngoepe and Tholakele Madala — found that the case presented circumstances in which provincial powers were not necessarily subject to the overriding power of the national government to ensure uniformity. That finding may have significance in future disputes over the legislative power of national and provincial governments. ■



CHRISTO WIESE

Drive and opportunism

Gains in wealth should be matched by increased transparency



Measured simply by the financial results, Christo Wiese, 54, is an inspiring example of entrepreneurial success in 25 years his wealth has grown from nothing to more than R1bn

Pepkor, the retail and clothing group he built, has thrived in the local mass market and is now expanding abroad. The formerly ailing Checkers supermarket chain has been rejuvenated since Pepkor acquired it in late 1991.

And the share price of Boland Bank — long constrained by its own provincialism — has tripled since Wiese took personal control a couple of years ago. Now Boland, too, has international ambitions.

Wiese himself is a dapper fellow, quick of wit, sharp of vision and engaging in manner. But social graces have not always been sufficient to deflect the envy that such rapid and manifest success inevitably brings. There are those who have used innuendo cunningly against him.

Among his strengths is an evident ability to find, inspire and retain the loyalty of very good managers — some of whom are influential confidants.

He has shown resilience in the face of setbacks. Most memorable was the R90m foreign exchange loss faced by Pepkor. Nor has he avoided controversy. His purchase of the historic Lanzerac wine estate in Stellenbosch for what some saw as a giveaway price and the acquisition by Wiese's unlisted company — Monex — of property held by over-borrowed Ilco Homes after Boland had foreclosed on it, are transactions that invited scrutiny. And rightly so.

Pepkor under Wiese's control certainly bought Checkers (from Sanlam) and assets in the UK on highly attractive terms.

The embattled W&A Group offered another opportunity. After W&A CE Jeff Liebesman had discussed a deal to sell his company to Wiese, Liebesman then saw a more attractive suitor in Trencor. A deal was struck with Trencor, which, considering subsequent events, should have been to the relief of Pepkor shareholders. But Wiese demanded — and got — a "cancellation fee" of R1,3m-R1,7m.

However, the recovery from the foreign exchange losses — which nearly wiped out Pepkor's capital in 1985 — demonstrates Wiese's unusual ability to deal with adversity.

The group did have the advantage of strong cash flow. Wiese used this to persuade banks and other institutions to extend credit lines. He appointed Arnold Louw MD of Pep, sold the peripheral activities, issued rights, rationalised and refocused on core operations. Within two years, the group was again highly liquid and producing good profits. It has expanded steadily since. Today, the Pepkor empire includes

six listed companies. Pep Stores, the core clothing business, is a cash chain with more than 1 000 outlets in SA. Your More Store has 100 outlets in Scotland. Smart Centre was acquired by takeover.

Tradehold (taken over with Checkers) is the holding company of Shoprite, which operates Shoprite and Checkers supermarkets, under MD Whitey Basson. Cashbuild was another takeover, as was London-listed Brown & Jackson, which controls the 200-store Poundstretcher chain in Britain.

There are also the unlisted Stuttafords and Ackermans retail chains, and 10 factories producing clothing and textiles almost exclusively for sale by Pepkor companies. Combined turnover of these companies is R10bn, operating profit exceeds R360m.



Wiese



Basson

On paper, Wiese is one of SA's wealthiest people. He owns 68m Pepgro shares. At R12 each, they're worth R816m. In addition, through his 54% control of Samgro, the current market value of his Boland Bank holding is R427m.

Based simply on his JSE-quoted assets, he is worth at least R1,25bn. That excludes unlisted interests, such as property, he has 32% of unlisted Monex. It also takes no account of whatever

the borrowings or other obligations he may have. These, of course, could be telling in any computation of his wealth.

His business relationships extend far beyond direct financial interests. He is a director of 50 companies. Most are in the ambit of Pepkor and, more

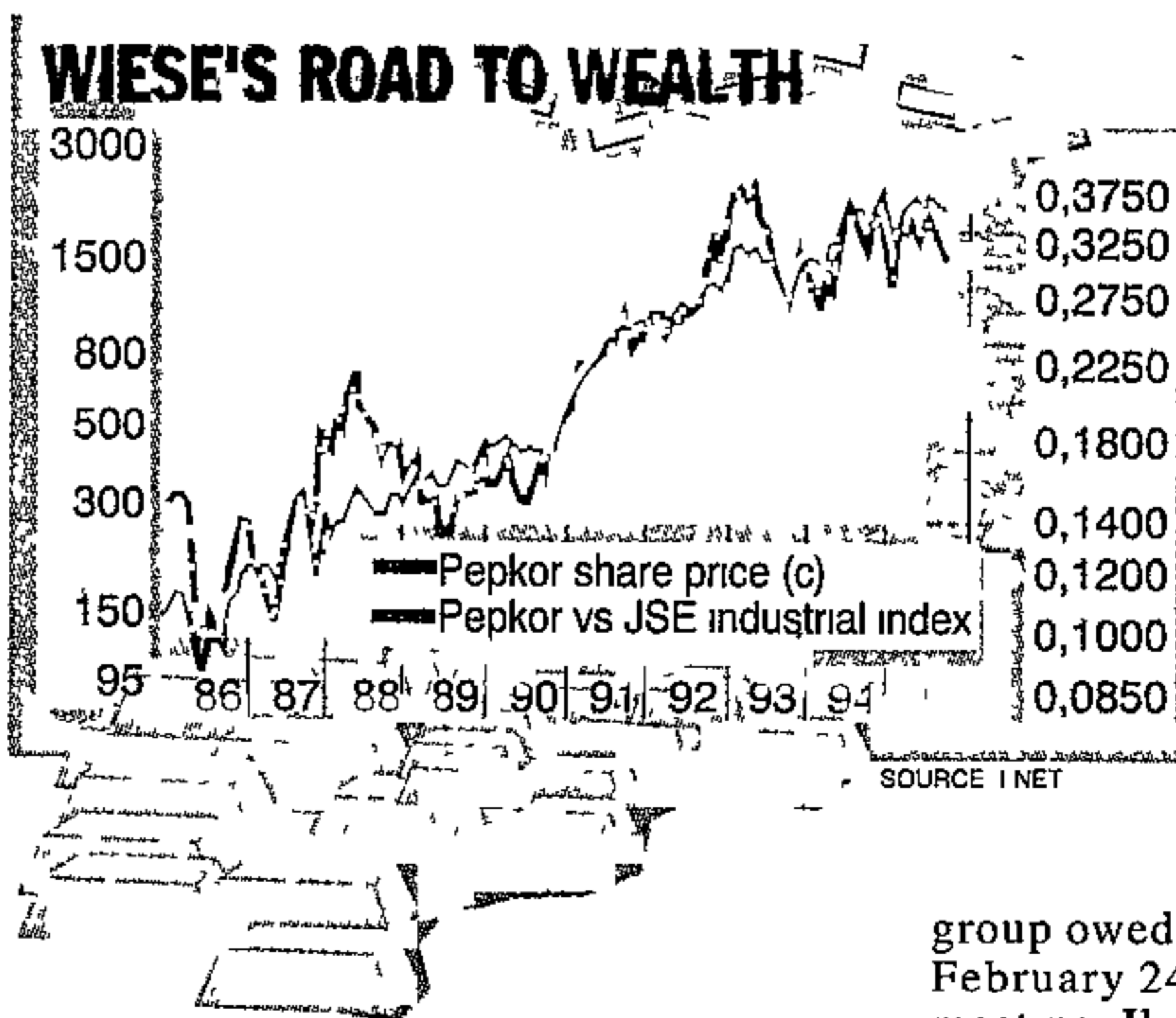
recently, of Boland Bank. But he is also chairman of the IDC, and sits on the boards of Sanlam, Santam, Sasol, Lenco, Waltons and the Board of Executors.

For some years he was a director of the Reserve Bank — latterly in circumstances that attracted controversy. One press report suggested that it was Wiese's involvement with the Bank that enabled him to buy the Lanzerac estate cheaply. The Lanzerac transaction followed the collapse of Alpha Bank and its subsequent curatorship.

Among Alpha's assets was the Lanzerac estate, offered to a number of parties at about R5m. All turned it down. Later the curator offered it to Wiese, who says he bought it, including antiques and art, for R9m, not the R5,4m mooted.

Boland Bank MD J G le Roux, previously MD of Distillers Corp, says that negotiations between Boland Bank and Ilco MD Jos Demmers to reduce the company's overdraft exposure started in December 1990, when the

group owed the bank about R50m. On February 24, at a Boland Bank board meeting, Ilco's overdraft was R78m. It



here

Tutu hotly tipped to play major role in Truth and Reconciliation Commission

Cape Town - Desmond Tutu is being hotly tipped to become a member of the proposed Truth and Reconciliation Commission - and possibly even to head it.

The Anglican Archbishop of Cape Town was once the target of an apartheid dirty tricks campaign when agents of the Civil Co-operation Bureau hung a monkey foetus outside his Bishops court residence in the 1980s when he was high on the government's "hate-list".

But he has made a determined effort to achieve an image of neutrality and reconciliation - even parading down Adderley Street in a Springbok rugby jersey after the Rugby World Cup when he supported the retention of the springbok symbol in rugby, once associated with whites-only sport.



ARCHBISHOP TUTU

The truth commission will decide, among other things, whether to grant amnesty to people who used violence and dirty tricks to bolster or fight apartheid.

This month, the Anglican synod of bishops, sitting in Kim-

berley, resolved to nominate Tutu as a candidate for the commission. They said Tutu had "the required gifts for a commission whose task will be to investigate the truth about our past and to bring about reconciliation in the future".

He said he was willing to let his name go forward even though he had planned to take up a one-year visiting lectureship at the Candler School of Theology at Emory University in Atlanta after he retired as archbishop in June.

But there has been strong political pressure on Tutu to remain in South Africa after his retirement rather than take up a sabbatical appointment in the US. He has also had an offer from the episcopal National Cathedral in Washington DC.

(252)

Star 30/9/95

PUBLIC SECTOR-GOVT. - JUSTICE

1995

OCT.

1992 The Sultan of Brunei, said to be the richest man in the world, celebrates 25 years on the throne

**GROUCHO
MARX**
US comedian
(1895-1977)

THOUGHT FOR THE DAY
It wasn't until quite late in life that I discovered how easy it is to say "I don't know" — **W Somerset Maugham**, English writer (1874-1965)

A-G's grilling condemned

(252) Star 2/10/95

Ulundi — The political "interrogation" of KwaZulu-Natal Attorney-General Tim McNally was a glaring example of the move towards political show trials characteristic of totalitarian states, the IFP said yesterday.

A national council resolution adopted at the weekend, expressed the IFP's "indignation at the unprecedented attempts to apply direct personal political pressure on the Attorney-General of KwaZulu-Natal". It was referring to McNally's seven-hour grilling before Parliament's ANC dominated justice committee on Wednesday in which the A-G had to account for certain decisions to prosecute.

"The grotesque spectacle of

politicians interrogating an attorney-general on specific decisions affecting prosecutions is a glaring example of the steady drift to political show trials characteristic of totalitarian states

"The ANC has embarked on the dangerous course of utilising denunciations and sweeping allegations against political opponents in place of impartial non-political judicial administration."

The ANC KwaZulu-Natal region has criticised McNally for his perceived failure to prosecute Inkatha officials allegedly involved in political violence in the province, and ANC secretary-general Cyril Ramaphosa has publicly accused the A-G of bias — Sapa

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Death Row talks today

Prisoners' fate to be decided by law next year — Niehaus

(252) AR 5 2/10/95

CLIVE SAWYER
Political Correspondent

THE fate of prisoners left on Death Row after the abolition of capital punishment will be decided by legislation to be tabled in parliament next year.

In the meantime most are being transferred to prisons closer to their families, although this will not be possible where there are no maximum security prisons close to their homes.

This was disclosed by Carl Niehaus, chairman of the national assembly committee on correctional services.

Mr Niehaus said he had had talks with Justice Minister Dullah Omar and Correctional Services Commissioner Henk Bruyn after inquiries from family members of former Death Row prisoners.

The hunger strike by some Death Row prisoners, in protest against their continued confinement in Pretoria Central Prison, was threatening to spread, he said.

Pretoria Central would continue to be used as a maximum security prison, he said. "In the light of the serious problems of overcrowding in

prisons and the limited maximum security facilities available, it is imperative that this facility be utilised to house prisoners in the maximum security category."

But this did not mean these prisoners were being kept on Death Row, which was only a legal concept.

"However, one must be appreciative of the fact that the prisoners who have been on Death Row have extremely negative connotations about the cells in which they have been kept and have suffered severe emotional stress.

"The conditions that have prevailed on Death Row were also by no means acceptable for long-term imprisonment."

Before the ruling of the Constitutional Court, many of these prisoners had been on Death Row for an unacceptably long time, Mr Niehaus said.

They should be moved for their own wellbeing and proper psychological care.

He was satisfied that these prisoners were not disadvantaged by the fact that legislation to determine their position would be introduced next year only, he said.

"They have been found guilty of very serious crimes and are likely to face long periods of imprisonment."

He would meet General Bruyns today for further talks, which would cover conditions under which prisoners were being kept.

"I intend to visit the Pretoria maximum security prison this week to ascertain for myself that prisoners who are affected by the Constitutional Court's ruling are not being discriminated against in comparison with other prisoners," Mr Niehaus said.

MONDAY
OCTOBER 2, 1995 ★

PRISONERS TO BE CLOSER TO FAMILIES

Law on 'death row' convicts to be altered

(252) ~~CT~~ CT 2/10/95

JOHANNESBURG: Prisoners sentenced to death will no longer be kept on death row and many are to be moved to maximum security jails closer to their families

THE fate of prisoners who had been sentenced to death probably would be decided in Parliament next year, Mr Carl Niehaus, chairperson of the portfolio committee on correctional services, said yesterday

He said that during their weekend meeting, the Minister of Justice, Mr Dullah Omar, had indicated that legislation would be introduced next year to determine the position of prisoners affected by the Constitutional Court's ruling that the death sentence was unconstitutional

He had been told that several former death row prisoners were threatening to go on a hunger strike, or had done so already, in protest against being kept at the Pretoria maximum security prison

The prison buildings would still be used as a maximum security

prison as prisons were overcrowded and the number of maximum security facilities was limited

"This does not mean that such prisoners are being kept on death row," Mr Niehaus said

Prisoners kept on death row had "extremely negative connotations" about the cells and had suffered severe emotional stress, Mr Niehaus said. Conditions on death row were unacceptable for long-term imprisonment

"It must be taken into consideration that, prior to the ruling of the Constitutional Court, many of these prisoners had been on death row for an unacceptably long period. For the sake of their wellbeing and proper psychological care, it is advisable that they be moved"

Many prisoners were imprisoned far from their families. It was preferable that they be moved to

prisons closer to their homes so they could maintain family contact, Mr Niehaus said

The Commissioner of Correctional Services, General Henk Bruyns, had assured him that the transfer of prisoners to prisons closer to their families had begun. Not all prisoners could be moved because of the limited number of maximum security prisons

Mr Niehaus said he was satisfied that former death row prisoners were not being disadvantaged by the delay in introducing legislation determining their position

"They have been found guilty of serious crimes and are likely to face long periods of imprisonment"

Mr Niehaus is to meet Gen Bruyns again today. Discussions are to include the conditions in which former death row prisoners are being kept. Mr Niehaus also intends visiting the Pretoria maximum security prison this week — Sapa

Legal Aid Board faces R40m shortfall, says auditor-general

Ingrid Salgado

THE Legal Aid Board would be underfunded by at least R40m after failing to provide for at least R55m in contingent liabilities for claims not yet disposed of, deputy auditor-general Bertie Loots said yesterday.

The auditor-general's report on its financial statements for the year ended March 31 1994 said the board had made provision for only R15,2m in claims from attorneys and lawyers.

The board's administration was "in an unsatisfactory state", Loots said. His office had serious reservations about some figures reflected in the financial statements.

The report comes amid allegations of irregular conduct by up to five senior employees of the board. Board director Nic Pretorius said there had been claims that the staff members gave preferential treatment to the accounts of some lawyers. An investigation into the matter should be completed within

(252) BD 3/10/95
six weeks, he said

The board was seen in the past as an apartheid state organ lacking credibility and legitimacy. It is now in the process of restructuring and the life of its council was extended recently by Justice Minister Dullah Omar until restructuring was complete.

The auditor-general's report showed that the board had not made provision for bad debts in the 1993/94 financial year. More than R320 000 was outstanding and it seemed a provision for bad debts was necessary, Loots said.

The board's accounting policy was not applied consistently in its financial statements and identified debtors owing nearly R650 000 were not recorded.

The board had incorrectly estimated provision for legal costs creditors. This was overstated by nearly R4m.

Chief auditor and report author Hendrik van der Westhuizen said the

Continued on Page 2

Legal Aid (252)

Continued from Page 1

BD 3/10/95
board could not produce a complete assets register; its current assets register could not be reconciled with the ledger; no internal checking was carried out on the assets register, and no stock-taking certificates could be produced.

This was a problem in many government departments and statutory institutions and the joint standing committee on public accounts were "very upset" about it, a source said.

The committee recommended last year that the board consider reconstructing itself to include members with financial expertise. Pretorius has been requested to appear before the committee next month.

The board has also been accused of taking up to three years to reimburse its creditors. Pretorius said there had been an increase in demand for legal aid over the last four years and a staff shortage meant the board was under "immense pressure".

Pretorius said the board had about 4 000 attorneys representing more than 85 000 clients during the past financial year.

Head of the probe into allegations of misconduct, magistrate Francois Roets, said he could not yet say whether the matter would be handed to police for further investigation.

Pretorius said the board had submitted proposals to Omar to ensure it was more representative. "We have suggested that each province have an advisory committee on legal aid, comprising lawyers and civil society."

Legal Aid Board faces R40m shortfall, says auditor-general

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A-G explains how he will prosecute

□ *Sequel to Deeds Office bribes allegations*
ARG 3/10/95 (252)

Staff Reporter

ATTORNEY-GENERAL Frank Khan intends prosecuting on a "piecemeal basis" crooked attorneys and Deeds Office officials alleged to have paid or taken bribes

Mr Khan was called before the parliamentary justice select committee in Pretoria last week to explain, among other things, progress in cases against attorneys and officials

He told the committee the mere handing over of monies to officials did not constitute an offence

"In order to prosecute any attorney or official, evidence is required as to why the monies were paid," Mr Kahn said

His explanation was a sequel to the row which erupted recently around the Cape Of Good Hope Law Society's refusal to publish the names of attorneys disciplined for "unprofessional conduct", relating to payments to Deeds Office officials

The vice-president of the society, Tim McIntosh, resigned in disgust, and Minister of Justice Dullah Omar urged attorneys to take urgent steps to ensure that corruption was never "suppressed" again

Mr Kahn told the select com-

mittee he got a copy of a report from the Office for Serious Economic Offences (OSEO) in March last year

According to the report, 24 attorneys had paid various sums to 14 Deeds Office officials. Further investigation by his office had unearthed another three attorneys, Mr Kahn said

In its inquiry, the OSEO had procured explanations from the attorneys and officials as to why they had given or received monies. But in terms of the OSEO Act, the statements had been inadmissible in subsequent trials

Mr Kahn said "the approach" decided on by his office was to prosecute as many officials and attorneys as was legally possible

But it would be impossible to prosecute all of them as the State needed some of the attorneys and officials to turn State witnesses

"This will involve a series of trials with an accused in one case possibly giving evidence in another case, and a witness in the one case possibly being an accused in another case," he said

"In addition, each case consists of various combinations between attorneys and officials. It is for this reason that

the whole matter will be dealt with in a piecemeal fashion

"It is impossible to deal with this matter otherwise.

"To disclose more information at this stage will reveal the thinking and strategy of the State which will be prejudicial to the prosecution and unfair to an accused"

Formal decisions on whether to prosecute other attorneys and officials would be taken after the conclusion of each trial

"It must be appreciated that witnesses who do not earn their indemnities might well be prosecuted after the trial," he said

A further complication was that the entire case was based on information obtained by the OSEO in terms of sections five and six of the OSEO Act, sections which had been challenged in the Tollgate matter in the Constitutional Court

Judgment in this matter was still pending

"Once the trials are disposed of, my decisions will become a matter of public record and I look forward to explaining them to this committee at a later date

"If, however, we are given more staff, as requested, the remaining matters will be disposed of sooner," said Mr Kahn

Human rights body 'will use its teeth if necessary'

ET 3/10/95

(252)

PRETORIA The statutory Human Rights Commission wanted to ensure citizens' rights were defended at all times and would use its teeth if necessary, its newly elected chairman Mr Barrie Pitso said soon after its inaugural meeting at the old Raadsaal here yesterday.

The commission was committed to establishing a culture of human rights and aimed "to make the human rights commission accessible to every citizen", he said.

Commissioner Mrs Helen Suzman said the 11 members were to debate the commission's parameters.

"We cannot deal with domestic issues or ones that are in the hands of the court," she said. "We are lucky there are many examples of human rights commissions in other countries. We can learn from their experience."

Mr Max Coleman, former director of the non-governmental Human Rights Commis-

sion, said it would be the commission's task to alert legislators to laws that were "out of line".

"We will alert legislators to modify (legislation) where necessary," he said. "It is important to take note of the international practice of human rights."

Mr Coleman said the commission would prefer to use dispute resolution tactics, but if these failed, it had the power to use a tougher approach.

Minister of Home Affairs and Inkatha leader Chief Mangosuthu Buthelezi said he applauded the commission's appointment.

"I came here to give my colleagues moral support. It's cause for jubilation but we must not be simplistic and believe that things will happen overnight," he said.

Mr Pitso said the commission would hold its first plenary session on October 12. — Reuter

Grahamstown in bid to keep court

□ Debate over site of Eastern Cape seat

ACT 4/10/95 (252)

Argus Correspondent

PORT ELIZABETH. — Organised business, Cosatu, Sanco and Rhodes University have joined forces in a submission to the Hoexter Commission in an effort to maintain Grahamstown's status as the Supreme Court's Eastern Cape seat.

Premier Raymond Mhlaba's office, in a written submission, recommended that four supreme courts be established in Port Elizabeth, Grahamstown, Umtata and Bisho. Each would have full and exclusive jurisdiction of trial review and appeal.

A supreme court in Bisho, the submission said, was a minimum requirement.

It said: "If a court closes down as a seat, that should be a natural occurrence dictated by the reality of circumstances such as sparse population or too light a workload, and must

not be contrived"

Grahamstown, it said, was fortunate to have a university as an economic resource.

The TLC, however, believes it stands to lose about R22,5 million if the supreme court seat is moved from the city.

And town clerk Steve Cridland said yesterday the debate on the issue had already impacted on the property market, with little market activity taking place while the commission investigated the matter.

A loss of the supreme court seat, status quo supporters said in a submission, would leave the city with a "bleak, unstable and uncertain future".

Supporters include the Grahamstown Chamber of Business, Cosatu, Sanco, the Bar and Side Bar Association of Grahamstown, the Grahamstown Ministers' Fraternal, Rhodes University, the rate-

payer's association and the Fingo Village Ratepayers' Association, the Master Builders' Association and the Rhodes University Law Faculty.

Eastern Cape Judge-President Mr Justice Neville Zietsman has said that for the Bisho court to become viable, it would have to take large areas of jurisdiction from the Grahamstown court, causing its demise.

The removal of the supreme court from Bisho would not have the same catastrophic effect as Bisho had received a boost when it became the legislative and administrative capital.

The Advocates and Attorneys' Liaison Committee for the Eastern Cape has recommended that Grahamstown remain the seat of the supreme court and that local divisions be established in Port Elizabeth, East London and Umtata.

ANC: convicts are too far from home

BD 5/10/95

(252)

Business Day Reporter

FORMER death row prisoners should be transferred to prisons nearer their homes to improve their psychological wellbeing, the ANC said yesterday.

The organisation said ANC MEC Carl Niehaus visited former death row prisoners at Pretoria Central Maximum Security Prison yesterday afternoon, and also met members of the SA Prisoners Organisation for Human Rights on the need to review the continued incarceration of such prisoners.

The ANC said it was necessary to detain former death row prisoners at the Pretoria prison because other prisons did not have the maximum security facilities to house prisoners convicted of extremely serious crimes.

The prisoners, however, had developed "negative connotations about their surroundings" and it was in this context that the ANC believed they should be moved closer to their homes.

The legal status of former death row prisoners had still not been clarified and the ANC welcomed Justice Minister Dullah Omar's commitment to introduce legislation during parlia-

ment's next session in this regard.

While the ANC remained concerned about prison conditions in SA and would strive to improve them, it was also important to stress the organisation's commitment to drastically reducing the current high crime level.

High crime levels portrayed SA in a negative light to potential investors, hampered the successful implementation of the RDP and projected a false image of instability in the country.

The ANC was committed to ensuring that all newly elected local government structures played a critical role in working with the community to stamp out crime.

Stressing the crime problem could only be solved through a partnership between government, the community, business and the SAPS, the organisation said it welcomed the efforts of police in implementing the community safety plan launched by President Nelson Mandela this year.

The ANC also praised the business initiative on crime and the Gauteng youth anti-crime conference started by Gauteng safety and security MEC Jessie Duarte.

Black lawyers call for return to jury system in SA

□ 'OJ verdict should reopen debate'

ROGER FRIEDMAN
Staff Reporter

SOUTH Africa should seriously consider re-introducing the jury system, the Black Lawyers' Association said in reaction to the OJ Simpson verdict

But another national lawyer's association, a senior Cape Town judge and the convener of the Cape Town Lay Assessors Co-ordinating Committee were lukewarm to downright cool in response to the proposal

Welcoming OJ's acquittal, Black Lawyers' association spokesman Dumisa Ntsebeza said South Africa's judiciary consisted mainly of people who "subscribed fully to the ideology of the racist apartheid past"

"In the circumstances, it may well be that for a long time we will have to rely on the judgment of the ordinary people in society for determining the guilt or innocence of individuals"

The OJ verdict, warts and all, should be the frame of reference for re-opening the debate on the jury system as part of South African law, he said

But his was not the universal view

National Association of Democratic Lawyers spokes-

man Krish Govender said "While a jury system in South Africa might save some people from injustice at the hands of racists, the issue is complex and needs to be debated within the South African and not the US context"

Mr Govender questioned if "honest, hardworking and non-racial" police officers had investigated the Nicole Simpson and Ronald Goldman murders whether the outcome of the trial would not have been different

"The answer may not be easy, but most definitely the jury would have deliberated for much, much longer than four hours to reach a verdict"

Racism was the single ugly factor that ran through the "OJ saga" from the discovery of the bodies to the verdict and subsequent reactions, said Mr Govender

The senior judge, who spoke on condition of anonymity, said he "firmly favoured" the present assessor system over the jury system (abolished in 1961) "as a better system for achieving justice".

"I believe that a court comprising a judge and assessors is a far better mechanism of arriving at a just decision than a jury comprising lay people who have no experience in analysing evidence or appreciating

its true significance"

The judge added that he was not in favour of using lay assessors in the Supreme Court either.

"I do not believe that justice is served by using lay assessors I don't believe we must get carried away by the talk of community participation when real question is how is justice going to be achieved

"The representivity of assessors is another matter. But the present system is rapidly emerging from a past tainted by racial exclusivity"

Essa Moosa, a member of the team appointed by Justice Minister Dullah Omar to implement the lay-assessor system in magistrates' courts countrywide, said he had no principled objection to the jury system, but it would be expensive compared to using lay assessors

The lay assessor system was introduced as a mechanism to involve ordinary citizens in the administration of justice and to increase the legitimacy of the system in the eyes of the majority of the people

In fact, the assessors had more jurisdiction than jurors would, as assessors gave input in determining guilt and sentence, while juries traditionally only determined guilt.

System started 800 years ago

Staff Reporter

JURIES were introduced by King Henry II in England more than 800 years ago so that, instead of proof by battle, 12 "free and lawful men of the neighbourhood" could settle disputed land claims

Juries became part of the English criminal justice system about the same time

The system was introduced to South Africa in 1828, in the Cape, at the same time as English criminal procedure and rules of evidence were adopted

Before the system's demise here, South African juries consisted of nine white men. A majority of at least seven was required in order to reach a verdict

Women could apply to be enrolled on a special list of women jurors.

The Minister of Justice could order that trials on charges including treason, sedition, public violence, riots, illicit dealing in gold or precious stones, sales of liquor to blacks or offences across racial lines be heard by a judge only, without a jury

Natal lawman defiant on transfer attempt

(252) (252) ARG 5/10/95

Political Correspondent

PRETORIA. — Controversial KwaZulu-Natal Attorney-General Tim McNally says he will resist any attempt to transfer him from the province to another area.

He was responding to a report that the parliamentary justice portfolio committee may recommend a reshuffle of Attorneys-General following last week's hearings of A-Gs at the Union Buildings.

One option which has been raised by committee members is to transfer Mr McNally to the Johannesburg post vacated by Klaus von Lieres und Wilkau earlier this year.

"I will not consent to any move from KwaZulu-Natal. My appointment lasts until I reach the age of 65," said Mr McNally, who has been in the province since 1992 — when he was transferred from the Free



Tim McNally

State by then Minister of Justice Kobie Coetsee to fill a vacancy in Maritzburg.

He said an A-G could only be transferred when a vacancy had to be filled and had to take place with the person's consent. He had not applied for the Johannesburg post and had no intention of doing so.

Mr McNally has been at the centre of a row over his al-

leged failure to prosecute high-profile hit-squad cases in KwaZulu-Natal.

Inkatha Freedom Party spokesman Ed Tillet yesterday slated the suggestion to move Mr McNally as a politically motivated attempt to get the A-G to surrender his legal independence.

Mr Tillet described last week's hearings by the parliamentary justice portfolio committee as "McCarthyism" and added that Mr McNally had acquitted himself well before the hostile committee.

Spokesman for the National Association of Democratic Lawyers (Nadel) Krish Govender said a uniform standard of justice had to be maintained for the whole country to send a clear signal to criminals in every province.

"If the standard of work of an A-G is deemed to be unsuit-

able for a particular area, I don't see how he can be fit for another area."

Mr Govender said it would be wiser to move such a person to another less controversial post in the state legal system.

Acting Johannesburg A-G Kevin Atwell said the vacancy should be filled sooner rather than later as important long-term decisions needed to be taken.

According to a member of the justice portfolio committee, Senator Bulelani Ngcuka, a report will be drawn up following last week's hearings at the Union Buildings, where the country's A-Gs testified on their work.

The viability of a number of options would be considered, including the reshuffling of A-Gs and the establishment of a parliamentary commission of inquiry to look into the performance of A-Gs, he said.

Panel seeks clarity (252) on McNally evidence (251)

CT5/10/95

THE joint parliamentary committee on justice is to meet today and tomorrow to discuss the evidence given by the attorneys-general last week, but the possibility of a major shuffle has not been discussed.

This was disclosed yesterday by the secretary of the portfolio committee on justice, Mr Willie Hofmeyr.

It is understood that because of concern about the situation in some attorneys-general offices, various options, including the possible transfer of the kwaZulu/Natal attorney-general Mr Tim McNally have been suggested in the parliamentary committee.

Mr Hofmeyr said a number of issues arose during the evidence given to the committee, but this was merely the start of a process. "What we will do now is take the process forward from the evidence we heard."

When the committee meets next week, it will hear evidence from the Department of Justice, the Public Service Commission and the Department of Public Works.

"We have to take a decision on unresolved issues, included unan-

swered questions arising out of the evidence given by Mr McNally," Mr Hofmeyr said.

Mr McNally says he will resist any attempt to transfer him.

"I will not consent to any move from kwaZulu/Natal. My appointment lasts until I reach the age of 65," said Mr McNally.

He was transferred in 1992 from the Free State to fill a vacancy in Maritzburg. He said an attorney-general could be transferred only when a vacancy needed to be filled and had to take place with the person's consent.

'McCarthyism'

Inkatha Freedom Party spokesman Mr Ed Tillet yesterday condemned the suggestion of moving Mr McNally. He said it would be a politically motivated attempt to get the attorney-general to surrender his legal independence.

Mr Tillet described last week's hearings as "McCarthyism" and said Mr McNally had acquitted himself well before the "hostile" committee. — Political Staff, Own Correspondent

Organiser of justice 'essential'

Kevin O'Grady
(252)

THE appointment of a national attorney-general to co-ordinate SA's 11 prosecuting authorities had become "imperative" to satisfy the equality clause in the constitution, parliamentary justice committee chairman Johnny de Lange said yesterday.

The issue, and the possible reshuffling of the attorneys-general, were likely to be discussed at a joint parliamentary justice committee meeting next week.

Hearings were held recently at which the attorneys-general were called to account for their actions and policies. De Lange said it "came very strongly to the fore" that there were "11 attorneys-general with 11 different ways of prosecuting".

KwaZulu-Natal attorney-general Tim McNally came in for criticism at the hearings for failing to prosecute in a number of high profile murder cases.

De Lange said a situation where a person was likely to be prosecuted for an offence in one province and not in another would contravene the right to equality. Thus it was necessary to have an independent national attorney-general to co-ordinate policy.

At the hearings Western Cape attorney-general Frank Khan insisted Justice Minister Dullah Omar fill the role.

Senate justice committee chairman Mohseen Moosa said yesterday arguments in favour of a reshuffling were likely to emerge at next week's meeting.

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CAPE

Law Society may expose attorneys

Staff Reporter

(252) ARG 6/10/95
WESTERN Cape attorneys who are guilty of impropriety and whose reputations have been protected by secrecy clauses contained in the rules of the Cape Law Society precluding publication of their names, could find themselves exposed from Monday.

But the 24 attorneys in the eye of the recent storm over allegations of irregular payments to deeds office officials will escape being named, unless they are prosecuted by the attorney-general in open court.

The society's council has published notice of motions to go before the annual meeting starting on Sunday — including one empowering the council to publish its determination and punishment at the conclusion of disciplinary proceedings.

Motivating the motion, the council said there was presently "wide-ranging" debate on whether findings and punishments should be published "even in respect of transgressions such as the failure to reply to letters."

Public debate on the issue reached a crescendo in August, when it was alleged in evidence before the Cape Town

Regional Court that a former senior member of the Deeds Office had taken bribes totaling R30 000 from 12 Cape Town law firms.

The Cape Law Society subsequently confirmed that 20 attorneys had paid state officials to help them register property transfers.

According to Cape Attorney-General Frank Kahn — who has said he intends prosecuting as many of the attorneys as possible — further investigation has uncovered the names of another four attorneys.

According to the law society, the initial 20 attorneys were found guilty of professional misconduct and fined a total of R92 000.

But their names could not be published because the society's rules forbade it.

The society was widely accused of being involved in a "cover-up", an accusation consistently denied by the president, Andries Landman.

The effect of the proposed amendment will be that the society will have to publish every disciplinary finding and punishment in the future. The proposed amendment will not be retrospective.

Legal worry on juveniles

□ Differences in treatment of accused youngsters



Picture: OBED ZILWA, The Argus

CHRISTMAS FAIR: Fana Taliwe, 5, goes through some of the goodies that The Argus/Spar Christmas Hamper Fund will be handing to underprivileged families to brighten up their Christmas lunch.

Cheer for needy of Cape Town

Staff Reporter

THE jingling of Christmas bells may be three months away, but The Argus/Spar Christmas Hamper Fund is already set to bring a little cheer to 4 000 underprivileged families.

The fund, started three years ago, raises money to buy food hampers for the needy.

Argus promotions manager Beryl Eichenberger said "Christmas is traditionally a time of giving, but for many it is also a bitter reminder of their poverty."

Already The Argus and Spar have each donated R2 100 to the fund,

which will buy 120 hampers.

Each hamper, valued at almost R50, will contain biscuits, soup, tea, jelly, sliced peaches, pilchards, rice, macaroni, peas, sugar, baked beans, and much more.

The parcels will be packed by schoolchildren on December 6 and the beneficiaries — Cafda, the Nyanga Welfare Centre, TB Care, Mfesane, Kwana Temba and the Marconi Beam community — will distribute them to the most destitute families on their feeding lists.

Support the fund by sending money to The Argus/Spar Christmas Hamper Fund, Box 97, Cape Town, 8000.

Staff Reporter

NATIONAL statistical research unveiled at a juvenile justice conference in Cape Town reveals there has been very little uniformity in the State's approach to dealing with young offenders. ARG 6/10/95

South Africa is currently debating the reform of the juvenile justice system — aimed at formulating uniform, national policy in keeping with a human rights culture.

Several reforms — notably the abolition of whipping and the enactment of legislation aimed at keeping as many juvenile offenders out of prison — have already been achieved.

The research — compiled by members of the Community Law Centre at the University of the Western Cape, and undertaken in the Eastern Cape, KwaZulu-Natal, Venda, Vredendal, Western Cape and on the East Rand — was based on cases in June and July last year, prior to the above-mentioned reforms.

It was presented at a conference hosted by the Community Law Centre in Sea Point yesterday.

A total of 970 cases involving alleged juvenile offenders — 517 of them aged between 16 and 18 — formed the basis of the research.

The youngest juveniles in the sample were eight years old, and all the cases researched followed normal magistrate's court appearances. Nearly 90 percent of cases involving alleged offenders aged 10 or younger were converted to children's court inquiries.

Boys in the sample outnumbered girls by a ratio of nearly 10 to one.

There were marked differences in the number of appearances by each accused between the various regions surveyed.

For example, all cases in the Eastern Cape were disposed of within seven appearances, some Western Cape cases involved 15 appearances, and one even had 22.

Guilty pleas were also unevenly distributed across the regions with almost 80 percent of the Vredendal accused pleading guilty, while the figure was only about 12 percent in East Rand.

About half of the Western Cape accused pleaded guilty.

The majority of accused — nearly 60 percent — appeared in court without legal representation, but here, too, there are regional variances.

Less than 10 percent of the accused in the Eastern Cape and Vredendal had legal representation, rising to more than 40 percent in the Western Cape.

Of the total number of cases, more than half were withdrawn — none in Vredendal, about half in KwaZulu-Natal, and more than half in the Western Cape.

Of the remaining cases, almost one in six resulted in an acquittal.

Researchers concluded that sentencing disparities, and uneven arrest practices and rates of acquittal, were areas of concern.

They said: "The desirability of courts using bail as a means of securing the release of juveniles will warrant debate and possible policy guidelines.

"Numerous remands and delays, prevalent in certain jurisdictions, should be a matter of concern."

Lawyers' secrecy clause may go

A CONTENTIOUS "secrecy clause" which protects the identity of attorneys found guilty of unprofessional conduct by the Law Society of the Cape may be scrapped when the society meets at the Wilderness from Sunday to Wednesday.

The society was criticised earlier this year when it kept the names of 20 attorneys secret who had been fined by a disciplinary committee

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for making payments to Deeds Office officials to expedite the registration of bonds

A motion to amend the clause would be tabled on Monday

The society would also be asked to decide whether it should open its disciplinary procedures to the public and whether attorneys should be allowed to tout for business — Staff Reporter

By CARMEL RICKARD

DISTINCTIVE personalities are emerging on both sides of the otherwise unremarkable Constitutional Courtroom.

Public attention often focuses on those judges who have become well-known for their colourful repartee, but three advocates in particular have already made their mark.

Wim Trengove SC, Jeremy Gauntlett SC and Gilbert Marcus have argued more cases than anyone else so far — between them they have appeared in about a dozen cases of the 16 heard by the court since February.

They share a command of key foreign cases and the principles of developing constitutional jurisprudence, but the trio could hardly be less alike in manner, background and style of argument.

Tall, patrician Mr Trengove, 46, grew up in a judicial household. His father, Judge John

Trengove, capped a distinguished career on the Appellate Bench with a term on the Constitutional Court. Perhaps this ex-



Jeremy Gauntlett

An English style dotted with acerbic remarks and full of quotable lines

Assisted by Mr Marcus, he was first counsel to address the Constitutional Court when it considered the death penalty.

He comes from a typical Pretoria-Afrikaner background. During his university days he moved from being a conventional Nationalist to a position somewhere beyond the then Progressive Party.

After graduating with an LLB (*cum laude*), he was admitted to the Johannesburg Bar, and took silk in 1987. He has been chairman of the Johannesburg Bar Council and the General Council of the Bar.

Mr Trengove appeared in the 1985 Kamemeyer commission of inquiry following the shooting of 15 people by police at Langa. He also appeared for Dr Wendy Orr, when she asked for an interdict against the Port Elizabeth security police to stop their assaults and torture of detainees, and he acted for Anton Lubowski's family at the inquest into

an associate professor

Of the three, he argues with most passion. A colleague comments that Mr Marcus is most likely to persuade an outsider that his argument is true.

He has a widely diverse practice and has established a strong name for his human rights work. He appeared in both the Delmas and Maritzburg treason trials in the 80s, as well as in a number of state of emergency cases.

Mr Marcus has become a leading counsel on freedom of expression issues. He has fought more than 100 appeals before the Publications Control Board for a variety of clients, including the soft-porn magazine *Hustler*.

His argument in court displays his humour, with a relaxed style that is both lucid and accessible. Traces of this humour flavour his private life — the distinctly Jewish Mr Marcus was a South African junior champion bagpipe player, and still judges competitions.

And perhaps when he called his golden labrador Barrister, it was a reference to his own bark being worse than his bite.

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Three unlikely musketeers of the bar



Gilbert Marcus

A relaxed approach in court that displays traces of humour and is both lucid and open

international awards. A Rhodes Scholar, he studied at Stellenbosch, Oxford and Harvard. He is a member of Grays Inn, London, and colleagues say his style is the most English of the three.

He comes across as academic, yet his argument is punctuated with acerbic remarks and quotable lines.

The recent Western Cape government case illustrates this. He complained about remarks by Peter Marais, the Western Cape Minister of Local Government, who had said his side was sure to win the case unless the court's decision was party political.

Mr Gauntlett said the court should censure these remarks, as they implied that a judgment in favour of the central government would amount to judicial dishonesty. "The court can obviously distinguish between a bee sting and the bite of an insignificant gnat, but it is not a light matter and we would like

the Legal Resources Centre, where he is now director of its constitutional litigation unit.

Mr Gauntlett, 45, slightest of the three in stature, has a brilliant academic background, studded with

the Swapo leader's death. He has also held retainers for Anglo American, De Beers — and Cosatu.

Earlier this year he assailed many colleagues when he gave up his lucrative practice and moved to

the court to indicate its extreme censure."

He has fought an impressive list of human rights cases as well as commercial cases.

Youngest of the three, Mr Marcus, 39, is perhaps

the most colourful. He graduated from Wits before being awarded an LLM (*cum laude*) at Cambridge. He was admitted to the Johannesburg Bar in 1983, and formerly taught at Wits when he became

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Wim Trengove

Spare, elegant and precise with no extra words, no clever lines for the gallery.

Human rights (252) men and judge in row over money

By MARLENE BURGER

A FURIOUS row has broken out among members of Lawyers for Human Rights over two payments made to Brian Currin, the former director of the organisation, and Sipho Mahamba, his associate in a consultancy.

The row became public when Ahmed Motala, a lawyer in the organisation, sent staff a memorandum which said LHR had paid off R56 000 of Mr Currin's personal income tax.

Another R30 000 had been paid to an acting judge, Mr Acting Justice Jules Browde, then chairman of the organisation's national council, to settle an ex-employee's claim for more pay. This had been done without the knowledge of the organisation's management.

The LHR is funded mainly by donations from the European Union, USAID and several other governments.

Mr Motala sent the memorandum on the last day of his employment with LHR, saying he had "agonised" over whether to share his knowledge with his colleagues, but had finally decided to do so in the interests of "justice and equity".

Mr Motala claimed that when the LHR's financial controller, Paul Ledwaba,

had adopted the attitude that "it was a loan, but not repayable as LHR owed him money".

No explanation had been given, according to Mr Motala's memo, for a May 1994 cheque for R30 000 issued to Mr Browde.

Mr Currin, who left LHR at the end of last year, said this week that there was no need for Mr Browde to account for either payment, "as the auditors were fully informed at the time".

He admitted that Mr Ledwaba had been given "incorrect information" about the tax payment at the time, "because it was a personal matter, and I'd do it again".

"When the taxes were paid, I already knew I'd be leaving and Mr Browde was quite happy that the amount be offset against my final package, which I estimated would be around R100 000," he said.

His calculations included payment for untaken annual leave, long leave, various personal effects he proposed to leave behind

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Row in human rights body (252)

⇨ From Page 1

and expense claims dating back four years.

Mr Currin says the payment to Mr Mahamba was made after he threatened to sue the organisation to recover the difference between the salary approved in 1993 by the management committee and what he had expected to be paid.

Mr Mahamba left LHR after nearly two years and presented Mr Currin with a claim for R56 000 for additional remuneration.

"Things got somewhat ugly and I negotiated with him until he agreed to accept a payment of R30 000," Mr Currin said.

However, he said, he knew the national directorate, which was responsible for the day-to-day management of LHR, would not authorise the payment. So he approached Mr Browde, who agreed to issue a personal cheque to Mr Mahamba after the money was deposited by LHR. The payment went through LHR's books as a consultancy fee.

Since leaving LHR, Mr Currin has established SA Constitutional Consultancy in association with three legal firms, in Johannesburg, Cape Town and Durban. The company offers advice and a "broad range" of constitutional services to local and international clients. Mr Mahamba is an associate.

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Approached this week, Acting Judge Browde — who is heading a commission of inquiry into alleged irregularities in public service promotions shortly before last year's election — initially said he had "no recollection of ever receiving such a cheque in my life" and had "never been used as a conduit" for payment to Mr Mahamba.

"If Mr Mahamba was owed the money, the cheque would surely have been paid to him direct," he said. "I can't imagine why it should have been done any other way."

Two hours later, after obtaining a copy of Mr Motala's memorandum, Judge Browde said he "now recalled" the circumstances of "what was a very simple matter", and confirmed the transaction.

Jody Kollapen, Mr Currin's successor, said he was deeply distressed by the situation and that LHR staff were quite rightly concerned.

"I have been given certain explanations, and I have to work with them," he said.

"My biggest worry is the possible effect these revelations could have on the future funding of LHR and on the reputation for integrity it has built up over the years.

"My inquiries show that there is no question of funds being misappropriated, but I do not consider the arrangements that existed

between Brian and the national council to have been satisfactory.

"The present management will take steps to ensure that nothing like this happens again."

He said that, by his calculation, Mr Currin owed LHR R5 000 and he had been assured that it would be paid within the next few weeks.

The matter is still to be considered by LHR's Board of Trustees, elected five weeks ago and yet to hold its first meeting.

BRIAN CURRIN

tried to follow up the payment of Mr Currin's taxes last year, he was told by the organisation's auditors that it was "none of his business".

Confronted about the tax payment, according to Mr Motala, Mr Currin admitted he had lied to Paul to obtain the money and

Ga-Rankuwa courts 'under siege'

By MPH0 KOBUE

MAGISTRATES and prosecutors in Ga-Rankuwa who are allegedly being continuously harassed by taxi operators and others have called on the authorities to increase security at the courts

The plea followed a recent incident in which a group of taxi operators

blockaded the entrance to a regional courtroom

The taxi operators claimed that one of three accused appearing on a charge of illegal possession of a firearm, had shot a colleague and threatened to shoot others.

The group allegedly abducted one of the three accused

The accused was rescu-

ed by police - but the group later barred his attorney (a Ms Groenewald) from leaving the courtroom after she had asked the magistrate to withdraw her client's bail for his own protection

Magistrate AC Klopper this week confirmed the incident and said police had to be summoned to defuse the situation and escort the attorney

out of the township

Sources told City Press the taxi operators had manned another roadblock in the township

They later allegedly abducted the other two accused in the case and assaulted them. "The problem of taxi operators harrasing court officials has been going on for some time now," Klopper said.

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The document that caused all the trouble

BY CYRIL MADLALA

AT THE heart of this week's political bloodletting in the Kwazulu Natal legislature was a motion tabled by the Inkatha Freedom Party instructing the legislature's constitutional committee to draft a new provincial constitution on the basis of the party's so-called Green Paper

This document lists 12 fundamental principles which the IFP believes should be the cornerstone of the province's constitution. Other parties had had their own position papers, but after negotiations a working document on compromise constitutional principles was drafted at the end of August

Negotiators then had to take this document back to their organisations for mandates. The working document was rejected by the IFP, and its national council last weekend instructed its members to push through the provincial legislature the party's own proposals

The main contentious principles in the Green paper are

- Calling the province "the Kingdom of Kwazulu Natal" and establishing a constitutional monarchy. The DP wants a monarchical structure of traditional rulers for the Zulu people, rather than a monarch for the territory of Kwazulu Natal. The NP wants the province called "Province of Kwazulu Natal"

- A "sunrise" clause wish-listing additional powers that Kwazulu Natal

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should acquire when the new national constitution allows for it. The DP and the NP believe outstanding powers should be part of a schedule attached to the provincial constitution rather than part of the constitution itself, and should be negotiated before becoming part of the provincial constitution. The ANC prefers the existing arrangement whereby provinces are given specific powers and the remainder rests with central government.

- A provincial judiciary independent from the national judiciary and an independent provincial constitutional court. The other parties are opposed to this, but the NP does want the province to have the right to nominate one or two judges to serve on the national constitutional court when it deals with matters that concern Kwazulu Natal

- The principle that provincial powers cannot be overridden by national powers. The ANC feels that there should be concurrent powers to enable central government to set national standards; for example on the payment of traditional leaders

- The establishment of a provincial militia.

- Opposition parties are demanding clarity on the relationship between the envisaged provincial police force and the national police service. The ANC has expressed fears that the IFP wants to use the provincial police for political ends, as it says, happened in Kwazulu

The fight for the truth

By CAROL PATON

A TOTAL of 186 people have so far been nominated to serve on the Truth and Reconciliation Commission

They include prominent academics, lawyers, church leaders and human rights campaigners

Among the most notable are Alex Boraine, a founder of the Institute for a Democratic South Africa, former Black Sash campaigners Mary Burton and Sheena Duncan, lawyers Denis Davis, Geoff Budlender, Kathy Satchwell and John Dugard; and

church leaders Desmond Tutu, Frank Chikane, Stanley Mogoba and Charles Villa-Vicencio

Among the academics nominated are Steven Friedman, Robert Schrire, Mervyn Shear, Colin Vale and David Welsh

Other nominees include psychologist Saths Cooper, SA Institute of Race Relations director John Kane-Berman, violence monitor Mary de Haas and publisher Shelagh Gastrow

The deadline for nominations has been extended to October 14.

A panel appointed by the president will then draw

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up a short-list of 40 candidates considered to be impartial and of high moral integrity and not high-profile members of a political party. Candidates should not be people who may apply for amnesty to the commission.

The panel will hold public interviews of the 40 candidates and recommend 25 to the president for selection as commissioners

Mr Mandela, in consultation with the cabinet, will make the final selection of between 11 and 17 commissioners. He is also likely to include two international members

All Truth Commission nominees

THIS is the full list of present Truth Commission nominees
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- Aboobaker, Nazcer, Adams, Freda
- Akhalwaya, Ameen, Auerbach, Franz, Augustine, Archibald, Aziz, Khalil, Babro, Louis
- Basson Deon, Banda, Dick, Bhana, Surendra, Blignaut, Gerald, Boraine, Alexander, Bosman, F, Budd, Avril, Budlender, G Bult, M A, Burton, Mary, Cachalia
- Mohamed, Cele, Sqaliso, Chikane, Frank, Christy, Louise, Murray, Cooper, Saths, Davis, Lynn, Coetzee, Culters, Charl, De Lange, JP
- Dennis Inderial, Davis, Denis, De Lange, De Haas, Barney, De Viliers, Nicholas, De Dugard, John, Duncan, Sheena, Du Toit, Erasmus, H J, Farlam, I G, Finca, Bongani, Frankel, W H, Friedman, Steven, Frost, Shirley, Gastrow, Shelagh, Gevisser, David, Govender, S M Govindsamy Poobalan, Gumbi Mzamo, Harris Anne, Hartland, Caryl, Heath, W H, Hufkie, Frederick, Hilton, Lanyon, Gifford, Irvine, George, Isaacson, Ben, Ismail M I E, Jobson Marjorie, Jozana, Mbuyiselo, Kane-Berman (no first name given) Katz, Anton, Kearney Patrick, Kerchhof, Peter, Khampepe, Sis, Khumalo, Bongani, Klein, Hans, Klein, M, Kleinschmidt, Horst, Krishna, P M, Langenhoven, Pieter Lapsley, Michael, Lifton, M, Lyster, Richard, Mabuza, Wesley, Mayke, Pumzile, Majodina, Thole, Makapela, Refilwe, Makapela
- Martindale, Robert, Manthata, Thomas, Mbaba, Justice, McClaren, Hugh, Medupe, Sidwell, Meer, Shehnaaz, Meltz, Ronald, Menell, Irene, Mlonzi, S, Mngojana, Z M, Mogoba, Stanley, Mohammed, E, Mokoeni, Rafceek, Mokhezi-Parker, Joyce, Moosa, Essa, Alois, Molefi, Joseph, Moosa, Anne Mouton, Glen, Motata, Nkola, Mollatjie, Munnik, Margaret, Mouton, Wynand, Mpati, Lex, Nicholas, Jan, Musikanth, Selwyn, Mounwekhulu, Ranwedzi, Nelson, Roy, Neng, Ngwan, Gabriel, Nettleton, Geoffrey, Ntsebeza, D B, Nxumalo, Siphon, Nyati, Leonard, Nzimande, R M, Oglethorpe, Ann, Olivier, Willem, Omar, Rashid, Owen, Catherine, O Connell, Athlene, Patel, Essop, Peterse, Jude, Pilsa-Seroke, Joyce, Pillay, Barathanathan, Pillay, Thumb, Richard, Rory, Prinsloo, Dione, Ququ, Daniel, Ramdhan, Narissa, Rander, Carmel, Richard, Rous, Rice, Ruth, Rickard, Daniel, Richard, Rous, Rose, Desmond, Rosenthal, Pierre, Rwelamira, souw, Neil Roussouw, Harry, Senti, Medard, Sarkin, Jeremy, Satchwell, Kathleen, Schrire, Robert, Schwarz, Harry, Senti, Willie, Simelane, N, Sithole, Frank, Shear, Mervyn, Sigodi, Sibongile, Simons, Mary, Simpson, Graeme, Sithole, MNS, Sithole, SizaKéle, Small, Adam, Soga, Mtebeleli, Soti, Vasantri, Sooka, Yasmun, Stiles, Sean, Strauss, Hendrik, Swart, Ray, Taylor, Vuyisile, Thomashousen, Andre, Molefe Tshabalala, Torgbor, Edward, Tsele, Molefe Tshabalala, Maqaleni, Tutu, Desmond, Vabaza, Mxolisi, Vale, Colin, Vally, Hanif, Van der Merwe, S, W, Van der Merwe, Hendrick, Van der Westhuizen, J, Van der Westhuizen, Kobus, Van Rieenan, Michael, Villa-Vicencio Charles, Von Schmiding, Kurt, Wade, Yusuf, Welsh, David, Winslow, Tom, You, Tu-fo, Zulu,

Truth booty: Few black nominees

Source: 9/10/95 (252)

By Rafiq Rohan
Political Correspondent

FEWER THAN A THIRD of the 185 people already nominated to serve on the Truth and Reconciliation Commission come from the black community

The majority are white and most of the black nominees, with one or two exceptions, do not come with high-profile images. This could impact on the final choice of commissioners

One of the nominees has warned that it would be unwise to have a commission – set up to probe crimes of the apartheid past against victims who were mainly black – that was not black in character

Prominent names from the black community include those of Archbishop Desmond Tutu, the Reverend Frank Chikane, Tom Mankata, Harry Nengwekhulu and Dumisa Nisebenza

Included on the list of nominees are the Black Sash's Sheena Duncan and Mary Burton, academics John Dugard, Colin Vale and Denis Davis and lawyers Kathy Satchwell and Neil Rousooy

Other prominent nominees are Alex Boraine, Charles Villa-Vicencio, Harry Schwarz, Rory Riordan and Sheilagh Gastrow

Tom Winslow of the Trauma Centre for the Victims of Violence and Torture, who is also a nominee, said it was important that a "grass-

roots perspective" emerged when the final selection was made.

"The list of nominees appears to be focussed on whites and coming from a white perspective. It is important that the commission be Africanised in terms of language, voice and values," he pointed out

So far, nominations have mainly been made via organisations, with the coordinator of the commission, Mr Denzil Potgieter, recently saying a number of the nominees had not formally accepted their nominations

Of the final list of nominees, 40 will be short-listed and between 11 and 17 commissioners will be selected.

In terms of the Truth and Reconciliation Bill, candidates should be people "able to

make impartial judgments; be of moral integrity with a known commitment to human rights, reconciliation and the disclosure of truth, must not be a high-profile member of a political party and should not be an applicant for amnesty in terms of legislation"

This recommendation therefore makes the nomination of former high-profile politicians such as Harry Schwarz, Alex Boraine, Wyand Malan and Ray Swart questionable

The body will have a two-year life-span. The two front-runners to head the commission are clergymen Tutu and Chikane. Nominations can still be made up to October 14 to the Ministry of Justice and all must be accompanied by CVs of the candidates.

● See all names on page 2.

Inquiry into LHR loan to ex-director

(252) Star 9/10/95

■ STAFF REPORTERS

Two financial transactions at Lawyers for Human Rights (LHR) last year are to be subjected to an independent investigation, the former LHR head Acting Justice Jules Browde, SC, said yesterday.

The transactions caused a row among members and involved payments to Brian Currin, former director of LHR and Spho Mahamba, currently his associate in SA Constitutional Consultancy. Currin was given a loan of R58 000 to pay a tax debt and Mahamba was paid R30 000, apparently owing to him.

According to Browde, the transactions were revealed in a memorandum to LHR staff by lawyer Ahmed Motala, who had been disgruntled about his unsuccessful application for the national directorship of LHR.

Current LHR director Jody Kollapen reportedly said last week LHR staffers were quite rightly concerned.

He added that while his inquiries did not point to misappropriation, he did not consider the arrangements that existed between Currin and the LHR national council to have been satisfactory.

Browde responded yesterday that he was satisfied there is no basis for the "inferences of dishonesty or irregularities" made by Kollapen, but was requesting an independent investigation into the payments.

Browde explained that Currin approached him, the director, for a loan to settle a tax debt. Because the loan was less than the departure package owing to Currin by LHR, he (Browde) had no hesitation authorising it.

'Shambles in courts' comes under scrutiny

(252) ARG 9/10/95

By ROGER FRIEDMAN
and ANTON FISHER
Staff Reporters

SALARIES, vacancies and affirmative action in the Department of Justice — aspects blamed by some for low morale in the state legal system — will come under close parliamentary scrutiny

And a top state advocate has slammed working conditions in magistrate's courts, saying there was an alarming turnover of staff within the magistrates' and prosecutors' ranks.

The scrutiny of conditions in the Department of Justice follows a statement by Pretoria Attorney-General Jan D'Oliveira to the parliamentary justice portfolio committee that President Mandela's anti-crime campaign would come to nought if non-commensurate remuneration and career uncertainty were not addressed

The committee has called Justice director-general Jasper Noeth to give evidence about crucial unfilled vacancies and affirmative action in the department and the Public Service Commission (PSC) to explain the government standpoint on affirmative action and salary scales.

Writing in the latest edition of the attorney's journal *De Rebus*, senior state advocate and lecturer at the Department of Justice College in Pretoria Leon Dicker gave an insider's view of the shortcomings in the magistrate's court system

He said it was disappointing no funds had been allocated from the RDP budget for the justice administration

He said not only were working conditions atrocious, but the general treatment of offi-

cial by the Department of Justice was just as bad — and magistrates were, generally, inadequately qualified.

"As has been pointed out by the media, the physical conditions at most magistrate's offices are disgraceful," said Mr Dicker.

He felt the first problem was the minimum requirement for appointment as a magistrate, which was an approved three-year law degree or diploma

"The usual qualification held by a magistrate is either a BLur or a Diplur. While these are good qualifications, they are generally inadequate as a basic preparation for the civil courts

"In addition, the one subject in which good grounding is needed, civil procedure, is neglected by many universities. What is more, most universities concentrate on Supreme Court procedure at the expense of magistrate's court procedure," Mr Dicker said.

The salaries paid to magistrates and prosecutors were probably sufficient to attract newly qualified graduates, but not to keep them in service

"There is an alarming staff turnover, particularly within the ranks of magistrates and prosecutors. The average level of experience of prosecutors in both Johannesburg and Pretoria is somewhere between three and six months," he said.

"We have realised that the RDP is meaningless where lawlessness is rampant. A properly functioning system of justice is vital to the RDP."

It was therefore deeply disappointing that no funds were allocated from the RDP budget to the administration of justice.

Lawyers' code of secrecy scrapped

(252) AAG 9/10/95

ROGER FRIEDMAN
Staff Reporter

WILDERNESS. — Attorneys found guilty of unprofessional conduct by the Cape Law Society will no longer have their reputations protected by the society's rules prohibiting publication of their names.

A motion stipulating that the names of attorneys found guilty of unprofessional conduct would be named in future was accepted early this afternoon at the 112th annual meeting of the society

But attorneys found guilty by the society of minor offences and given an official warning, a reprimand or a fine of less than R500 would not automatically have their names published

Their names and offences would be available on application to the society

The debate was sparked by the revelation of irregular payments by attorneys to deeds office officials

The amendment will not be retrospective.

Speaking as members voted on whether to accept the proposed amendment that only serious offences would be automatically published, society president Andries Landman said he had "no doubt" that secrecy was about to be consigned to the scrapheap

David Kessler of Bellville said people had committed suicide in the past due to sensational reporting

Richard Volks of Cape Town said he believed overseas countries did not publish information on members found guilty of any offences

"Why have we got to be holier than the Pope," he asked

Frikke Swanepoel of Vredendal said it would be ridiculous for members to give in to media and public pressure.

"Now we are suddenly scared and must give in to this print devil," he said

But Tony Hardy of Cape Town said he was surprised that attorneys could get so "uptight" regarding publication.

Society was entitled to know whether the attorneys they consulted were honest, he said

And Dumisa Ntsebeza of Umtata said attorneys should take into account that the demand for publication was not a media demand but a result of "the times we live in"

"Transparency and openness are not only buzz words, but demands of society.

"Justice should be seen to be done"

● The reason for the haggling over what form the amendment to the rules should take is that many attorneys feel it would not be in the profession's interests to publish all offences, including minor ones such as failing to answer correspondence

Session to ensure local elections

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ARG 9/10/95

PATRICK BULGER
Political Staff

PARLIAMENT will meet for a four-day session this week to pass legislation ensuring local government elections go ahead as planned on November 1.

The Local Government Transition Act Second Amendment Bill will be considered by parliament's portfolio committee on provincial and constitutional affairs before going before the national assembly and senate on Wednesday and Thursday.

The bill amends crucial national legislation on the local government elections and reinstates controversial proclamations on Western Cape demarcations made by President Mandela earlier this year.

The proclamations were ruled unconstitutional by the Constitutional Court because Mr Mandela, rather than parliament, had issued them.

This week's sitting has set the scene for a bruising battle between the African National Congress and the National Party, which controls the Western Cape government and which brought the original court application.

Deputy-President and NP leader F W De Klerk has warned that his party could return to court to contest those aspects of the legislation which reinstate Mr Mandela's proclamations.

If the ANC does not agree to come to a deal on the Western Cape issue the NP will probably oppose the bill.

'Make litigation more accessible'

RONALD MORRIS

WILDERNESS: The fact that litigation is too expensive for ordinary citizens is one of the reasons, if not the most important one, why civil courts are inaccessible to so many people, says the Judge President of the Cape, Mr Justice Gerald Friedman

Speaking at the 112th annual general meeting of the Law Society of the Cape, Judge Friedman called for an urgent commission to inquire into all aspects of access to justice in SA and recommend ways to make it more accessible

Mr Andries Landman, president of the Law Society of the Cape, referred to widespread criticism of the society's refusal to make public the names of attorneys found guilty of misconduct

"The time is overdue for the law societies to be more accessible to the public and to the media to prove to all that the profession is controlled by honest and efficient elected counsellors," he said

(252) ET 9/10/95.
The society will decide today if in future it will publish findings, names and punishment in cases in which members are found guilty of unprofessional conduct

Judge Friedman said the high cost of litigation could not be blamed on professional fees charged by the legal profession. An important factor was the manner in which civil proceedings were dealt with, he said

Some of the problems he identified were non-compliance with the rules of court and pleadings that were often obtuse and failed to identify the real issues clearly

Another problem was that expert evidence tended to cloud points in dispute rather than crystallise them

Judge Friedman said that what was required if litigation was to become accessible in the sense of being speedy and cost-effective, was a "hands-on" system of case management in which the courts, and not the litigants, were in control of each step in the process

Bill of Rights forum breaks new ground

(252)
David Greybe

BD 10/10/95

CAPE TOWN — The Constitutional Assembly's deadlock-breaking committee yesterday adopted more than half the clauses of a new Bill of Rights, but deferred discussion on the most controversial ones to today.

MPs predicted, though, that consensus on some issues would be reached only early next year after meetings between some parties.

Outstanding issues included abortion, the death penalty, religion, economic activity, labour relations, property, education, academic freedom, language and culture, administrative justice and the limitation of rights. The NP and DP led the opposition against the ANC on most outstanding issues.

The draft Bill of Rights differs from the current Bill in that most clauses have been expanded, and in some cases strengthened.

Some clauses agreed to were

- Unrestricted right to freedom of speech and expression and freedom to receive and impart information and ideas.
- Rigorous protection of the environment through "reasonable measures";
- A children's rights charter.
- Access to "any information" held by the state, as well as any information "held by another person and that is required for the exercise or protection of any rights", and
- Strict guidelines for the declaration of states of emergency and international

Continued on Page 2

Bill of Rights

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ally accepted rights for detained, arrested and accused persons.

Parties also agreed on a detailed equality clause, political rights, the rights of assembly, demonstration and petition and freedom of association, movement and residence.

Senior ANC negotiator Mohammed Surty said: "By and large we have done extremely well. We finalised more than 50% of the Bill of Rights."

He confirmed the ANC had dropped its opposition to a property clause. However, it had to be linked to land restitution. "There ought to be a property clause with certain limitations."

The ANC argued against the retention of a clause which guaranteed the right to economic activity because, Surty said, no other constitution embodied a similar clause. The NP and DP argued strongly for its inclusion.

Surty was confident that ANC opposition to an employer's right to lock out workers would prevail after it won the backing of the PAC and African Christian Democratic Party.

Judge questions access to justice

(252) Star 10/10/95

■ BY OWN
CORRESPONDENT

Cape Town - Civil trials have become so expensive and so mired in complex procedures that access to justice is being denied to all but the very wealthy and very poor who qualify for legal aid or relief, says Judge President of the Western Cape, Mr Justice Gerald Friedman.

In his opening address to the Cape Law Society's 112th annual meeting here last night, Judge Friedman said this applied to both Supreme Courts and magistrates' courts.

Today, the Law Society is to discuss the question of secrecy in its disciplinary proceedings.

Two motions are to be debated - one proposes allowing publication of the names of attorneys found guilty of unprofessional conduct, and the other suggests lay persons be included on disciplinary inquiry committees.

Judge Friedman called for an urgent and comprehensive inquiry into all aspects of access to justice in South Africa, "to make recommendations aimed at making justice far more accessible than it is at present".

Either the Hoexter Commission - set up last year to investigate rationalisation of the provision and local divisions of the Supreme Court - should have its terms of reference widened, or a special commission should be

appointed, Judge Friedman said.

The cost of litigation was probably the major factor prohibiting access to civil justice. Not only were legal fees expensive, but the rules of procedure added to the cost.

Part of the problem facing litigants was that the conduct and pace of expensive litigation was left entirely to the parties and also their legal advisors.

Judge Friedman added "What is required, if litigation is to become accessible, is a hands-on system of case management, where the court, and not the litigants, is in control of each and every step in the litigation process".

Judges would have to become less passive and more interventionist and the legal profession would have to co-operate with the courts in order to perfect a "new culture".

The only relief given to litigants in the past decade was the creation of small claims courts dealing with claims of less than R3 000.

"Any litigant involved in a dispute exceeding that amount finds himself engulfed in the complex and costly procedures of a trial action in the supreme or magistrate's court.

"The costs of a supreme court trial action today are such that I venture to suggest that no salaried person is in a position to finance the costs of a full-scale trial."

Naming guilty attorneys

(252) Star 10/10/95

■ OWN CORRESPONDENT

Wilderness - Attorneys found guilty of unprofessional conduct by the Cape Law Society will no longer have their reputations protected by the society's rules prohibiting publication of their names

A motion stipulating that attorneys found guilty of unprofessional conduct would in future be named was accepted early yesterday afternoon at the 112th annual meeting of the society

But attorneys found guilty of minor offences and given an official warning, a reprimand or a

fine of less than R500 would not automatically have their names published

Their names and offences would be available on application to the society

The debate was sparked by the revelation of irregular payments by attorneys to deeds office officials

The amendment will not be retroactive

As members voted on whether to accept the proposed amendment that only the names of those guilty of serious offences would automatically be published, society president Andries Landman

said he had "no doubt" that secrecy was about to be consigned to the scrapheap

Frikkie Swanepoel of Vredendal said it would be ridiculous for members to give in to media and public pressure

But Tony Hardy of Cape Town said he was surprised that attorneys could get so "uptight"

Society was entitled to know whether the attorneys they consulted were honest, he said

And Dumisa Ntsebeza of Umtata said attorneys should take into account that the demand for publication was a result of "the times we live in"

'Stop delaying' civil justice, judges urged

Attorneys want faster judgments

Staff Reporter

WILDERNESS — Attorneys have called for rules to stop judges delaying the administration of justice by reserving civil judgment for a long time

The Judge President of the Western Cape, Mr Justice Gerald Friedman, has supported the call, saying undue delays bring the administration of justice into disrepute

To applause and calls of "hear, hear" at the 112th annual meeting of the Cape Law Society here yesterday, council member Mervyn Smith raised the issue and appealed to judges president to take steps to rectify the situation in the interests of justice and transparency

"The time has come for rules to be set," said Mr Smith

There were four judges president at the meeting

After the meeting adjourned, attorney Elsa van der Merwe — a member of the attorneys' delegation at a recent meeting with the bench and bar where the issue was raised — said delayed judgments put the parties and their legal representatives in a "difficult position"

There were about 40 judgments outstanding in the Cape Town Supreme Court — some recently reserved, she said

Asked to comment, Judge Friedman confirmed Ms van der Merwe's figures

The oldest outstanding judgment in his division was deferred nearly a year ago, he said

He refused to name the presiding judge

"The problem is a judge president has no means of expediting the delivery of judgment

"In some western countries if a judgment is not pronounced in a specific time the judge concerned has his salary cut until he delivers the judgment," Judge Friedman said

In other countries, it is understood

judges are denied leave until they deliver judgment

He suggested the Judicial Services Commission (JSC) investigate the matter

"Steps should be taken to give the judges president or the JSC power to apply sanctions," he said

There was an explosion in litigation, forcing judges to work under considerable pressure and this was often the reason for reserving judgment

"This cannot, however, provide an acceptable excuse for undue delays in delivering judgment," Judge Friedman said

As it was, it took about 11 months for a matter to be placed on the roll

"It goes without saying that litigants are entitled to expect that after their dispute has been ventilated in the courts, they will be advised of the results as soon as possible"

Undue delays could discourage people from approaching the courts for the solution of their disputes, Judge Friedman said

Judge President of the Eastern Cape Mr Justice Neville Zietsman said there was not a serious problem in his division

But it was a potential problem, considering the large sums of money tied up in litigation

President of the Cape Law Society Andries Landman said a few years ago attorneys had raised the issue of insuring the lives of judges and had offered to pay the costs in the public interest

If a judge with outstanding civil judgment was to meet an untimely end, the matter would have to be heard again, causing further delays in the administration of justice and at considerable cost to the parties involved

Mr Landman said insuring judges' lives would reduce risks to the public, but judges had not been keen on the concept

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ARG 10/10/95

Petty apartheid rife, Kahn and Beukes told

Staff Reporter

GEORGE — Western Cape Attorney-General Frank Kahn and regional police commissioner Andre Beukes have been told racism and maladministration in their departments are rife

Mr Kahn and General Beukes were at a meeting of the community in the civic centre here last night, requested by Mr Kahn to hear first-hand the situation "on the ground" in this southern Cape town

Isaac Fillies of the Pacaltsdorp Civic Association told the meeting petty apartheid was still rife and police responded differently to crimes committed in different ethnic areas

Manuel Claasen, an independent candidate in the local government election, complained of lengthy delays at the local magistrate's court.

"Our people sit in the court corri-

dors from early morning till evening waiting for their cases to be called. The white community doesn't suffer similar problems," he said.

A Cape Nature Conservation official complained that cases disappeared or took inordinately long to reach court

Mr Kahn condemned the problems raised in connection with his department in the strongest terms.

He requested those who had raised them to write to him personally so that he could take steps to rectify the position.

General Beukes said a small group of criminals had to be identified, isolated and neutralised.

"Those who dwell in the past or the present will miss the future," he said, calling for closer relations between the community and the police

Prosecutors face dismal conditions

LYNETTE JOHNS

(252)
ET 10/10/95

AS working conditions deteriorate and court rolls get increasingly longer, prosecutors are abandoning the dingy, smoke-filled corridors and pressurised court-room environment of the Cape Town and Wynberg magistrate's courts.

Cigarette butts and ash litter the crowded passages of the magistrate's court. Toilets are filthy — in some cases blocked and overflowing.

At the Mitchells Plain magistrates court, people mill around — aimlessly killing time — waiting for overworked prosecutors to tread through as many as 20 cases a day.

The deputy attorney-general, advocate Mr P van der Merwe, said prosecutors were under increasing pressure and many were leaving the Wynberg and Cape Town magistrate's courts.

A Cape Town Magistrate's Court prosecutor said: "Cases are ladled out continuously. We often get a case another prosecutor has done half-way and we then have to be up-to-date with the case in time for the next hearing. This is not always possible, but we have to do it."

Lawyers also complained about the dismal conditions they have to work under in court. One lawyer said Mitchells Plain Magistrate's Court was particularly bad.

A well-known city attorney said on a number of occasions, charges had been withdrawn against his clients because the state had not been fully prepared.

He put it down to the huge case loads prosecutors had to work under.

Parliament given a pat on the back

Mduduzi ka Harvey

PARLIAMENT has been applauded by the Human Rights Committee for taking its commitment to human rights seriously

An HRC report said 21 human rights-related laws had been passed by Parliament this month. These affected areas such as police, courts, language, states of emergency, local government, land and citizenship.

The plethora of legislation violating human rights left behind by the previous government necessitated the frantic lawmaking witnessed this session, it said.

The Constitutional Court ended its penultimate session of the year at the end of September. Three decisions had been handed down which related to the competencies of the President, civil imprisonment for debt and the constitutional jurisdiction of the Supreme Court.

The Constitutional Court also heard cases on freedom of expression, presumption of innocence and the right to fair proceedings

Human rights institutions countrywide were beginning to take shape after delays and postponements. Human rights commissioners were appointed by

(252) BD 11/10/95
President Nelson Mandela and assumed duty on October 1.

Criteria for appointments to the truth and reconciliation commission would ensure appointees had a proven commitment to human rights.

With the process of writing the final constitution continuing, and a draft expected in November, the HRC would examine the debate on the inclusion of social and economic rights

Even though there appeared to be political consensus on inclusion in principle, the specifics of these rights would remain the subject of negotiation, it said.

The report said the behaviour of the security forces in Wembezi, one of the areas of KwaZulu-Natal worst affected by violence, could only undermine the successes of their colleagues in other parts of the province. It said the conflict in this area primarily involved the police and the IFP

Despite progress in restructuring the police and establishing community policing forums, there were many examples of unsatisfactory SAPS behaviour. The public's continued complaints highlighted the urgency of ensuring accountability, transparency and effectiveness in the police service.

Legal Aid Board 'not underfunded'

BD 11/10/95 (252)

Ingrid Salgado

THE Legal Aid Board had not been allowed to hold a reserve fund for contingent liabilities due to ministerial and treasury directives, board director Nic Pretorius said yesterday.

Responding to the auditor-general's report on the board's 1993/94 financial year, reported in Business Day last week, Pretorius said it was incorrect the board had neglected to make adequate provision for about R40m in contingencies.

Deputy auditor-general Bertie Loots said

that the report showed that the board would be underfunded by at least R40m after failing to provide for R55m in contingent liabilities.

Provision for only R15,2m in claims from attorneys and lawyers was made.

Pretorius said it was incorrect that the board may not be able to meet its liabilities because they did not all become due simultaneously or within a short period. Cases giving rise to contingent liabilities, mainly civil, took a considerable time to be finalised and their conclusion

dates were distributed over many years.

"The Legal Aid Board's responsibility to effect payments in such matters generally comes into being only once a case has been finalised," he said.

The board was discussing improving its contingent liability reserve with the state expenditure department. Alternatively, the state could provide a guarantee in respect of liabilities. It had experienced no difficulties in meeting its financial obligations during the 1994/95 financial year, despite not covering the full R55m amount in contingent liabilities for 1993/94.

Legal aid provision would proceed and legal practitioners who performed aid services on the board's instructions would be paid. R182m from the exchequer had been made available for legal aid provision in the current financial year.

As politicians and members of the security forces prepare to face the Truth Commission, it becomes increasingly unclear who is holding whom hostage. Chris Steyn of Spectrum went looking for answers.

Old loyalties put to the test

SPECTRUM
MAKING A DIFFERENCE

Chris Steyn (252) Saw 11/10/95

As the day of reckoning for the enforcers of apartheid draws closer, a fine balance of fear is separating members of the security forces from their former political masters.

Some members say that certain politicians — whom they claim were among the "order givers", or at the very least, had some knowledge of actions which kept them in power — will not back them when they come before the Truth Commission.

Politicians, however, say it is pure mischief-making on the part of security personnel to portray themselves as being at the mercy of their former bosses. "Who is holding who hostage here?" asked a government official.

Allegations have been made to Spectrum, the investigative unit of Independent Newspapers, that Deputy President P W de Klerk is planning to distance himself from actions of men who had "exceeded their authority" and "disgraced the party".

When this was put to De Klerk by Spectrum, he reiterated that he would accept "overall" political responsibility on behalf of the previous government, but that a distinction should always be made between extraordinary actions that would normally be taken by any security force in the world to counter insurgency, terrorism and "unacceptable, gross violations" such as murder and assassination.

"With regard to the former, it was the previous government's duty to act strongly and to apply extraordinary measures," De Klerk claimed.

Spectrum also approached former state president P W Botha, who reiterated his intention to "stand by everyone who supported me in this fight against communism, against the total onslaught against our country". He added that brave soldiers and policemen had made great sacrifices for the safety of South Africa and its people.

Former law and order minister, Adriaan Vlok told Spectrum that he too would back the security forces when their time came to be held publicly accountable. "I

stand by my people I don't intend to run away from my responsibilities. I am prepared to accept responsibility," he said.

But battle-weary soldiers and policemen remain cynical. "Just how far will the politicians go in taking responsibility?" they want to know.

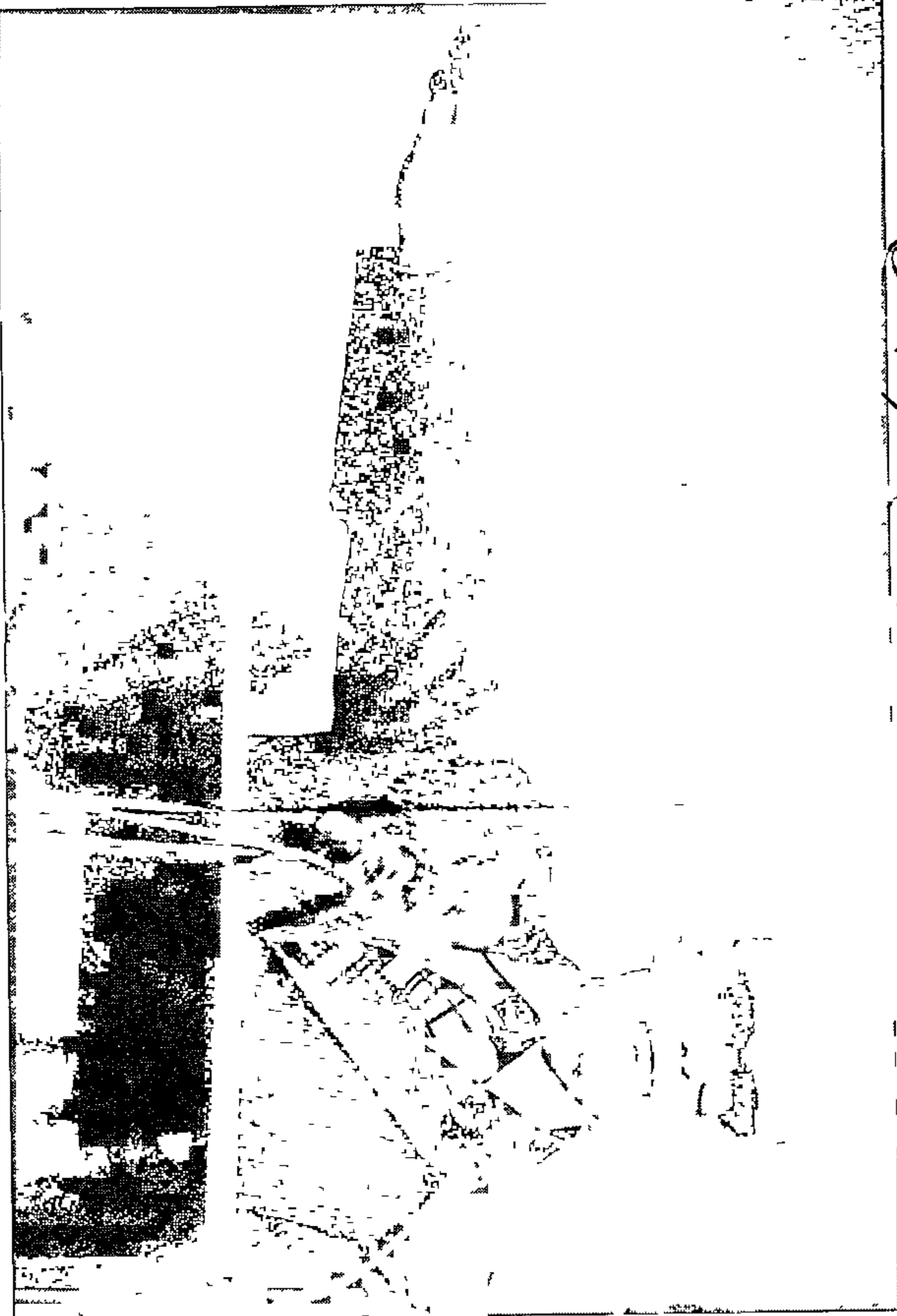
While some politicians speak with pride of men who carried out "justifiably strong" actions, they admit that there are three categories of security force personnel which could find themselves out in the cold — those who "misunderstood" their orders, those who acted wrongly on purpose, and those who were involved in actions which, while they might have been well planned, "went wrong" in their execution.

"Some guys misinterpreted orders," said a former cabinet minister who asked not to be named. "They could have gone too far. Over the years, so many things could have gone wrong. I have sympathy for these men they were in a war. But I never told anybody to murder anyone I cannot accept responsibility for misunderstandings."

The increasingly bleak future of these particular categories of pro-apartheid warriors is further highlighted in an earlier statement by De Klerk, in which he said he had never denied that there might have been individuals within the security forces who could have been involved in illegal actions aimed at promoting their own political, and even criminal, agendas.

His spokesman said "It must be realised that those involved in such unauthorised actions were often highly critical of the reform policies that Mr De Klerk had implemented. A primary objective of their actions was to undermine his efforts to bring about a peaceful and negotiated solution to South Africa's problems."

He added that attempts to link De Klerk with the "brutal, unacceptable and unauthorised crimes that these individuals are



The old order... P W Botha (left) will stand by everyone who supported him in the fight against communism. F W de Klerk (right) will accept 'overall' political responsibility on behalf of the previous government.

alleged to have committed" were contemptible and without any factual or logical basis.

However, security force members who agreed to speak to Spectrum on condition of anonymity said politicians were being predictably silent about another category of men — those whom they claim were duped into carrying out orders, the significance of which they did not understand until it was too late.

These men, they claim, were, in certain instances, led to believe that they were acting against people on criminal grounds, when, in fact, the real purpose of their actions was political.

They say that in many instances, they realised only years later who some of their targets really were and why. The necessary "proof of criminal activity" had been provided to ensure that swift, decisive action was mounted against them. Police with knowledge of

covert operations told Spectrum they were convinced that in certain cases they were misled by their own senior officers, who were strategising with the powers of the day. "Sometimes there was an interchange of intelligence between agencies. If agency A wanted someone 'removed' but didn't want to be coveredly supply agency B with a legitimate and verifiable reason to do so, Agency B would never be any the wiser."

But a government official who had witnessed a number of power plays between security force chiefs and politicians argued that it would be naive to believe that some of the men now portraying themselves as having been mere followers of orders were that powerless. "They are not victims at all. They are most definitely co-conspirators. Nobody could work without the other."

"They must remember that

the politicians made their decisions on the basis of the necessary intelligence and advice provided by the security forces. How would they (the politicians) have had the specialist knowledge to choose what technical measures should be taken? They bowed and scraped to each other. It was a cynical charade."

The official said politicians could, in fact, have a lot more to fear from the security forces, rather than the other way round. "The politicians are really at their mercy. They know all the truths. They won't eat up the new politicians, they will go after the old ones. It must be remembered that the majority of the security force members are still in the system. So the politicians did look after them. They had to."

Another official, who asked not to be named, remarked "There was a huge breach of trust on both sides. Politicians abused the trust the security

forces placed in them, and the security forces abused the trust the politicians had in them."

This source said political power during the apartheid years was diluted by the dependence of politicians on the security forces. He likened the relevant ministers of that time to "termites kings."

"The security system grew so large. Even though P W was in charge, the structure was holding him hostage. That was why it was so brave of P W to break with that system. It was almost flying in the face of blackmail."

This official said the mistake made by the politicians was to over-indoctrinate the security forces. "Any war spawms psychotics. But whether politicians are prepared to take responsibility for creating conditions for them to thrive in is another matter."

Government sources conceded that attempts will inevitably be made to lessen the burden of responsibility that individuals



might be expected to take for the methods they allowed to be used to keep National Party rule entrenched. "The Truth Commission is acting as a magnet. People will seek favour and try and exonerate themselves. It is called scapegoating."

The only consolation for the security forces, they say, is that some things were so sinister that it would not be in any political

party's interests to have them disclosed. For instance, they claim there were cases of members of different political parties and liberation movements framing or "planting" their opponents, then using cops to get rid of them. "Some cops eventually figured this out. But they stayed quiet for fear of their own lives. It was a fine, fine line, and we walked for them every time."

Day of reckoning looms

A SPECIAL INVESTIGATION

SPECTRUM MAKING A DIFFERENCE

(252) ARG 11/10/95

As politicians and members of the security forces prepare to face the Truth Commission, it becomes increasingly unclear who is holding who hostage. CHRIS STEYN of Spectrum went into the termites's nest looking for answers.

Another official, who asked not to be named, remarked "There was a huge breach of trust on both sides. Politicians abused the trust the security forces placed in them and the security forces abused the trust the politicians had in them. So who abused who?"

AS the day of reckoning for the enforcers of apartheid draws closer, a fine "balance of fear" is separating members of the security forces from their former political masters.

Some members are saying that certain politicians whom they claim were among the "order givers" — or at the very least had some knowledge of actions "which kept them in power" — will not back them when they come before the Truth Commission.

Politicians, however, say it is pure mischief-making on the part of security force personnel to now portray themselves as being at the mercy of their former bosses. "Who is holding who hostage here?" asked a government official.

Allegations have been made to Spectrum, the investigative unit of Independent Newspapers, that Deputy State President F W de Klerk planned to distance himself from actions by men who had "exceeded their authority" and "disgraced" the party in the process.

When this was put to Mr De Klerk by Spectrum, he reiterated that he would accept "overall" political responsibility on behalf of the previous government, but that a distinction should always be made between "extraordinary" action that would "normally" be taken by any security force in the world to counter insurrection and terrorism, and "unacceptable, gross violations" such as murder, assassination and incitement to violence.

"With regard to the former, it was the previous government's duty to act

strongly and to apply extraordinary measures," Mr De Klerk said.

Spectrum also approached former State President P W Botha who reiterated his intention to "stand by everyone who supported me in this fight against communism, against the total onslaught against our country". He added that "brave soldiers and policemen" had made a "great sacrifice" for the safety of South Africa and its people.

Former Law and Order Minister Adriaan Vlok told Spectrum that he too would back the security forces when their time came to be held publicly accountable. "I stand by my people. I don't intend to run away from my responsibilities. I am prepared to accept responsibility," he said.

But battle-weary soldiers and policemen remain cynical. "Just how far will the politicians go in 'taking responsibility'?" they want to know.

While some politicians speak with pride of men who carried out "justifiably strong" actions, they admit that there are three categories of security force personnel who could find themselves out in the cold those who "misunderstood" their orders, those who acted "wrongly on purpose", and those who were involved in actions which, while they might have been well planned, "went wrong" in their execution.

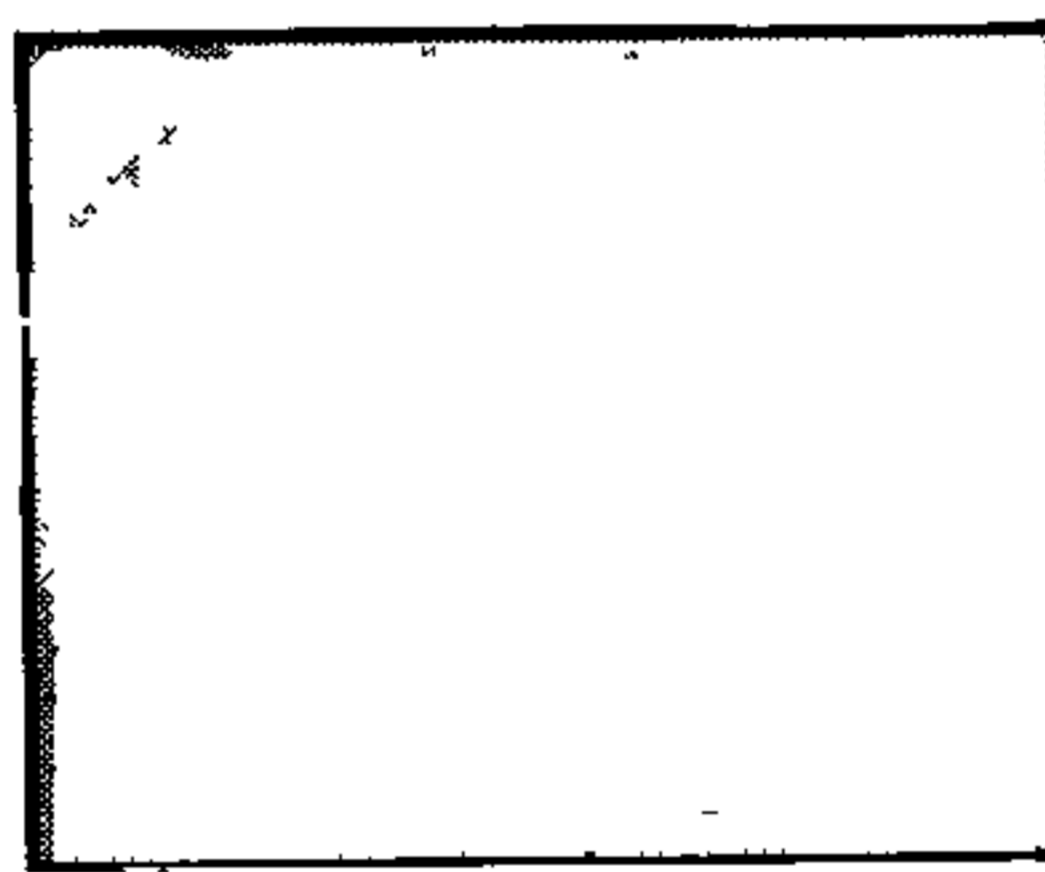


F W de Klerk

"Some guys misinterpreted orders," a former cabinet minister, who asked not to be named, said. "They could have gone too far. Over the years, so many things could have gone wrong, boomeranged.

"I have sympathy for these men... they were in a war. But I never told anybody to murder anyone else. I cannot accept responsibility for misunderstandings."

The increasingly bleak future of these particular categories of pro-apartheid warriors was further highlighted in an earlier statement by Mr De Klerk in which he said he had never "denied" that there might have been individuals within the security forces who could have been involved in illegal actions aimed at promoting their own political and even criminal, agendas. His spokesman stated "It must be realised that those involved in such unauthorised actions were often

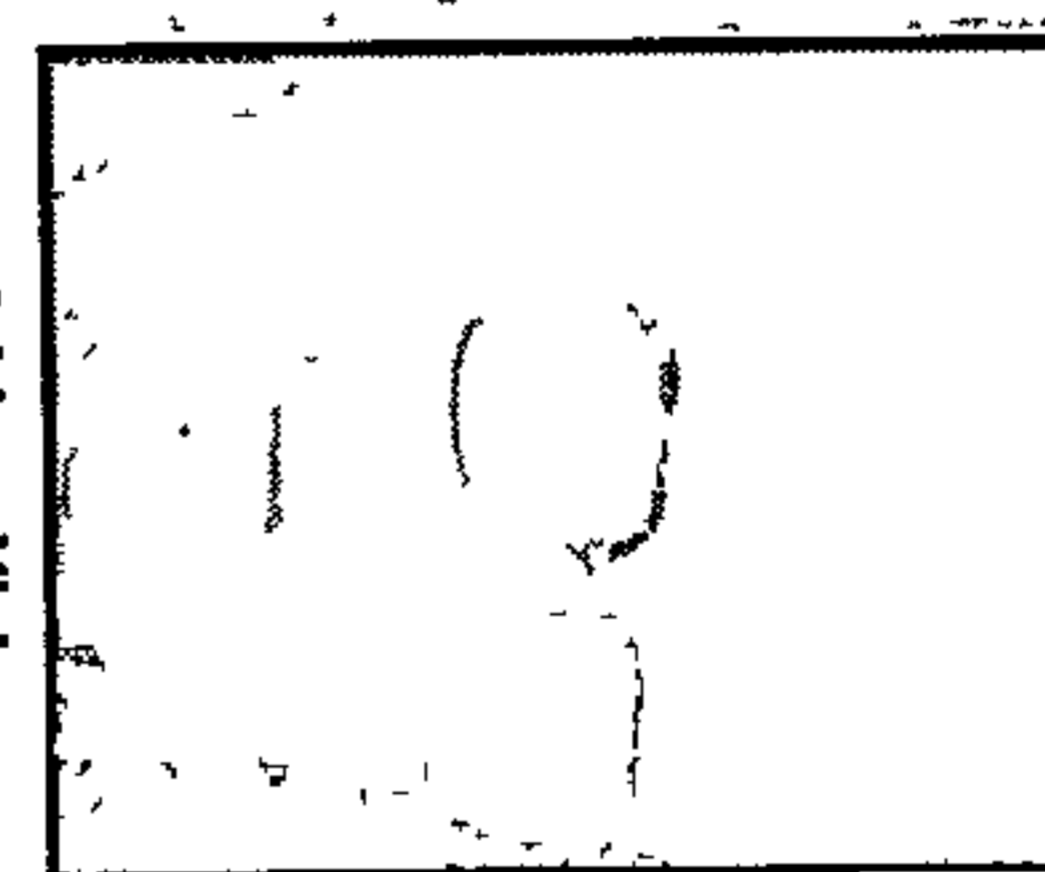


P W Botha

highly critical of the reform policies that Mr de Klerk had initiated. A primary objective of their actions was to undermine his efforts to bring about a peaceful and negotiated solution to South Africa's problems."

He added that attempts to link Mr De Klerk with the "brutal, unacceptable and unauthorised crimes that these individuals are alleged to have committed", were "contemptible and without any factual or logical basis."

However, security force members who agreed to speak to Spectrum on condition of anonymity said that politicians are being "predictably" silent about another category of men those whom they claim were "duped" into carrying out orders, the significance of which they did not understand until it was too late. These men, they claim, were, in certain instances, led to believe that they



Adriaan Vlok

were acting against people on criminal grounds, when, in fact, the real purpose of their actions was political. They say that in many instances they realised only years later who some of their targets really were and why the necessary "proof of criminal activity" had been provided to ensure that swift, decisive action was mounted against them.

Police with knowledge of covert operations told Spectrum they were convinced that in certain cases they were misled by their own senior officers and generals who were strategising with the powers of the day. "Sometimes there was an interchange of 'intelligence' between agencies. If agency A wanted someone removed but didn't want to be connected to the removal, they would covertly supply agency B with a legitimate and 'verifiable' reason to do so. Agency B would never be any the wiser."

According to this official, politicians could, in fact, have a "lot more to fear" from the security forces "than the other way round". "The politicians are really at their mercy. They know all the truths. They won't eat up the new politicians, they will go after the old ones," he said. "It must be remembered that the majority of the security force members are still in the system. So the politicians did look after them. They had to," the source added.

But a government official who has witnessed a number of power plays between security force chiefs and politicians argued that it would be naive to believe that some of the men who are now portraying themselves as having been mere followers of orders were — or had ever been — that powerless.

"They are not victims at all. They are most definitely co-conspirators. Nobody could work without the other."

"They must remember that the politicians made their decisions on the basis of the 'necessary' intelligence and advice provided by the security forces. How would they (the politicians) have had the specialist knowledge to choose what technical measures should be taken? They bowed and scraped to each other. It was a cynical charade."

Government sources conceded that attempts would inevitably be made to "lessen" the burden of responsibility individuals might be expected to take for the methods they allowed to be used to keep Nationalist Party rule entrenched. "The Truth Commission is acting as a magnet. It is under the auspices of the new government. People will seek favour and try and exonerate themselves. It is called 'scape-goating'."

"The security system grew so large. Even though P W was in charge, the structure was holding him hostage. That was why it was so brave of F W to break with that system. It was almost flying in the face of blackmail."

According to the government official, the fatal miscalculation made by these politicians was to "over-indoctrinate" the security forces. "They became over zealous."

"Any war spawns psychotics. But whether politicians are prepared to take responsibility for creating conditions for them to thrive in, is another matter." Government sources conceded that attempts would inevitably be made to "lessen" the burden of responsibility individuals might be expected to take for the methods they allowed to be used to keep Nationalist Party rule entrenched. "The Truth Commission is acting as a magnet. It is under the auspices of the new government. People will seek favour and try and exonerate themselves. It is called 'scape-goating'."

The Deeds Office affair

THE Cape Law Society's annual meeting held at Wilderness this week was the best attended in the 112-year history of the body. The reason? The furore over the non-disclosure of names of attorneys found guilty of unprofessional conduct.

ROGER FRIEDMAN reports.

AFTER an entire morning session of fierce debate, the meeting room crowd thinned, and talk in the corridors turned to golf.

The Cape Law Society had amended its rules to allow for the automatic publication of the names of attorneys found guilty of serious improper conduct.

Those found guilty of lesser offences — for which they are warned, reprimanded or fined less than R500 — will not have their names automatically published, but their names and offences will be available to anyone, on request to the Law Society.

The society even went a step further, to allow for the inclusion of lay people to participate in disciplinary procedures — in keeping with the new transparency that started permeating our country in April 1994.

The amendment will not act retrospectively, so the attorneys found guilty by the Law Society of making irregular payments to Deeds Office officials will escape being named unless they are prosecuted by the attorney-general.

The embattled attorneys' body had been involved in a two-month media bun-fight over its refusal to make public the names of attorneys found guilty of unprofessional conduct since the Deeds Office scandal came to light.

Thus, in spite of everyone from the Minister of Justice to the Speaker of the National Assembly, to the justice spokesman for the Democratic Party to the society's own vice-president, urging that the names be released

The society stood steadfast, insisting that it was not involved in a cover-up, but sticking to the letter of its own rules prohibiting publication.

It promised that it would attempt to revise the situation at its forthcoming annual meeting — held this week — and was as good as its word.

The society's governing body, the council, proposed a motion amending its rules to force the publication of the names of all attorneys found guilty of improper conduct, regardless of their offences.



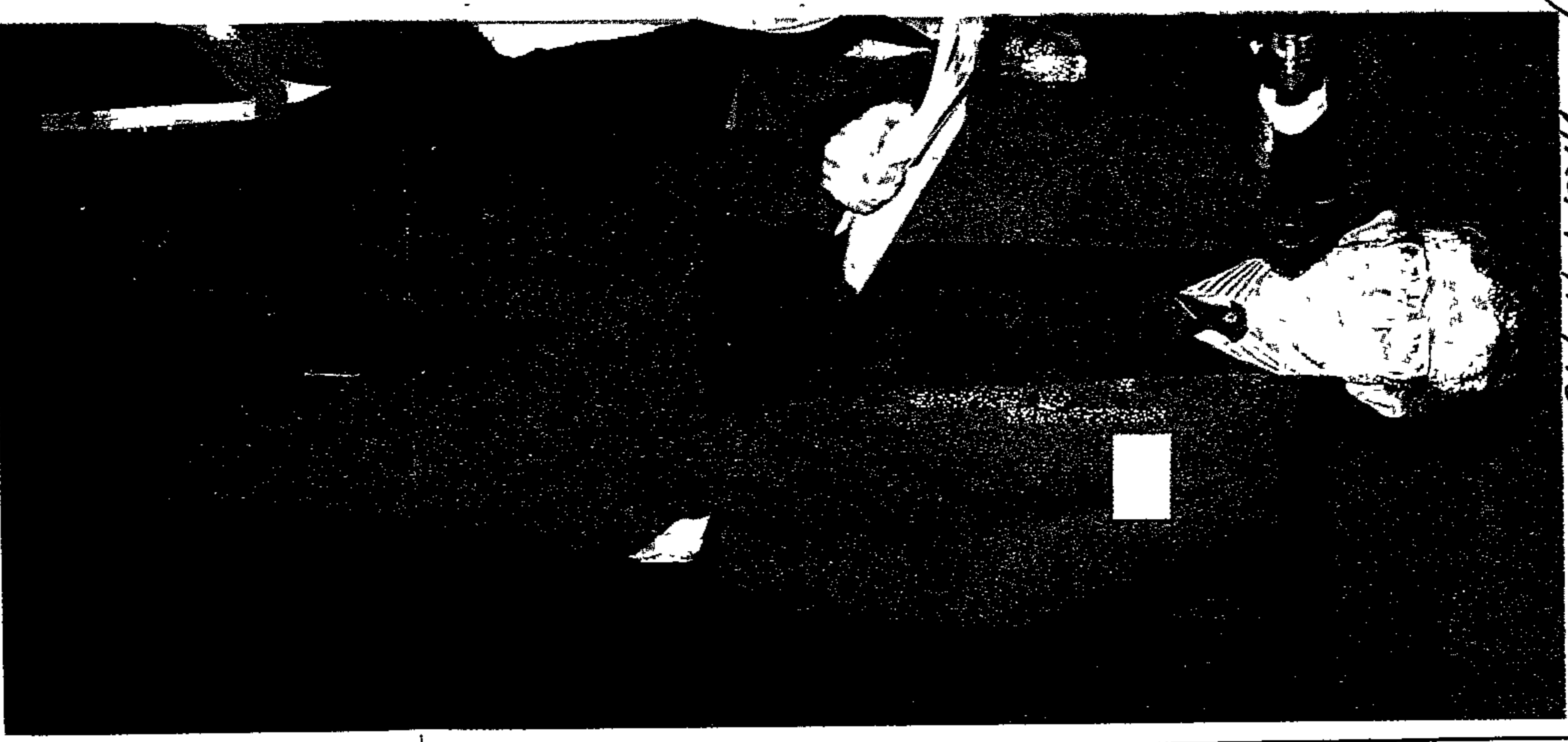
THE PRESIDENT: President of the Law Society of the Cape of Good Hope, Andries Landman, left.

THE COUNCILLOR: Law Society council member Dumisa Ntsebeza, above, who is also the national publicity secretary for the Black Lawyers' Association

THE MEMBER: Cape Town attorney, Richard Volks, right, suggested that if the Law Society had handed the issue of attorneys paying bribes to Deeds Office officials appropriately, it could have avoided dirtying the name of the entire profession.

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COLINE IT



the motion was tabled were confident it would be passed in the proverbial wink of an eye

This was not the case. Evidently the Deeds Office affair and surrounding scandal had exposed a nerve, and attorneys were divided as to exactly how far to go in exposing their crooked or unprofessional colleagues

The motion took an entire morning session — including the addition of a compromise amendment (the non-automatic publication of the names of lesser offenders) — before being given the thumbs-up by the assembled lawyers

And, as if to illustrate what many suspected, that the annual meeting was well-attended largely because of the secrecy issue, straight after lunch the attendance dropped and talk turned to golf (Some of the most beautiful courses are situated along the Garden Route)

At least two pertinent issues surrounding the secrecy furore came firmly to light.

● Firstly, that had the law society's council converted the Deeds Office affair into a formal inquiry, rather than dealing with the case itself, it would have been able to publish the names — and thereby avoid the scandal, and

● Secondly, the harm and distress that the scandal has caused the entire attorneys' profession.

The first issue was raised by Richard Volks of C K Friedlander, Shandling and Volks, who, in an emotional address, pleaded for the secrecy issue to be debated in its proper context

It was the Deeds Office affair that had brought the profession into disrepute, he said.

"It must have been apparent when these offences came to light that we were dealing with a very serious matter."

Had the council converted the disciplinary proceedings into a formal inquiry, the names of guilty parties



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could have been published and the scandal averted.

Overseas countries did not publish the names of all petty offenders — why should South Africa be holier than the Pope, he asked

The second issue became apparent when council member Theuns Steyn introduced the motion. In doing so, he did not so much argue the merits of publishing the names of unprofessional attorneys, as dwell on the image of attorneys which, he said, was in tatters

Mr Steyn quoted extensively from media reports slating the profession for the non-disclosure of names

He admitted that the "hue and cry" over the non-publication of the names of the guilty parties in the Deeds Office affair had led the council to revisit the issue.

"This society and its council have been accused of a cover up, of a scam, of not taking steps to have the guilty attorneys struck from the roll, of being an accessory after the fact in conspiring to cover up a crime or to defeat the ends of justice, of holding itself to be above the law, of denying access to information which might be needed to win redress in malpractice suits, of bringing the entire profession into disrepute and of being

involved in extortion," he said

Some attorneys argued vociferously against publishing the names of all unprofessional attorneys

They said it would make a mockery of their profession should the names of people who, for example, had failed to answer correspondence, be bandied about in public

One attorney warned that it was not unknown for people to commit suicide due to sensational media reports. Another said the profession should not give in to the "print devil" (newspapers)

Other attorneys argued that the Law Society was there to maintain the highest professional standards, and if members acted professionally they would stand to lose nothing to transparency

A Bredasdorp lawyer said platteland firms regularly had to deal with city firms, and country attorneys would like to know that the firms they approached were honest

John MacRobert of Herold, Gie and Broadhead, also argued for publication of all names "It irritates me when colleagues don't answer letters and I would like to see their names published"

Israel Mdlulwa of I M Mdlulwa Inc in Umtata suggested that any outsider listening to the debate would think twice about the reputation of attorneys

"Clients are very concerned about the matters they bring to us, however insignificant they may appear to outsiders

"They are therefore entitled to know whether attorneys are sticking to the rules," he said

Dumisa Ntsebeza of Ntsebeza Inc — also of Umtata, and a Law Society Council member — said he did not think the media was so desperate for news that it would sensationalise stories concerning attorneys found guilty of relatively minor transgressions

"We should take into account that the demand (to publish the names of guilty attorneys) is not a demand of the press, but of the times we live in

"Transparency and openness are not only buzzwords, but demands of society

"Justice should be seen to be done. It would be a sorry day were we seen to be quibbling over whether the general public should be given access to information.

"If we have nothing to hide, then let's give those who want to know about us the information they require," said Mr Ntsebeza, arguing against the amendment

In the event the amendment was passed fairly comfortably, and the amended motion almost unanimously

● The newly elected Law Society council comprises Andries Landman (president), Theuns Steyn (vice-president), Daryl Burman, Mervyn Smith, Koos de Waal, Tony Hardy, Wilfred Dicker, Christof Pauw, Elsa van der Merwe, Dumisa Ntsebeza, Elijah Makiwane, Fanie Maritz, Christene Qunta, Humphrey Lusu and Peter Horn (alternate member).

The four last-named are new members.

Attorneys-general must be accountable

(252)

MG 13-19/10/95

The appointment of a national attorney-general could avoid a recurrence of the 'McNally issue', argue
Dr Jeremy Sarkin and Suzie Cowen

THE criminal justice system is in crisis. It lacks legitimacy and is seen as ineffective. It is in this context that the danger of giving attorneys-general independence, without creating mechanisms for effective accountability, has resurfaced as a crucial debate amidst allegations that Kwazulu-Natal Attorney-General Tim McNally has failed to bring prosecutions for political reasons.

Whether or not the allegations are true, perceptions that decisions to prosecute are motivated by political reasons seriously undermine the legitimacy of the criminal justice system. Legislation should be re-examined to ensure that AGs operate without political bias and that they can be brought to book if necessary.

When the independence of the office was entrenched by the former government in 1992, the concern was those selected for the job were people sympathetic to that government. Now we find ourselves in the undesirable

able position where, despite allegations that AGs are failing to serve the interests of justice, there are no remedies against that failure.

Although there are general mechanisms for accountability, there is no way to ensure that the day-to-day exercise of power, which concerns matters of vital public concern, is not being abused.

Two mechanisms to balance the twin requirements of independence and accountability should be considered seriously: creating the office of a national AG, and appointing two civilians to join the existing AGs in their deliberations.

The proposal to create the office of national AG would address some of the current problems. The national AG would be responsible for ensuring that there is a uniform policy for prosecutions throughout the country and provincial AGs would be answerable to him or her. The national AG would be empowered to

receive complaints about the provincial AGs and to take appropriate action.

Present AGs have not supported this proposal on the basis that it would once again subject them to "political tutelage". However, this charge can be met by including mechanisms to ensure that the office is not abused.

Firstly, the national AG should not be given the power to prevent a prosecution, but only to override a decision not to prosecute. Giving the office the power to override a decision not to prosecute would be an additional means of ensuring that prosecutions are carried out despite their political nature. However, the incumbent would not be able to prevent such prosecutions taking place.

The appointment process should be designed to prevent a political appointment. Removing the power of selection from party political players would afford an additional guarantee that the incumbent would be able to serve independently and effectively.

As the Kwazulu-Natal non-governmental organisation coalition proposes, the Judicial Services Commission should be responsible for selecting the incumbent and an open,

transparent procedure should be followed. Public nominations should be invited, interviews should be open to the public, and the public should be given an opportunity to object to a proposed candidate.

The AG should serve only for a specific term, possibly four years. A limited term of office is crucial and such term should be renewable only if the power to renew it lies with the Judicial Services Commission, and then only after a renewing process.

The second mechanism would involve the appointment of a small civilian panel (possibly two people) in each province who would consider prosecutions together with the provincial AG. This would ensure that the AG did not make unilateral decisions and applied his or her mind thoroughly to prosecutions. It would also ensure that community interests were considered, and would promote accountability and transparency in an office which is and should be independent.

The time is now ripe to confront the legacy of political bias which has pervaded prosecutions and find solutions which ensure that the interests of justice are served.

Dr Jeremy Sarkin is National Chairperson, Human Rights Committee of South Africa, and Suzie Cowen is Legislation Monitor, Human Rights Committee of South Africa.

Truth, rights & equality

(252)

The four ground-breaking commissions created by the new constitution — covering land rights, human rights, gender equality and truth and reconciliation — are finally beginning to take shape

SA is watching closely — especially the Truth Commission — to see whether the parties in Cabinet will be tempted to strike deals over the appointment of politically aligned commissioners instead of choosing the tough-minded, independent people necessary for the job *FM 13/10/95*

During the drafting of the Promotion of National Unity and Reconciliation Bill, the Democratic Party argued — unsuccessfully — that it should not be left to President Nelson Mandela, in consultation with the Cabinet, to appoint truth commissioners

Cabinet constitutes the very leaders and parties who conducted the violent struggles of the past and the temptation to strike deals would be very great, the DP warned

It suggested a process similar to that used in selecting the Human Rights Commission (HRC) should be followed — nominations to be made to a multiparty parliamentary committee for approval by a 75% majority of both houses sitting together

Instead, the President appointed a seven-member panel — representing parties in the Cabinet, with the addition of the Freedom Front — to receive nominations from the public and to conduct interviews

The composition of the panel has therefore not eliminated the danger that the commission will be carved up between the previously warring parties. Though this kind of inclusivity may achieve balance, it is no substitute for real independence

DP MP Dene Smuts says "It is crucial to the success and credibility of the Truth Commission that truly independent commissioners be appointed — not just a rainbow of rogue parties' representatives"

Public interest in the commission is considerable, and more than 100 nominations have already been received. The deadline is

October 14 and the commission is supposed to be operational before the end of the year

The HRC got off the ground in Pretoria last week by electing the Rev Barney Pitso, a senior research officer at the University of Cape Town's department of religious studies, as chairman at its first meeting

Pitso is a former director of the World Council of Churches' programme to combat racism and was an associate of Steve Biko

He says the commission aims to establish its independence and presence and to make itself accessible to all South Africans as quickly as possible

The HRC must promote the protection and awareness of fundamental rights and may even initiate its own investigations into alleged rights abuses and assist victims in securing redress.

It could double for the Commission on Gender Equality, which is being facilitated by controversial legislation which seeks to endow it with powers of search and seizure to investigate violations of gender rights

The legislation has yet to be reviewed by the Justice Committee and may be referred back to its originators — an ad hoc parliamentary committee chaired by ANC MP Ruth Mompoti, who hopes it will be accorded urgent priority when parliament resumes in February

By contrast, the Commission on the Restitution of Land Rights has been quick off the mark. It has received more than 4 000 claims since it began operating in March this year

In terms of the Restitution of Land Rights Act, passed in November 1994, the commission may compensate or restore the land rights of those who lost land because of racially discriminatory legislation passed after June 1913. The Act also establishes a Land Claims Court to review each case and enable final settlement through a court order.

The court has taken longer to get going. Four male appointments have been made by Mandela, acting on the recommendations of the Judicial Services Commission which received nominations from the public. But affirmative action critics are still waiting to see if a fifth judge — a woman — will be added to the panel

Fikile Bam, of the Johannesburg law firm Deneys Reitz, has been appointed court president. The other judges are former National Peace Secretariat chairman Antonie Gildenhuys, Cape human rights lawyer Alan Dodson and former Black Lawyers' Association executive director Justice M'oloto

Meanwhile, the number of unresolved claims awaiting the court's adjudication increases daily and the commission is anxious that it becomes operational before the end of the year.

Investigation finds squalor in courthouses

BD 13/10/95 (252)

CAPE TOWN — A justice department investigation into conditions at courthouses in the former Transkei and Ciskei found records rooms in disarray, safes with no doors and officials working in cramped conditions without running water or electricity.

At some buildings visited in March this year, the toilets were blocked, the cells were not in use because of missing door locks and the records rooms were being used to store refuse.

In a report handed to Justice Minister Dullah Omar in March but which was made public through the parliamentary justice committee yesterday, the department said a concerted cam-

paign was needed — at great cost to the state — to repair damage to buildings caused by years of abuse under the former homeland governments.

At Kentani in Transkei the courthouse had no running water or electricity. Officials were being housed in a garage on site while the court messengers were using a zinc structure as their office. The vault door had no handle and had to be manipulated with wire. Office doors had no locks and, as a result, cattle strayed into the building after hours. The garden was littered with human faeces.

At the Butterworth courthouse — described as a modern building with

three courts — six prosecutors shared two desks in one office.

In the former Ciskei, the Alice court records room was littered with refuse and infested with rats. Toilets were blocked because the sewage tanks had not been emptied.

A similar situation was found in Seymour where sewage from overflowing septic tanks was spilling into the street. At the Whittlesea court building sealed polling boxes from the April 1994 elections were found in a store room. At Ntabethemba a newly constructed court building had been erected in the middle of the veld 4km from the nearest dwelling — Sapa.

IFP call for referendum on death penalty

EDITED BY KARIN SCHIMKE
POLITICAL STAFF

Two IFP candidates standing for local elections in wards in the Eastern Metropolitan Substructure in Greater Johannesburg have urged Premier Tokyo Sexwale to hold a referendum on the death penalty at the same time as the November 1 elections.

They said their request prompted by the fact that poor men were being targeted by criminals, crime was "far and away the top-priority issue" and

the province's status as "crime capital of the world" was bad for foreign investment.

■ The ANC's decision not to put up candidates for elections in about one-third of the Free State's wards was to "give other parties an opportunity", according to the ANC's Bloemfontein chairman Jan Mohapi.

He said the conflict between Free State



SPOTLIGHTS

Star 13/10/95 (252)
Premier Patrick Lekota and ANC Free State leader Pat Matosa was not linked to the party's failure to nominate candidates in 34% of the province's wards.

The "small misunderstanding" with its election partner, the South African National Civic Organisation, had been resolved, Mohapi added. Sanco threatened to withdraw from

the alliance two weeks ago.

■ The United Methodist Church of Southern Africa has called on all provincial governments to set aside their party-political disputes and concentrate on making November 1 a "resounding success".

■ About 3 500 voters had registered in the Northern Province town of Tzanzan before the September 25 deadline, council spokesman Chris Muller said yesterday.

F Cape courts in appalling state

Star 13/10/95 (252)

Cape Town - A Department of Justice investigation into conditions at courthouses in the former Transkei and Ciskei, in March this year found records rooms in disarray, safes with no keys or doors and officials working in cramped conditions with overflowing water or electricity.

At some of the buildings visited, the toilets were all blocked, the cells were in disuse because of missing door locks, and the records rooms were being used to store refuse.

A departmental report handed to Justice Minister Dullah Omar in March, but made public through the parliamentary jus-

ice committee only yesterday, said a concerted and very costly campaign would be needed to repair the damage to buildings caused by years of neglect and abuse under the former homeland governments.

The appalling conditions at the court buildings were videotaped by a justice task team as part of a national assessment of Justice Department accommodation facilities in each of the nine provinces.

The report said the recordings showed that the court facilities in Ciskei were in a slightly better state of repair than those in Transkei.

However, this distinction was only academic as all the buildings were in "dire need of maintenance and refurbishment", the report stated.

At Kentani in Transkei the team found the courthouse had

no running water or electricity. Officials were being housed in a garage on site and the court messengers were using a zinc structure as their office.

The vault door had no handle and had to be manipulated with a wire. Office doors had no locks and, as a result, cattle strayed into the building after hours. The garden was also littered with human faeces.

At the Butterworth court-

house, described as a modern building with three courts, six prosecutors shared two desks in a single office.

In the former Ciskei, the Alice court records room was littered with refuse and infested with rats. Toilets were blocked because the sewerage tanks had not been emptied.

The task team found a similar situation in Seymour, where sewage from overflowing septic

tanks was spilling into the street.

At the Whittlesea court building they stumbled across sealed polling boxes from the April 1994 elections in a storeroom.

At Ntshembamba they found a newly constructed court building erected in the middle of the veld 4km from the nearest dwelling.

The Inkatha Freedom Party yesterday called on the ANC to declare the Transkei region of the Eastern Cape a disaster area,

claiming that its administration had collapsed and was nearing a state of "irretrievable decay".

The ANC, ultimately to blame for the chaos in the territory, appeared hesitant to intervene, the IFP said.

The ANC was apparently reluctant to declare a state of emergency in the crippled territory because it ran the risk of shedding voter support and alienating its traditional support base, the IFP said.

The party added that demands for the establishment of IFP branches throughout Transkei had surged from a trickle into a torrent - Sapa.

Uphill task for Justice Dept

(252) CT 13/10/95

WHEN two Justice Department officials wanted to send leave forms to Pretoria they sent them by courier at a cost of R68 instead of posting them.

This is an example of the problems the Justice Department faces in setting up a unified department, claimed a report to Justice Minister Mr Dullah Omar which was released yesterday.

SIX PENINSULA WOMEN DEAD

Family violence law backfires

(252) CT 13/10/95

WOMEN SEEKING PROTECTION from abusive spouses under the Prevention of Family Violence Act seem to have provoked even more violence. **ANEEZ SALIE** reports.

ALAW intended to stamp out violent abuse of wives has apparently backfired, with at least six Peninsula women who turned to the courts for protection being killed — and their husbands facing murder charges

It seems women who go to court for protection under the new Prevention of Family Violence Act anger their husbands so much that further violence follows

Mr Francois Botha, Commissioner of Child Welfare, heads the Family Law division of the Mitchells Plain magisterial district, which has the worst record of wife-battering in the country

He said an increasing number of women had complained that attacks had actually increased since they used the act

The act allows abuse victims to apply for urgent interdicts. Those who violate the court order are immediately jailed pending trial.

In one case a man was initially refused bail by a Mitchells Plain magistrate after ignoring an interdict, only for the Cape Town Supreme Court to overturn the decision. While on bail he allegedly killed her

Mr Botha says in the first month of the new act (December '93), his court issued 40 interdicts

Last year the average monthly rate more than tripled to an annual tally of 1 533. To date the figure for 1995 is already 2 210.

The act makes provision for interdicts to be issued immediately, and for these to be final, subject to appeal on 24 hours notice by the respondent.

Ruling

"But the Supreme Court ruled in June that 10 days notice had to be given to the respondent before the order can be made final," says Mr Botha

● Crisis Line, serving battered women in Mitchells Plain, cannot cope with the number of cases. They have appealed for greater police and government action

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Desai says no to Truth position

(252)

AKG 14/10/95

DAVID BREIER

Political Staff

BARNLEY Desai doesn't know who nominated him as a member of the Truth Commission, but he knows one thing — he won't touch the commission with a bargepole, and that's the truth.

Mr Desai of Cape Town now adopts a low political profile after serving for several years as the official national spokesman of the Pan Africanist Congress. He was also a member of the PAC's national working committee and executive committee.

No-one was more surprised than he was, to discover in Sunday Argus last weekend that he was one of 185 people nominated to serve on the Truth and Reconciliation Commission which will soon hear evidence on political crimes.

Mr Desai told Saturday Argus that he had never accepted nomination to the

■ Former national spokesman of the Pan Africanist Congress **Barney Desai** will not have anything to do with the Truth Commission.

commission and whoever had nominated him, had done so without consulting him.

"I am not prepared to serve on the Truth Commission," he said emphatically.

He rejects the commission firstly, because it makes provision for indemnity for those who confess to political crimes in defence of apartheid.

"My own view is that to confess crimes and turn a new page, is not a good enough way to forget the past. People should stand trial for crimes they committed in the name of apartheid," he said.

"I am on record in various articles

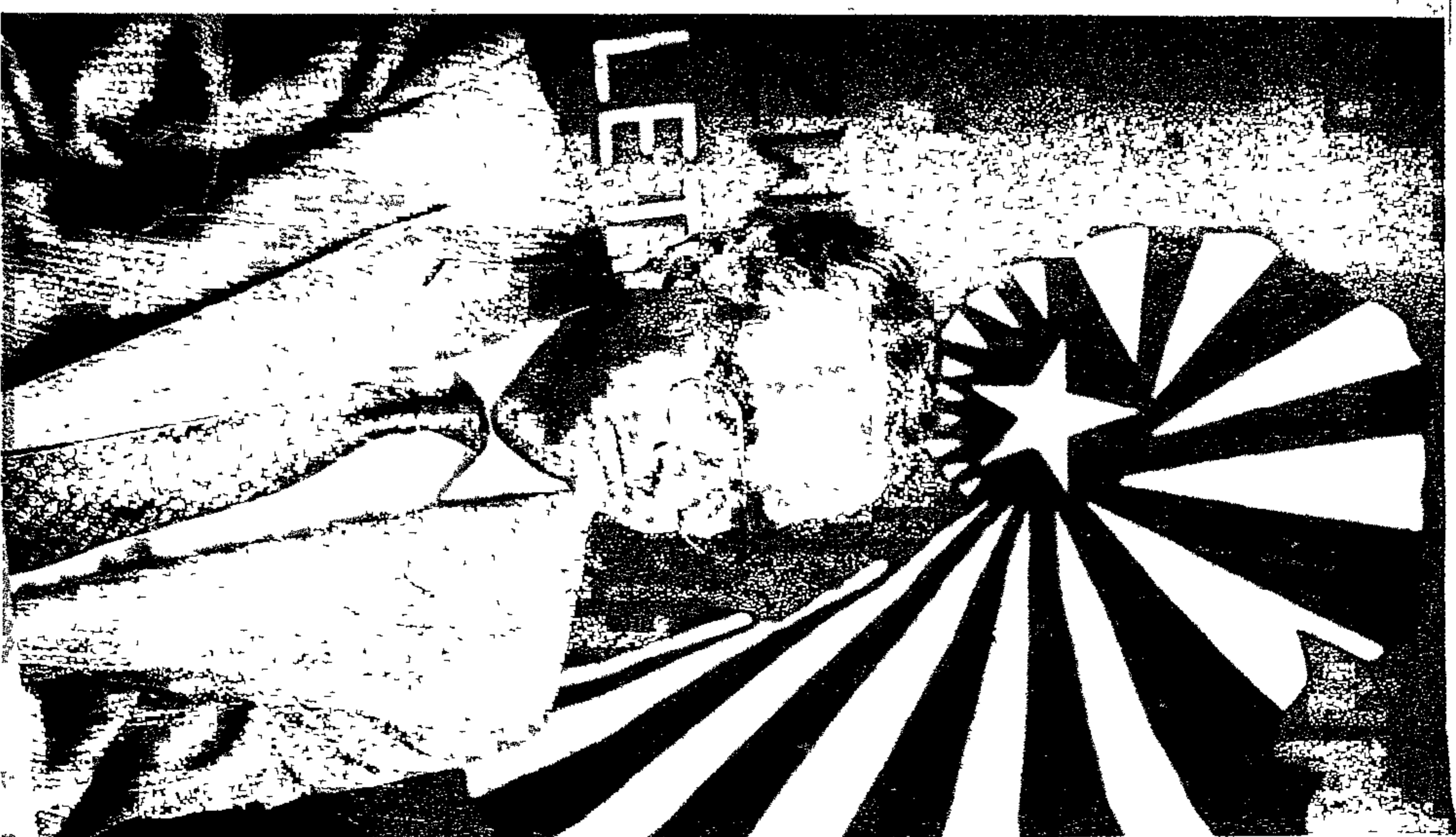
calling for trials for those who committed crimes against humanity

"In many ways it deprives families of victims the right to due process of the law. They should have the satisfaction of charging or suing those who were responsible," he said.

Mr Desai said his view had been vindicated by the view of a number of families of victims, including the family of black consciousness leader Steve Biko who died in police custody in 1977, that they wanted those responsible brought to trial.

Mr Desai also objects to the fact that the Truth Commission will investigate alleged crimes committed by those who struggled against the former government. "I don't think you can equate victims with aggressors," he said.

"The whole debate has been turned against those who fought apartheid, to put them in the dock as well. I think that is quite wrong," he said.



Picture DOUG PRITNEY, Staff Photographer
□ NOT ME: Barney Desai has rejected his nomination to the Truth Commission

Court probe a 'racist conspiracy'

By ELIAS MALULEKE

EASTERN Cape human rights "advocate" Mbuyiselo Jozana this week lashed out at those who have questioned his professional credentials.

It was recently alleged in the media that Professor Jozana was not a qualified advocate, although he acted as one in the Supreme Court.

Judges have questioned Jozana's conduct in court, which is sometimes characterised by "outbursts with racial overtones".

He accused a judge of racial bias in a heated debate during his divorce proceedings last month.

He was also barred from acting on behalf of Ciskei civil servants by Judge Willem Heath recently because of his questionable credentials.

A City Press investigation has found that

Jozana is not yet a member of any Bar and his application to the Transkei Bar is still being considered.

It has also been stated that although Jozana was exempted by Justice Minister Dullah Omar from meeting the South African academic requirements because of his overseas training, he was still not entitled to appear in the Supreme Court until he was admitted to a Bar.

This issue is now under investigation by the Supreme Court.

Jozana told City Press that all this was part of a "racist" conspiracy to undermine him because of what he stands for as a black human rights activist in a racially divided society.

He said the fact that he had not been admitted to the Bar in South Africa should not pre-

vent him from practising because South Africa was part of the Commonwealth.

The head of the Human Rights Centre in King Williams' Town said the reason for his conduct in court, which has come under fire recently, was that he was not going to stand before a judge he felt was biased without doing something about it.

"The fact of the matter is that there is a 'bogus down mentality' in the white-dominated press. The idea is to hunt black achievers, to destroy and shut them up."

"This attitude is evident in some of the courts where racist judges with a notorious history are supported by a conspiracy of white attorneys and advocates," Jozana said.

A Martin Luther King human rights fellow, Jo-

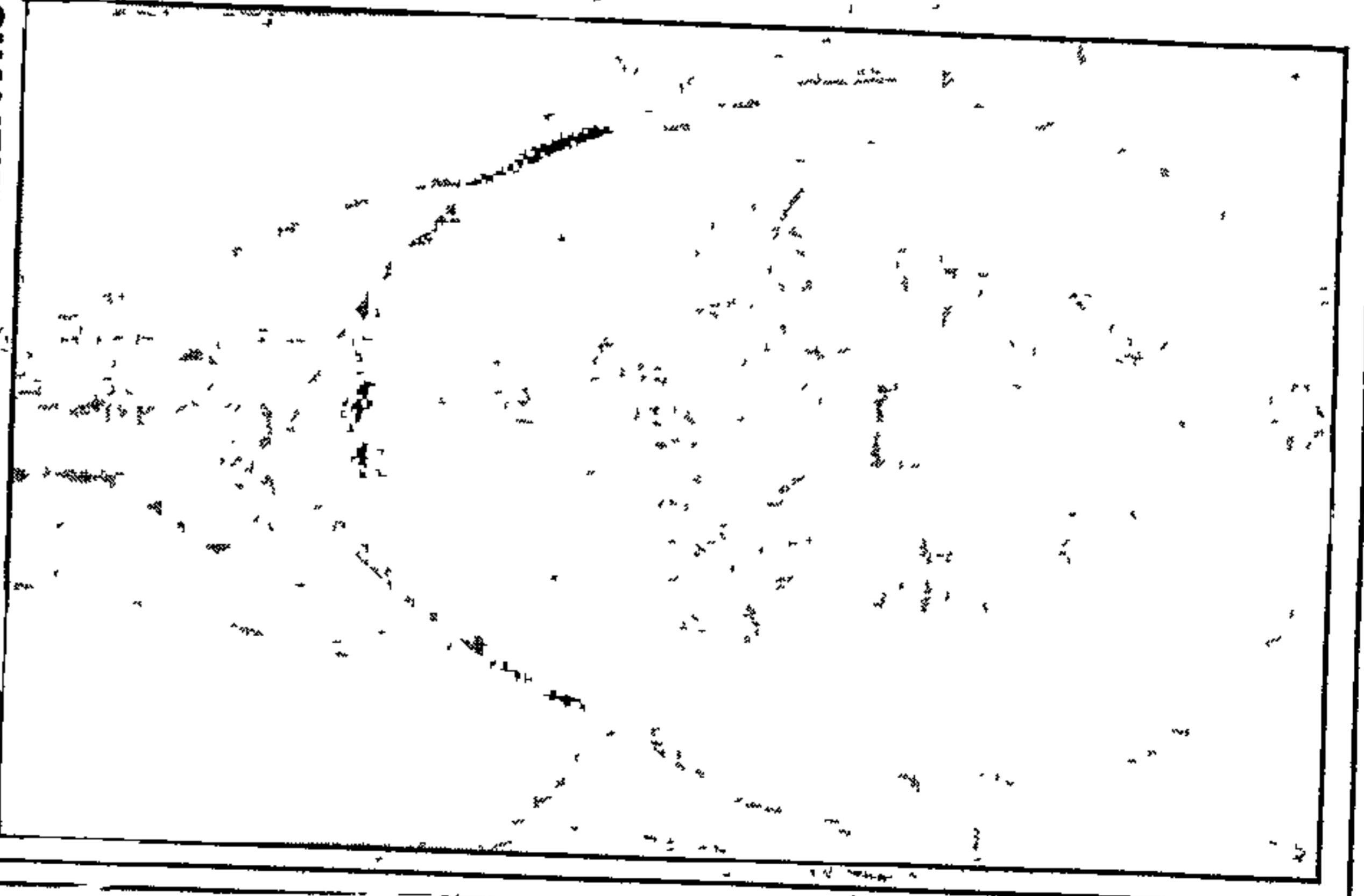
zana obtained his LLM degree while in exile in London, where he practised as a barrister before he was appointed professor of human rights at Wayne State University Law School in Detroit, US.

He said he returned to South Africa with a wealth of experience and expertise but had been reduced to doing "donkey work" for political reasons.

"I should also be serving in the Constitutional Court, Human Rights Commission and Truth Commission," he said.

Jozana also attacked the make-up of the commissions, including the Truth Commission, saying most of the people who had been nominated were white.

"It is like saying to them, 'you were part of this - now get it right!'" Jozana said.



QUALIFIED? . . . Mbuyiselo Jozana

Call to improve magistrates' lot

Susan Russell

(252) BO 16/10/95

THE status of magistrates, working under "atrocious conditions", had to be upgraded and their independence enforced by an entrenched provision in the constitution, according to a member of the profession

In a strongly worded article published in the latest issue of the attorneys journal *De Rebus*, senior magistrate Leon Dicker, attached to the Justice College in Pretoria, harshly criticised conditions under which his colleagues were forced to work

Dicker also had strong words for other members of the profession, including university law schools, which discouraged graduates from going into the public sector and criticised deficiencies in the justice system from "a safe distance"

"It is a tragedy that those who denigrate the quality of service in the administration of justice make only a paltry contribution towards our efforts to provide the country with a decent, workable and functioning system," he said.

Dicker said magistrates did not feel independent despite what the Magistrate's Act said.

The Act was not entrenched legislation, he said and ties between the justice department were still so strong that many magistrates believed there was a disparity between actual and theoretical situation

The magistracy needs to be made into an attractive and sought after career option so that the base to which magistrates are appointed may be widened to include people from the Bar and the attorneys profession," Dicker said

He pointed out that while starting salaries were not adequate to attract newly qualified graduates, good professional personnel were lured away by salaries offered by the private sector

Dicker described working conditions as "atrocious". Magistrates had to fight for overtime pay for hearing after-hours bail applications and were subject to transfers where the department chose whether they liked it or not

When the justice minister announced in the early 1990s that courts would sit after hours to reduce the backlog, Dicker said, the department merely ordered already overworked staff to sit in the evenings instead of employing extra personnel

Most of their time out of court was taken up with

administrative duties, leaving almost no time at work to write judgments, obliging them to write them after hours

"As a result, I am aware that a number of magistrates are several months behind in delivering reserved judgments," Dicker said

Dicker said magistrates also had no time to keep up to date with the latest law reports or textbooks and legal journals

The Justice College was addressing the issue of poor training and inexperience by providing functional training for magistrates and prosecutors, including civil court training

He said it had become evident however that candidate magistrates were generally so poorly equipped in regard to civil law and procedure that the college might be forced to present courses at three levels of expertise

Legal aid going to the wrong people

(252)

Star 16/10/98

■ PRETORIA
CORRESPONDENT

Taxpayers are footing the bill for legal costs of the wealthy because of inadequate control of the legal aid system.

In some cases, people on criminal charges have had access to legal aid intended only for people with strictly limited incomes

The accused had simply filled in forms at the Legal Aid Board's offices without having to prove how much they earned.

People only qualify for legal aid if they earn less than R1 000 a month for married persons and less than R500 a month for single people.

False figures

Legal Aid Board director Nic Pretorius said his department was aware of the possibility that well-off people could get legal aid by supplying false income figures on application forms.

He said the Legal Aid Board only acted as an agent for the Ministry of Justice in supplying the needy and disadvantaged with legal assistance.

In one case, an Austrian citizen charged with dealing in 1-million mandrax tablets, got legal aid because of a lack of funds

But during a recent appeal after he was refused bail, he claimed he earned R6 000 a month through his own business in Pretoria, and he and his wife owned property to the value of R410 000.

Pretorius said that as a rule, foreigners not economically active in South Africa and people on drug-related charges did not qualify for legal aid, but this had to be qualified in view of an accused's constitutional right to legal representa-

tion

In another case, an accused in a motor vehicle theft syndicate case was given legal aid in spite of claiming during his bail application that he was earning R10 000 a month from rent on six properties he owned.

Pretorius said he was aware of these two cases, and would look into the matter. If any irregularities had occurred, the appropriate steps would be taken.

He said in cases such as these, it should be borne in mind that an accused might have spent a long time in prison awaiting finalisation of the case.

A wealthy, accused might therefore qualify for legal aid at a later stage because of a loss of income.

It was very difficult for the board to verify an applicant's claim of having no income at all, said Pretorius.

He said the board usually demanded a salary slip from the applicant, and in cases where the legal aid consultant was suspicious, he could order an investigation to verify an applicant's income.

Verification

If foul play was discovered, the board could withdraw its funding and the Attorney-General could prosecute

A senior prosecutor who did not want to be named claimed it was common knowledge in his profession that legal aid consultants rarely bothered to verify an applicant's claimed income.

While prosecutors and State advocates barely survive on our meagre salaries, the Government seems to be willing to finance wealthy criminals," he said.

Mandela and Viljoen expected to add 5 months to indemnity cut-off date

Poll bombers may go

(252)

free

Star 18/10/95

BY JOVIAL RANTAO
POLITICAL REPORTER

A deal extending the indemnity date to May 10 1994 is expected to be struck tomorrow between President Nelson Mandela and Freedom Front leader General Constand Viljoen

The two leaders are to meet in Pretoria to also discuss the November 1 local government elections

The Star understands Mandela will accede to requests by right-wing parties to extend the cut-off date for indemnity from December 5 1993, as stipulated in the interim constitution, to May 10 last year, when Mandela was inaugurated as president

The deal will see the release of scores of prisoners involved in "politically motivated" crimes as well as awaiting-trial prisoners - including the 26 right-wingers held over last year's pre-election bombing spree on the Reef and in Pretoria. Their case was recently postponed to February 12

Government sources told The Star that Justice Minister Dullah Omar, who was initially against the extension of the



Deal-makers ... General Constand Viljoen and President Mandela.

RIGHTWINGERS set to benefit from pre-local government elections deal

date, now supported a move mooted by Mandela a few months ago

The deal will mean that the interim constitution will have to be amended, requiring a two-thirds majority, when Parliament reconvenes next year

The sources said Viljoen, who played a role in minimising violence from the right wing before last year's general election, was anxious to get something from Mandela he could take to his constituency in the run-up to the local polls

"Given the constructive role he has played in avoiding a bloodbath, the president might be keen to reward him. With the transformation process gaining ground and white fears disappearing, the political climate has become difficult for Afrikaner rightwingers. They need something from Viljoen and the president," the sources said

The news of the pending deal was welcomed by right-wing political parties and organisations

Afrikaner Weerstandsbeweging spokesman Fred Rundle said the AWB had pressed for an extension all along, and welcomed it

"We request that our jailed leaders be released on temporary amnesty as soon as possible because we need to consult with them

"The Government will then be seen to be treating everyone even-handedly"

Boerestaat Party leader Robert van Tonder also welcomed the news, saying there were many people in jail and awaiting trial for political deeds who would now be freed

He added it did not surprise him that a deal would be struck between Mandela and Viljoen, saying the latter was clearly the president's "blue-eyed boy"

ANC spokesman Ronnie Mamoepa said he could not give a considered response until he had received confirmation that the deal had been struck. "The ANC has confidence in the ability of the Government of National Unity to treat the matter in the best interest of the country as a whole," he added.

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Dullah Omar firm on amnesty date

(252)

BD 19/10/95

CAPE TOWN — Justice Minister Dullah Omar said yesterday that he continued to support December 5 1993 as the cut-off date for amnesty applications.

Omar was reacting to speculation that a deal may be struck when President Nelson Mandela and Freedom Front leader Gen Constand Viljoen meet at the Union Buildings today to discuss amnesty.

Omar said it had always been his view that a change in the cut-off date would result in uncertainty and erode attempts to establish respect for the law "I deny that I have changed my own position on this"

The only suggestion that there might be room to discuss a date change had been expressed by President Nelson Mandela in Parliament earlier this year at the introduction of legislation providing for the Truth and Reconciliation Commission.

Mandela had said the door was not completely closed on the issue, but there would have to be a considerable decrease in violence before the matter could even be reconsidered.

Viljoen, who could not be reached yesterday as he was campaigning in the Free State, was quoted by Agence France Presse as saying he would be pushing for an extension of the amnesty cut-off date for political crimes committed under apartheid.

"I will be speaking to the president on the need for reconciliation" he reportedly said.

A Johannesburg-based newspaper reported a deal was likely between the two leaders under which the cut-off date would be extended from December 5 1993 to May 10 last year, the day Mandela was inaugurated as president.

The deal, the report said, would see the release of scores of prisoners involved in politically motivated crimes, as well as awaiting-trial prisoners, among them 26 members of the Afrikaner Weerstandsbeweging involved in a bombing spree in the run-up to general elections in April last year.

The December 5 1993 cut-off date is set by the interim constitution, which will have to be amended if a deal is struck.

All political crimes and human rights abuses committed under apartheid until the cut-off date qualify to be heard by the soon-to-be-established truth and reconciliation commission, which will decide on trial or amnesty.

Viljoen, who headed the SA Defence Force in the '80s, said he had been asked by white police and defence force members who helped enforce apartheid to represent them at today's meeting.

The amnesty issue was not discussed at yesterday's Cabinet meeting, Cabinet secretary Jakes Gerwel said afterwards — Sapa.

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Omar: No change
on amnesty date

(252) CT 19/10/95

JUSTICE Minister Mr Dullah Omar said yesterday he still supported December 5, 1993 as the cut-off date for amnesty applications.

It had always been his view that a change would result in uncertainty and erode attempts to establish respect for the law.

"I deny that I have changed my own position on this matter," he said. — Sapa

Ah — but your land is beautiful!

(252) M4 20-26/10/95

Politicians are fighting about the property clause in the Bill of Rights — unnecessarily, argues Etienne Mureinik

LAST week the draft Bill of Rights for the final Constitution was debated in the Constitutional Assembly. As it did when the Interim Constitution was negotiated at Kempton Park, the property clause once again claimed an undue share of the limelight.

This clause which protects property rights and requires compensation on expropriation consistently gets undue attention largely because it is a focus of fear. The propertied fear that it will protect them insufficiently. The dispossessed fear that it will impede their just claims to redress of past wrongs.

Because the representatives of the dispossessed fear that it will impede equitable land restitution and reform, they project their worst nightmares onto the clause.

Many of the attacks from those representatives on the existing property clause in the Interim Constitution rest on anxieties that it does not fully authorise expropriation for the purpose of land reform, or that it requires market value compensation.

These anxieties generated a recent effort, in the Constitutional Assembly, to override the property clause altogether when the government's project is land reform. The effect might have been to eliminate the guarantee of any compensation at all when land is expropriated for restitution, or even just for redistribution.

In fact the anxieties are not well founded, and the text of the existing clause read properly, is most probably adequate to meet them. But that fact does not end the matter. If one side is worried about whether proposed constitutional words are clear enough to achieve a desired effect, and the other side concedes that the effect is desirable but claims that the words already have that effect, there is obviously little reason to resist including extra words to reflect the common intention. Why not make it absolutely plain that the desired effect is there?

In practice, our constitution-makers often avoid doing that. A persistent weakness of our constitutional process, since Kempton Park, has been a propensity for the parties, when they agree about the desired effect, but disagree about whether broad and general wording achieves it, to do battle about the meaning, armed with competing legal opinions. Often the issue is referred to legal advisers to resolve by giving an assurance that the



GRAPHIC: SEAN ZINT

wording does or does not have the desired effect. The advisers tend to give these assurances much too promiscuously. The truth is that the question is very often one which cannot be answered with confidence.

Sometimes the extra words necessary to resolve the doubt are resisted on the famous ground that that would "save trees". The reality, of course, is that the benefits of clarity hugely outweigh the cost of the additional paper.

And so the property clause should be changed to spell out that it does authorise expropriation for land reform, and the compensation requirement should be expanded to make entirely sure that all the considerations of equity and redress which arise during land reform are taken into account. This is far better than creating a set of prop-

erty rights which fall away altogether the moment the government declares that it is about the business of land reform.

And in fact the property clause has been sent for reformulation along these lines. But this is the simpler part of the problem, and it is cured easily enough by careful drafting. The harder part is to overcome the basic difference between the parties about how far property deserves constitutional protection.

To do that, propertied interests have to recognise that the right to property is profoundly different from the other rights in the Constitution. Unlike privacy or dignity or free speech it is inherently incapable of being enjoyed equally by all to whom it is given. To make existing property rights sacrosanct would violate a foundation of all democratic constitutions, the idea of equality.

But the unpropertied also have to recognise that unless the law acknowledges, as a fundamental, that people are entitled to retain a substantial proportion of the fruits of their efforts, the prosperity and stability essential to achieve true democracy cannot be attained.

If both these things, and all their ramifications, were fully acknowledged, we might be able to converge on a common understanding of constitutional property protection.

If we accept that existing property rights are not sacrosanct, but also cannot be left entirely at the mercy of governmental whim, then perhaps what we want is no more and no less than to bring the rule of law to property.

Perhaps what we really want by way of property protection is simply the principle that government can interfere with property only to the extent that it has a good justification, articulated explicitly and reviewable in court, for doing so.

The effect of that principle would be to protect property owners from capricious expropriation. It would also bring substantial certainty and predictability to property relations. It would require as much compensation as is justified, all things considered. And it would confer benefits which all would enjoy.

Under that principle, it would be open to the government to argue, in a particular case, that a land restitution measure was so urgently required to reverse an historical injustice, and caused such little prejudice to anyone with a fair legal stake in the land, that title or no compensation should be paid. And if government is confident of that argument, it should be willing to stand or fall by it before an independent court.

There are many ways of attaining the rule of law in a property clause. You can make it say, as does the Universal Declaration of Human Rights, that no one should be deprived of property arbitrarily. Or that the government can interfere with property only when it acts fairly and reasonably. Or that all takings of property have to be justifiable.

The essence would be the same. A property clause like that would state a principle that few would oppose. And few would ask for more.

The final Bill of Rights is being written over the next few weeks. Legal experts Etienne Mureinik and Dennis Davis will write a series dealing with all the major issues for the *Mail & Guardian*. Mureinik is professor of law at Wits University and Davis is head of the Centre for Applied Legal Studies.

Veil lifted on those 52 fatal steps ...

(252) Star 20/10/95

BY MALL AITCHESON
CRIME REPORTER

There are 52 steps leading from the holding cells up to the execution chamber in Section C of the Pretoria Maximum Security Prison.

It was a path of no return for all those who followed it until yesterday when for the first time the South African media was allowed access to the non-descript rectangular room

► Long walk first images of gallows - Page 5

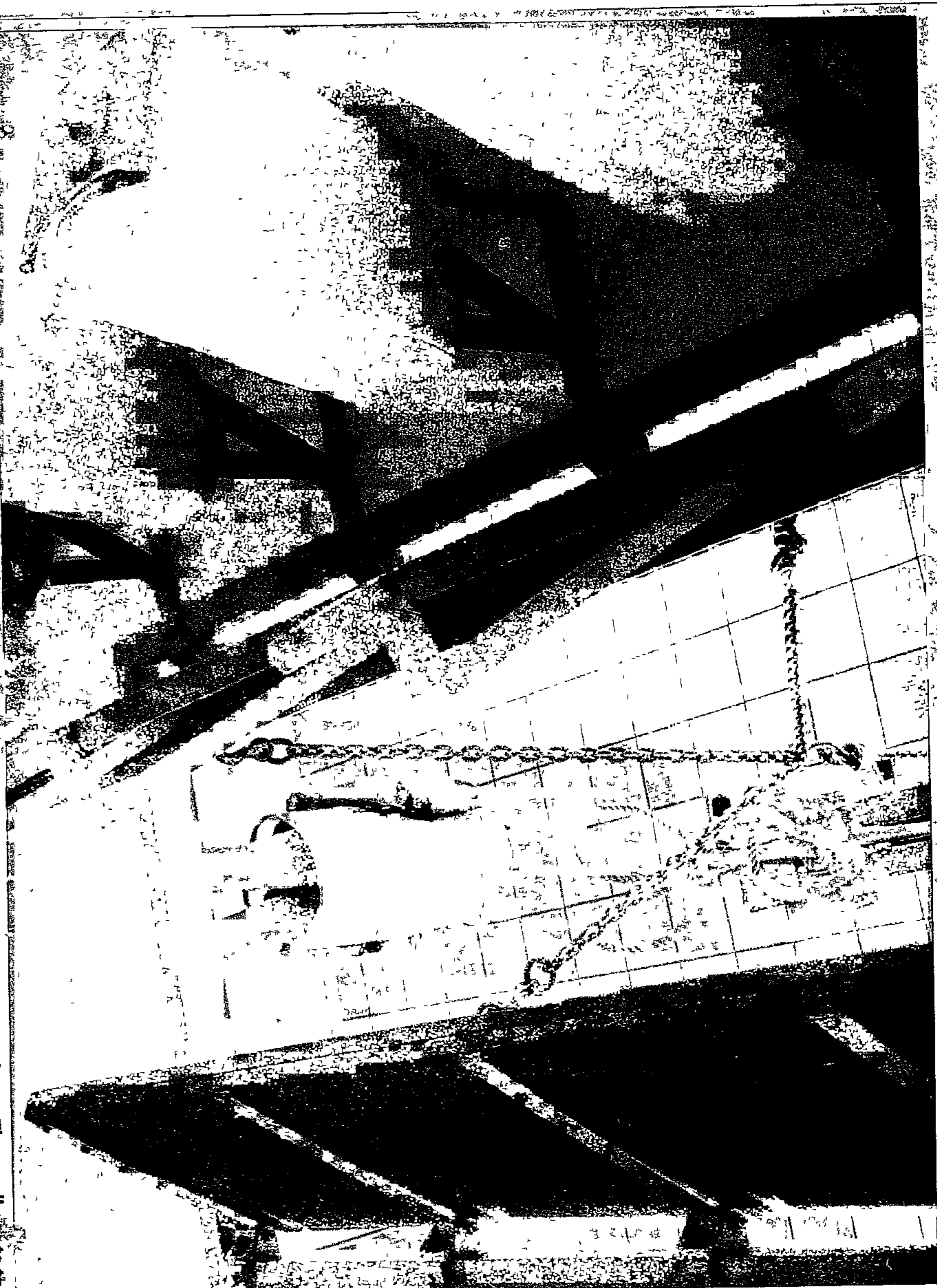
housing the State's instruments of death

The gallows, which executed 2 173 people between 1967 and November 1989, are to be dismantled following the abolition of the death penalty by the Constitutional Court in June

Seven nooses dangling above two solid wood trap doors provide a stark reminder of how the ultimate penalty was administered in the dark era of apartheid

Those awaiting execution would be led, handcuffed, from their cells at 15am to have their ^{by} ^{of} ^{the} ^{prison} ^{authorities} ^{checked} ^{through} ^{the} ^{gates} ^{to} ^{the} ^{gallows} ^{before} ^{being} ^{executed} ^{by} ^{the} ^{gallows} ^{operator}

► To Page 3



From inside the gallows ... the view from below the deadly trapdoor in Pretoria Central Prison, showing the noose above. The sandbags to the left were intended to keep the sound of the trapdoor clanging from other prisoners.

Fatal steps on the way to the gallows

► From Page 1

gious workers.

At 6 55am, the condemned prisoners walked along a barren corridor before climbing the winding concrete staircase to the gallows room

It is a grim journey, the air laden with the pungent smell of industrial disinfectant and stale body odour

The "seven o'clock walk" would undoubtedly have attracted the attention of other inmates in the spartan cells along the route. Yesterday's visit by the

press was no different, with journalists exposed to a barrage of complaints and grievances from "lifers" clinging to their cell bars.

On arrival, white cotton hoods were placed over the prisoners' heads. Once the executioner had placed the seven nooses around their necks, he pulled a lever to complete the grisly task.

A double row of sandbags deaden the sound of the trap doors swinging open.

Correctional Services Minister Dr Sipo Mzimela said at the prison yesterday: "I don't think the State has the right to take

someone's life. We should protect life, even though some of the men housed here have committed heinous crimes.

"The gallows are barbaric and belong in the past, and I think the Constitutional Court has taken the right decision."

The gallows would now be dismantled and the execution chamber and ante-rooms redesigned for other uses. Whether the gallows should become museum exhibits "has still to be decided."

On February 2 1990 the former government placed a moratorium on all executions.

(252) Star 20/10/95

PRESS MEMBERS TAKE 'LAST WALK'

Pretoria jail gallows to be dismantled

CT 20/10/95

(252)

PRETORIA: Yesterday, for the first time, members of the South African media were shown the path to the gallows trodden by 2 173 prisoners between 1967 and 1989.

THERE are 52 steps leading up from the holding cells to the execution chamber in Section C of Pretoria Maximum Security Prison.

Yesterday, for the first time, the South African media were allowed to climb them to the gallows on which 2 173 people died between 1967 and November 1989.

Following the abolition of the death penalty by the Constitutional Court in June, the gallows is to be demolished.

Seven nooses dangling above two heavy wooden trap doors are a shocking reminder of how formerly the ultimate penalty was administered.

Those scheduled for execution would be led, handcuffed, from their cells at 6.15am to have their identities checked against finger-

print records before being counselled by religious workers.

At 6.55am they walked along a bare corridor before climbing the winding concrete staircase to the gallows room.

The air is laden with the smell of industrial disinfectant and stale body odour.

Hoods

The "7 o'clock walk" would undoubtedly have held the attention of prisoners in the cells in the corridor.

In the gallows room, hoods and nooses were placed over the condemned prisoners' heads, and the executioner pulled a lever.

A double row of sandbags deadened the sound of the trapdoors swinging down.

Correctional Services Minister Dr Sipo Mzimela said at a press conference at the prison yesterday. "I don't think the state has the right to take someone's life, even though some of the people housed here have committed heinous crimes. The gallows is barbaric and belongs in the past."

He said the gallows would be dismantled and the execution chamber and its ante-rooms redesigned for other uses.

It was still to be decided whether the gallows would become a museum exhibit, he said.

Pretoria Maximum Security Prison was built in 1967 to accommodate 342 male prisoners. Women prisoners given the death sentence were normally detained in the Pretoria Women's Prison.

On February 2, 1990, the National Party government led by the then president Mr F W de Klerk, placed a moratorium on executions. — Special Correspondent

Amnesty extension deal 'not likely' before election

Kevin O'Grady

BD 13/10/95 (252)

PRESIDENT Nelson Mandela was unlikely to announce an extension of the amnesty cut-off date before next month's election and the Freedom Front could not expect to gain support from the issue at the polls, party leader Constand Viljoen said yesterday.

The issue of extending the date and the talks with Mandela were "so important that so far I have not connected them with the elections".

"If you consider it from Nelson Mandela's view, he will probably keep (any announcement) back and not give it before the elections, so I don't expect it will benefit us," Viljoen said.

However, "considering the collapse of the NP and that its election promises have been proved a failure", the Freedom Front expected to benefit from "quite a heavy swing" away from the NP, he said.

The Freedom Front had fielded

1 057 candidates countrywide and was concentrating on areas with a traditionally high concentration of Afrikaans people — Gauteng and parts of Northwest, Northern Province and Northern Cape.

Viljoen said the CP's re-entry into mainstream politics did not pose any significant threat to the Freedom Front, although "there will always be some conservative people who will rally around the CP". The Freedom Front could no longer be regarded as a right-wing party as it had moved "more towards a central position".

CP leader Ferdi Hartzenberg said his party would contest the local government elections as a way of "using the system to change the system". The CP had given up hope on pre-1994 election promises that Afrikaner self-termination would be negotiated and planned to gain power at local level in certain areas of the Northwest, Northern Province and Free State.

299 nominees for Truth Commission

JOHANNESBURG: The Truth Commission selection panel on Saturday released the names of 299 nominees ranging from Archbishop Desmond Tutu to lawyer and television personality Prof. Denis Davis. (252)

A shortlist of about 40 names will be drawn up after a week. This will also be made public and interviews with all 40 candidates will follow. CT 23/10/95

The commission will have up to 18 months in which to investigate the human rights record of the struggle for and against apartheid, to award compensation to victims and to grant amnesty to offenders who confess. — Reuter



JCI MD Bill Nairn, left, NUM branch educator Ariah Molokwuane and NUM education unit head Gino Govender, right, at yesterday's signing of the Adult Basic Education and Training agreement. Picture. CATHY PINNOCK

BD 24/10/95
Miners have education role

Renee Grawitzky

~~WORKER~~ participation in the structuring and implementation of Adult Basic Education and Training (Abet) on mines would be achieved after the signing of an agreement by the NUM and JCI yesterday.

The deal, which relates to the actual implementation of the programme on four mines employing 15 000 workers, stems from an industry framework agreement signed at industry level by the Chamber of Mines and the NUM in July this year.

JCI MD Bill Nairn said it was clear the education base of employees was too low and had to be addressed. He said if Abet was properly constructed and implemented it could "enhance employee capability to be found in competitive mining industries around the world".

NUM education co-ordinator Gino Govender said the Abet programmes would be decided on jointly by JCI and the union.

It would be aligned with the National Qualifications Framework, he said.

BD 24/10/95 (252)
Law Commission to deal with security laws

Stephané Bothma

THE issue of security legislation would be referred to the SA Law Commission for a "thorough investigation and recommendations", Safety and Security Minister Sydney Mufamadi said yesterday.

The Internal Security Act, Act 74 of 1982, has been amended twice since 1991 to remove objectionable provisions of the past, Mufamadi said.

The most recent amendment became effective on April 29 last year after the Transitional Executive Council scrapped Section 29, providing for detention without trial.

Four security-related Acts applicable in the former TBVC states remained in force. These should be replaced by one Act which applied to the country as a whole, Mufamadi said.

Meanwhile, the SA Law Commission has recommended draft legislation providing for class action and actions in the public interest.

The commission said yesterday class and public-interest actions were part of a worldwide movement to make access to justice a reality.

A class action is instituted on behalf of a class, or group, in respect of whom the relief claimed and the issues involved similarly affect all members.

"A class action is ideal in those circumstances where joinder of parties is impracticable and it is especially suited to claims for damages and specific

performance," the commission said.

SA courts traditionally required that the plaintiff or defendant has a direct, personal and sufficient interest in a court action. Legislation providing for class action will change this.

The commission's draft Bill provides for, among others, that:

- Any person, whether or not he claims the relief sought in his own interest, may institute action as a public interest action as long as such person identifies the action as a public interest action;
- A class action must be certified as such by the court;
- The court shall have a wide discretion as to the appropriate procedure to be followed in the conduct of a class action; and
- Judgment in a class action shall be binding on the members of the class.

"Prospective litigants are often hesitant to institute or defend actions as they lack the financial means to pay legal costs. This is especially true in the case of public interest actions and class actions," the commission said.

To address the problem, the commission suggested a court-appointed commissioner collate evidence and make determinations relating to individual issues, the creation of a fund to assist members of the public and contingency fees, where a lawyer is paid only if the action is successful.

The commission invited comment on the draft legislation

Law, order revamp (252) on the cards

ET 24/10/95
SPECIAL CORRESPONDENT

JOHANNESBURG: —Facing a massive voter backlash in the November municipal elections, the government is to consider a complete revamp of its law and order policies in the next two weeks.

The National Party and the African National Congress are facing a concerted threat from other opposition parties because of the perceived breakdown of public confidence in the ability of the security forces to contain crime. Safety and Security Minister Mr Sydney Mufamadi, speaking at a meeting of community leaders, police representatives and victims of crime and violence in Chatsworth, promised to seek cabinet approval next week to lift the moratorium on police recruiting and training in kwaZulu/Natal as well as in Gauteng.

Meanwhile, Minister without Portfolio Mr. Jay Naidoo, has announced a R200-million RDP aid package to the departments of safety and security, correctional services and justice to beef up crime prevention and streamline the criminal justice system.

Staff Reporter

IN a move to bolster people's confidence in the government, and to improve the government's administration, a Public Protector with vast powers of investigation has been appointed to act as the people's watchdog on government spending of public funds.

The Public Protector will also investigate allegations of maladministration against officials

Selby Baqwa, an advocate by profession, took up the challenge at the beginning of the month to ensure that the country was run by a good clean administration

In the past, the office of the Advocate-General and later an Ombudsman was given the task of keeping an eye on the government, but with this new post it will be the first time that these duties will be underpinned by a Charter of Fundamental Rights

Structures such as the Human Rights Commission, the Commission for Land Restitution and the Commission on Gender Issues are intended to support the Public Protector

Mr Baqwa's duties will include investigating complaints either on his own initiative or after getting complaints from people on any alleged charges of maladministration in connection with the affairs of government, at any level or in any institution in which the State is the controlling shareholder.

He is also authorised to investigate the abuse or unjustifiable exercise of power or other improper conduct committed by people performing a public function.

It is his duty to investigate improper or unlawful enrichment by officials and to investigate any act or omission by a person performing a public function that will result in unlawful prejudice. The Public Protector has been given extraordinary powers of access, subpoena and seizure without hindrance, even from the president

Upon completing an investigation and where it appears that a crime has been committed, the Public Protector will refer the matter to the Attorney-General for prosecution and is expected to report half-yearly to parliament.

Mr Baqwa said that compared to the task of his predecessor, his duties were expanded in the sense that the Public Protector would now be operating in an environment in which human rights would be very important and where the government placed specific emphasis on those rights

"In that sense, I perceive my mandate to be broader and not because the office as such is different, but because the political

climate and conditions have changed

"Traditionally human rights — as accepted internationally — have not been a matter over which the Public Protector had been seen to have jurisdiction in the past. In the classical sense the jurisdiction was concentrated mainly on the investigation of maladministration and making recommendations regarding complaints against State institutions.

"I believe this office is increasingly regarded as an instrument that is suitable for the protection of certain basic human rights since it will become more accessible to the individual

"However, I must state that in fulfilling this function, the Public Protector will work in co-operation with the Human Rights Commission, which is soon to be appointed. The two institutions complement each other in that this office protects the individual against vertical violation of human rights, whereas the HRC protects people against horizontal violation of human rights"

"Vertical" violation is defined as violation emanating from the State, as opposed to what the Human Right Commission is investigating, namely "horizontal" involving violations by an individual against another individual

He said one of his first tasks in his new office would be to publicise the existence and functions of the office as much as possible

Mr Baqwa said he felt comfortable with his new job and the powers associated with it, not because he was looking forward to using them. At least he had knowledge that if he did encounter problems he would be able to deal with them instead of throwing his hands up in the air and not being effective

"In other words, these powers exist to assure the public that the Public Protector has the necessary muscle to deal with whoever is at fault

"One is always aware of the potential of the closing of ranks in the public service. It is a bureaucracy whose members might for obvious reasons seek to protect one another. If there were such a closing of ranks, one would need to have powers to handle the problem

"I do not presume that this will be the case. I would rather presume co-operation from everybody concerned"

He said his office had been effectively removed from the control of the executive giving it greater independence in cases of

conflict with the government

"People both inside and outside the government should view this office as being potentially beneficial to them. If there is a complaint against the government and they (the government) appoint an internal investigating official, there is generally an outcry

"But, if this office finds there is no substance to the complaint, it can never be termed a cover-up because the Public Protector has absolutely nothing to gain from such a conclusion"

He said there was a need to let people know of the functions of Public Protector's office

"Even though the office has been in operation in Pretoria for years now, many people are not aware of its existence

"We have started a communication drive on radio, television and in the print media to foster an awareness in this regard, but at the moment there is not yet a structured publicity campaign.

"Such a structured campaign will commence shortly with a view particularly to reaching all institutions such as schools, technicians, universities, churches, non-governmental organisations (NGOs), government departments and people in the rural areas, who for most of the time are locked out of the mainstream communications in the country.

"We intend taking the concept of the Public Protector to the people, both on an informative and educative basis."

Mr Baqwa said he found his new job challenging and daunting, but also very exciting

"I have been given an opportunity and the power to make a difference in South Africa regarding public administration. I find support in the fact that the office has been expanded — it has a presence in every province and that solves the problem of inaccessibility

"I find further support in the fact that the Bill of Rights is contained in the Constitution and that the population now has a document which is public. People do not need to be told by this office that they have rights, and I will not let them down. I will do my best to be equal to the job."

The Public Protector in South Africa is nominated and selected by a committee comprising representatives of all political parties in parliament.

■ The Office of the Public Protector can be contacted on 0800 11 20 40 or at P/Bag X677 Pretoria 0001

Meet the man who's there to protect you from the State

Right-wing amnesty ruled out ⁽²⁵²⁾

PRETORIA — President Mandela said today he had ruled out amnesty for right-wingers standing trial for bombings in the run-up to last year's all-race elections

ARG 26/10/95
"I have pointed out to General Constand Viljoen that I find it impossible to

agree to the request to extend the amnesty date from December 5, 1993 to May 10, 1994," Mandela told a news conference

He was speaking after meeting 10 right-wingers standing trial for the bombings which killed 23 people in the run-up to last year's elections — Reuter

BILL OF RIGHTS

Beware of entitlement

(252)

FM 27/10/95

Three new socio-economic rights proposed by the ANC and included in the recently released draft Bill of Rights have sparked dissension between political parties negotiating the final constitution

These are the rights to adequate housing, to health care and to social assistance, including the right to food and water

The point of dissension is not whether socio-economic rights should be included — all three are accepted fundamental rights — but the extent of protection they should provide. The DP and NP do not want the Bill of Rights to do more than guarantee the country's citizens the essentials of life. Any detailed elaboration of socio-economic rights above a minimum base, they argue, could turn the Bill of Rights partially into a manifesto of State policy.

Affordability is a crucial consideration. Though the parties agree that socio-economic rights should not commit the State to providing what it cannot afford, some of the draft formulations give cause for concern.

□ Section 19 says everyone without adequate resources has a right to reasonable and appropriate measures by the State to secure adequate housing and equitable ac-

cess to land. The technical committee of the Constitutional Assembly (CA) says such measures could include facilitating disadvantaged communities' access to credit, building materials, services and appropriate land, providing emergency housing, and accommodating vulnerable groups like street children and unemployed single parents.

Notably, the alternative formulation of the right to adequate "shelter" was not adopted. The legislature would have the main task of defining "adequate" housing but the concept would have to keep pace with increases in housing standards in SA over time.

□ Section 20 says everyone has the right to health care which the State must take reasonable and progressive measures to improve and make accessible to all. These measures must include at least necessary medical attention.

By failing to qualify the level of health care deemed appropriate or what is meant by "adequate" resources, this formulation is open to wide differences in interpretation. At the very least it implies free health care for SA's vast indigent population, and



Smuts

□ Section 21 says everyone who is unable to support himself or his dependants has the right to receive reasonable and appropriate assistance from the State.

Everyone has the right to clean water and sufficient food which the State must take reasonable and appropriate measures to make accessible.

The technical committee says that what is "reasonable" will depend on the State's capacity and resources. Clearly as the State becomes more prosperous,

so its constitutional obligations will increase.

Education is another issue of debate. The draft Bill says everyone has the right to a basic education, including basic adult education, in a State or State-aided institution. The State must also take reasonable and progressive steps to make further education generally available and accessible.

The Education White Paper understands basic education to be 10 years of schooling. All the parties support the unqualified right to basic education — implying that nobody can be denied such an education because of an inability to pay. The formulation stops

CURRENT AFFAIRS

short of suggesting that education be free and compulsory. ANC MP Willie Hofmeyer says "We consider basic education to be up to standard eight, but there needs to be some obligation on the State to increase the level of entitlement to further education. In 100 years' time basic education might be interpreted as including matric or even tertiary education."

These draft formulations guarantee a basic minimum but place an onus on the State to increase that minimum over time. This means that the State could be taken to court if it does not try to improve social services.

The DP, however, proposes a minimum floor of rights to ensure that everyone is entitled to the bare essentials of life. It groups the main socio-economic rights into one clause — "Entitlement to the Essentials of Life" — which says every citizen shall be entitled to the food and water necessary for survival, to shelter from the elements, to basic health care, a basic education and a clean, healthy environment.

DP MP Dene Smuts says "It is cruel and deceptive to declare paper rights on things the population needs desperately but which the country cannot deliver. It devalues and endangers the rest of the constitution."

The ANC says it is not creating paper rights but that the Bill of Rights cannot shy away from including fundamental rights

"which, while posing difficulties of enforcement, reflect important principles in the promotion of a society based on justice and equality, a society which seeks to redress the imbalances of the past."

It regards the new constitution as an anti-apartheid document intended to mark a decisive break with the past. It says "The final constitution must ensure this rejection is permanent and the dismantling complete."

It is hardly surprising, therefore, that far from paring down the current Bill of Rights, most clauses have been expanded and strengthened in the draft Bill.

A Bill of Rights is supposed to sketch a broad framework within which the legislature should be at liberty to develop detailed policies. The finer interpretation should be left to the Constitutional Court so that the constitution can be informed by the body of case law that develops over time.

Though more than half the clauses in the draft Bill have been adopted, outstanding issues include the right to life, religion, economic activity and labour relations.

Consensus has been achieved on, among others, the rights of assembly, demonstration and petition, freedom of association, movement and residence, freedom of expression, political rights, citizens' rights and academic freedom.

CA executive director Hassen Ebrahim

says "We made much more progress than originally anticipated. There aren't very many major issues outstanding and we are in a good position to start our work in January with a view to concluding in May."

But the sphere of socio-economic rights remains tricky territory. Compromise solutions may be found in the next round of debate while some elements may have to be referred to closed-door bilateral meetings.

After months of haggling, the CA deadlock-breaking committee achieved a breakthrough recently when the parties agreed in principle to a new property clause which links the right to property with the right to land reform.

The current Bill of Rights makes provision for land restitution but not land redistribution — a legal loophole hampering government land reform.

The ANC has won the DP's support for the clause which satisfies their demand for entrenched property rights as well as the land hunger of the populous. The Nationalists, after initially supporting the clause, have withdrawn that support without explanation, possibly because of pressure from the white farming lobby.

The public will have three months to comment on the draft Bill and the draft final constitution which is due for release on November 15. The CA has to complete the final Constitution by May 1996. ■

DP slams 'inert' Transkei court

Own Correspondent

THE Transkei Industrial Court has not heard a single case this year, and the backlog now stands at 120 cases.

This was disclosed yesterday by DP Eastern Cape leader Eddie Trent, who said it was a "travesty of justice" leaving people who had been unfairly treated by employers with no access to justice.

He said he had been contacted by a person dismissed by Transkei University in 1993 who had been unable to get access to the court because there was no one to hear his alleged unfair labour practice case.

Constitutionally, Trent said, the court had to sit to hear all cases of unfair labour practices which had oc-

curred under the former homeland government.

Trent said that there was a backlog of 20 cases "and no light at the end of the tunnel as to when the court will ever reconvene".

"The type of anarchy that is now allowed to reign in Transkei will not be tolerated by the DP. The fundamental rights in chapter 3 of the constitution make provision for every citizen's right of access to justice."

Trent said the DP would approach the minister to demand that presiding officers be appointed immediately to hear the cases, "failing which we will proceed to the Constitutional Court on grounds that this person's fundamental rights are being deliberately ignored". (252)

BD 27/10/95

Wider southern African mining equity base needed — Holomisa

BD 27/10/95

Michael Moon

WAYS had to be found to widen the equity base of mining in the southern African region, Environment Affairs and Tourism Deputy Minister Bantu Holomisa said yesterday

This should be done through the promotion of appropriate technology and by devising administrative solutions, Holomisa said in a speech at a Southern African Development Community (SADC) conference on mining and the environment in Johannesburg

Holomisa conceded that the capital-intensive nature of mining limited the scope for small-scale entrepreneurial operations which would benefit "the poor majority"

He said the mining industry could also not be looked at in isolation. It exploited a non-renewable resource and had a narrow equity base, whereas other sectors with a wider equity base and using renewable resources could be adversely affected by mining

The new approach to public policy in SADC countries meant decision-makers would have to trade mining off against activities such as agriculture and tourism with broader equity and exploiting renewable resources.

The long-term environmental effect of mining on such activities was difficult to reduce to a cost-benefit analysis, which forced decision-makers into elusive value judgments

This meant "cruel decisions" had to be taken on a "micro-ethical level to attain macro-ethically acceptable transition from unsustainable to sustainable development", said Holomisa

Deciding at what point to close a marginal mine and retrench many workers in the face of mounting environmental conflicts was one side of the coin, while deciding when to open a new mine in the face of damage to agricultural land, tourism and water quality was the other. There had to be administrative reform in SADC countries to deal with such issues.

Narrow sectoral approaches and quick decisions by a single authority were unacceptable, he said

SADC countries were still driven by narrowly conceived and focused economic policies

They were moving towards integration of economic, environmental and equity impact assessments, compelling decision-makers to defend their choices in terms of economic, social and environmental sustainability, he said

Government announces environment awards

BD 27/10/95

Michael Moon

THE Natal Parks Board, Trees for Africa and Mpumalanga environmentalist Sue Hart were yesterday named as this year's recipients of government's Conservation Awards for achievement in the environmental field.

The environmental affairs and tourism department said the Natal Parks Board played a key role in the preservation of natural resources

and wildlife, and had also developed a dynamic neighbour relations policy in its sphere of influence. Through its community outreach programme, the board had improved the quality of life in its neighbouring communities

Trees for Africa was one of the first non-governmental organisations to play an active role in empowering people through community-owned projects, the department said. Through

these projects, thousands of trees were bringing new hope to deprived people

Hart, the founder of EcoLink and recently appointed to the National Parks Board, was honoured for her work among poverty-stricken communities and for promoting environmental awareness

Political comment in this issue by J Jones, newsbills by C Pickard-Cambridge, headlines by V Strauss, all of 11 Diagonal Street, Johannesburg

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Mandela refuses to alter amnesty date

(252)
Stephané Bothma

BD 27/10/95
PRETORIA — President Nelson Mandela has refused to extend the amnesty cut-off date from December 5 1993 to May 10 1994, saying this was his final word on the issue "for the time being"

The announcement followed a second meeting in two weeks between Mandela and Freedom Front leader Constand Viljoen on the issue of extending the cut-off date which, if granted, would have meant amnesty for the right-wingers allegedly responsible for last year's pre-election bombings

Yesterday's meeting was also attended by Justice Minister Dullah Omar, families of the right-wingers and their legal representatives

To grant Viljoen's request for an extension would result in too many complications, Mandela told a media briefing. "Let their trials go on, it will not be the end of the world if they are convicted. I am committed to reconciliation and I will examine any case even after convictions have taken place."

Continued on Page 2

Amnesty (252)

BD 27/10/95
Continued from Page 1

At the briefing Viljoen expressed only "disappointment" at the decision. But he told an election meeting at the Pretoria City Hall last night that a "serious situation developed" when Mandela on behalf of the ANC rejected the Freedom Front's request to change the cut-off date. "Without the extension of the amnesty date, reconciliation with the Afrikaner is impossible, regardless of the sweet-talking," Viljoen said.

Mandela and Viljoen said that the appointment of an ANC-Freedom Front standing committee was being considered in an attempt to exchange views on problems.

Mandela expressed sympathy with the fate of the right-wingers should they be jailed and also regret that he

had to send Viljoen away empty handed. "I regret that I am unable to give him something," the president said, as Viljoen was one of the political leaders in the country who attempted to serve SA. The right-wingers in custody had been misled by their leaders — the same leaders who had now abandoned them, he said.

He stressed that he had not only been approached by the right wing to extend the cut-off date, but had received similar requests from the IFP, the PAC, Azapo and the ANC.

"I have refused all of them," he said.

In reaction to Mandela's decision the AWB called for the prosecution of ANC members "responsible for gunning down Zulus" outside Shell House in Johannesburg in March 1994.

"If this is not done, then the blatant anti-white nature of the new SA and its judicial system will be obvious to all," the organisation said.

Viljoen warns on amnesty

Star 27/10/95 (252)

■ BY MONDLI MAKHANYA
POLITICAL REPORTER

Freedom Front leader General Constand Viljoen issued a warning at an election rally last night that reconciliation with Afrikaners would be impossible unless President Mandela agreed to an extension of the cut-off date for the amnesty of people accused of political crimes

He was taking a more militant stance than he had earlier in the day after his meeting with Mandela in Pretoria, when Mandela refused the extension on the eve of his inauguration as head of state

Viljoen said the question of an extension of the amnesty date from December 6 1993 to May 10 1995 could be the "mo-

ment of truth" for reconciliation

At their meeting, Viljoen and Mandela had agreed to form a committee of ANC and FF members to consider the extension and a moratorium on the trials of 26 rightwingers charged for a pre-election bombing spree last year. An extension of the date would have freed them

"The Afrikaner feels he has been done an injustice with regard to the constitutional stipulation that there should be amnesty for political crimes," he said last night

"The question arises whether the sweet talk of the president and the ANC on reconciliation also applied to Afrikaners. If the cut-off date is not moved, reconciliation with the Afrikaner would not be pos-

sible, despite all the sweet talk

The two leaders agreed to explore the possibility of establishing an ANC-Freedom Front standing committee ostensibly to exchange views on important matters, which will include the issue of "political prisoners"

This is being seen as an attempt by Mandela and the ANC to ward off the emergence of a right-wing front, which has been mooted by Viljoen in recent meetings he held with former state president P W Botha and Deputy President F W de Klerk. The ANC has been displeased with Viljoen's championing of such a front as well as with alleged right-wing involvement in training hit-squads in KwaZulu-Natal

► Picture - Page 3

NO AMNESTY EXTENSION FOR ALLEGED BOMBERS

Mandela: Let trials go on

CT 27/10/95

(252)

PRETORIA: President Nelson Mandela yesterday met family members and lawyers of alleged right-wing bombers, but said their cases would be reviewed only after their trial.

PRESIDENT Nelson Mandela said yesterday he had ruled out amnesty for right-wingers standing trial for bombings in the run-up to last year's election

"I have pointed out to General Constand Viljoen that I find it impossible to agree to the request to extend the amnesty date from December 5, 1993, to May 10, 1994," Mr Mandela told reporters

He was speaking after meeting wives and lawyers of right-wingers standing trial for the bombings that killed 23 people

Ten of those charged waited in an adjacent room during the talks

Gen Viljoen said it was agreed with justice officials that the accused should not meet Mr Mandela "because it would set a precedent for other prisoners wanting to speak to the President"

"They were there, but they

stayed behind in another room while the wives and legal representatives went in to meet the President," Gen Viljoen said

Mr Mandela said their cases should be reviewed, but only after their trial was completed

"Let the trials go on throughout the country," he said, adding that he had received similar requests from the ANC, Inkatha, PAC and Azapo

"I regret that Gen Viljoen should leave with empty hands," Mr Mandela said.

He said he sympathised with the 26 right-wingers

"I sympathise with these requests, especially because the people he (Gen Viljoen) represents are young people who were misled by their leaders and found themselves in difficult positions and have now been abandoned by



CUT-OFF DATE STANDS: President Nelson Mandela

those leaders

"I sympathise fully they have got families It is not a comforting thought, especially to a man who has been in prison, as myself "

He had explained to the delegation the complications that were likely to arise should the amnesty date be extended to May 10, 1994 — the date when he was installed

as President.

Mr Mandela praised Gen Viljoen, saying "He is one of those political leaders who is trying to serve South Africa in the best way possible "

Gen Viljoen said he was disappointed at Mr Mandela's rejection of the amnesty request, but was pleased the President had not completely closed the door

"We are hoping we will try to find a better definition of which cases to consider for amnesty I have the intention to find a new formula to put a moratorium on some of the cases until they are dealt with by the truth commission," he said

Mr Mandela told Mrs Brenda le Roux, wife of alleged bomber Mr Etienne le Roux "Just tell them I think of them and we sympathise with their position "

●The DP welcomed Mr Mandela's announcement that the amnesty cut-off date would not be extended, human rights spokeswoman Ms Dene Smuts said

Tough new bail laws bite

CT 27/10/95 (252)

JACKIE CAMERON
CRIME REPORTER

SUSPECTED criminals are finding it harder to get bail as sweeping amendments to the Criminal Procedures Act take effect.

The amendments, which were finalised last month, have shifted the onus from the state, which previously had to prove that refusing bail was in the interests of justice, to the person suspected of committing a serious crime, who now has to prove that they should be granted bail.

They also allow for the postponement of bail hearings to provide police with more time to gather evidence. Magistrates must now postpone hearings if they do not have enough facts about a case to make a balanced decision.

The new changes were put to the test in the Cape Town Magistrate's Court yesterday, when two Nigerian men suspected of involvement in fraud and other crimes

totalling hundreds of thousands of rands wanted bail, but police wanted them behind bars while they continued their investigation.

The men were advised by their attorney that their chances of getting bail yesterday would be slim in the light of the new amendments and that they had a better chance at the next court appearance.

The men agreed and the case was postponed to November 6.

Prosecutors and police have welcomed the changes. Magistrates also prefer the new law and said it allowed for more informed decisions on granting bail.

Attorneys said it would now be more risky to fight the state when they opposed bail on a first appearance.

● According to statistics released to the Cape Times yesterday, 137 people were refused bail and 83 were granted bail at the Cape Town Magistrate's Court between July 1994 and June this year.

Right-wing troublemakers warned

Star 28/10/95 (252)

Safety and Security Minister Sydney Mufamadi yesterday ordered police surveillance of organisations threatening mayhem following President Nelson Mandela's rejection of indemnity for rightwingers on trial for bombings in the run-up to last year's general election.

"I have instructed the national commissioner (of police, George Fivaz) to monitor the activities of those individuals or organisations threatening to break the law," he said.

Mufamadi said his ministry was treating the threats seriously, and

warned of a police crackdown on individuals or organisations bent on destabilising the country.

Earlier this week, in talks with Freedom Front leader General Constand Viljoen, President Mandela refused to extend the indemnity deadline.

"We want to assure the public and to place on record that the Government will not be intimidated by such threats," Mufamadi said in Pretoria.

"Any threat to public safety must be treated seriously," he added - Sapa

Right wing warns of violence as Mandela turns down bid to extend amnesty date

(252)
ARC 28/10/95

JOHANNESBURG — President Nelson Mandela's decision not to extend an amnesty to rightwingers accused of pre-election bombings raised fears of new violence in post-apartheid South Africa, conservative groups said

But Safety and Security Minister Sydney Mufamadi said the government would not be intimidated by right-wing threats of civil war

Pieter Mulder, chairman of the Freedom Front, said his party stood to lose credibility, supporters and its role as a check on rightwing whites if it could not show it had the government's ear

"The government is playing a dangerous game. We have been in this game for two years now and stand to lose our credibility as a result of this decision

"We promised there would be no rightwing violence if the government listened to us. There hasn't been any since the elections but I don't know what will happen now," said Mr Mulder

Mr Mulder said while the amnesty door was not fully

closed, Mr Mandela's move could not have come at a worse time, as it could lose the Front votes in next week's local government elections

Freedom Front leader General Constand Viljoen entered the elections at the 11th-hour. His championing of right-wing causes and efforts to find a white homeland in the new South Africa effectively neutralised the threat posed by hardliners such as those in the neo-Nazi Afrikaner Weerstandsbeweging

The AWB said the amnesty decision meant the ANC would be responsible "for the civil war which is slowly manifesting itself in the country"

"The AWB declares that it is now no longer going to use its influence to deter embittered Boers from going over to drastic actions if they so wish," the AWB's national executive council said in a statement

Mr Mandela on Thursday ruled out extending the amnesty to May 10, 1994, a move that would have covered rightwingers standing trial for pre-election bombings in which 23 people were killed

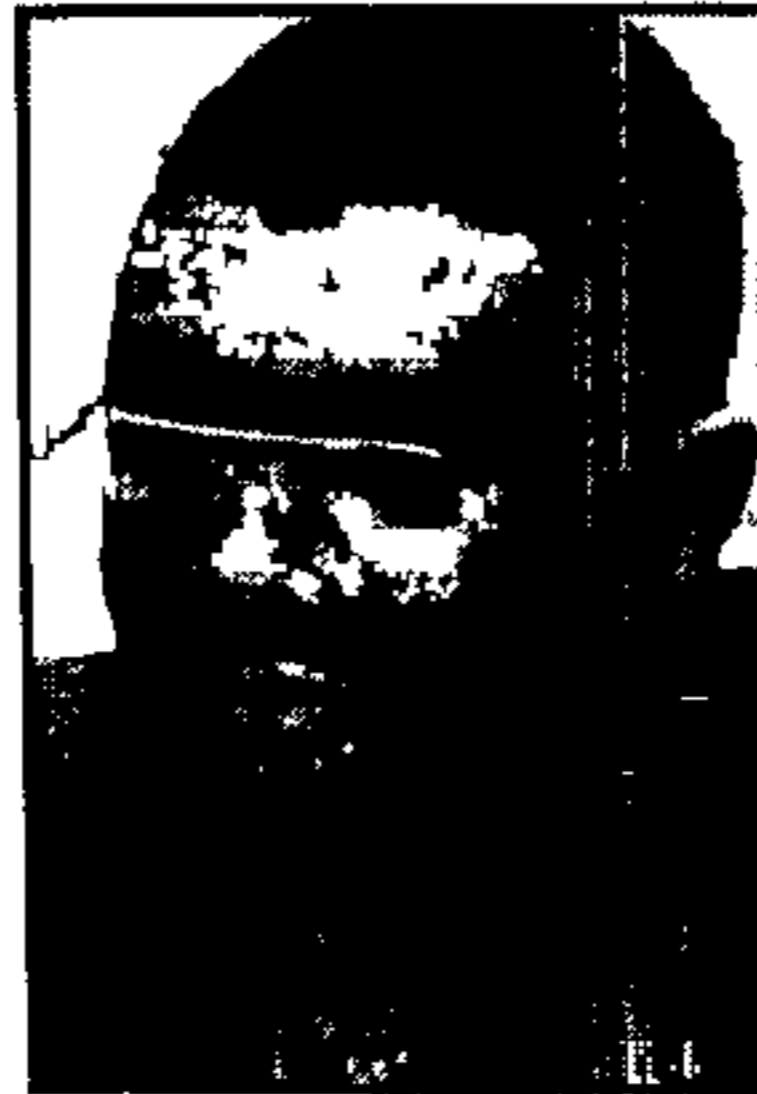
"I have pointed out to General Constand Viljoen that I find it impossible to agree to the request to extend the amnesty date from December 5, 1993 to May 10, 1994," he said

Mr Mandela ruled out amnesty for rightwingers after meeting wives and lawyers of some of the 26 men accused of planting bombs in Johannesburg, Germiston and Pretoria before the election

ANC sources suggested Mr Mandela was prepared to extend the date, which would have included blacks accused of political crimes, but had

given way to ANC officials who felt the government owed nothing to the white right

The AWB said if the date was not extended the ANC members who shot and killed eight Zulus outside the ruling party's Johannesburg headquarters



Sydney Mufamadi

during a march last year, should be prosecuted, as should the president

Mr Mandela shocked parliament earlier this year when he said he gave the ANC guards permission to open fire if necessary.

"The ANC thinks that because the Afrikaner is not doing the toyi-toyi he is not angry. He is and we fear we will lose control over our followers," said Mr Mulder

Mr Mufamadi said his ministry had noted threats by rightwingers after the failed negotiations with Mr Mandela

"We want to assure the public and to place on record that the government will not be intimidated by such threats. Any threat to public safety must be treated seriously

"I have therefore instructed the national commissioner (of police) to monitor the activities of those individuals or organisations that are threatening to break the law."

Lawyers' payments probe is completed

By MARLENE BURGER

TRUSTEES of Lawyers for Human Rights have completed their investigation into two unorthodox payments involving top human rights advocates Brian Currin and Jules Browde, and are expected to make their findings known soon.

The two payments — R56 776,91 for Mr. Currin's personal taxes in August 1994, and a sum of R30 000 to Siphon Mahamba, a former LHR employee, three months earlier — came to light in a staff memorandum last month.

Both of the payments were approved by Mr Browde, who at the time was chairman of LHR's national council.

The amount paid for Mr Currin's taxes was offset against money, he said was due to him for leave he had not taken. He still owes the organisation R5 000.

Mr Mahamba was paid after he claimed LHR owed him R56 000 for two years employment. He said the amount was the difference between the salary agreed to by LHR and a package he had negotiated independently with USAID, an LHR donor.

Mr Currin said he had negotiated the R30 000 payment with Mr Mahamba after he had threatened legal action.

Mr Currin said he knew the management committee would not approve the payment, so he arranged for it to be put into Mr Browde's account and asked him to write a personal cheque for Mr Mahamba.

ST 29/10/95

'NP will work to bring back death penalty'

JOHANNESBURG: The NP would work towards re-instituting the death penalty to fight crime, party leader Deputy President F W de Klerk said at Nasrec near here at the weekend.

During a local government election roadshow in this city's coloured areas, Mr De Klerk called for a review of the prison release policy and said something would have to be done to implement stricter jail sentences.

Quoting official statistics, he said vehicle theft and hijacking had gone up between 34 and 38% respectively since last year's election. Child abuse had increased by

ET 30/10/95 (252)
35%, armed robbery by 15% and fraud by seven per cent.

He attacked the ANC for "not really rising to the occasion" when it came to peace and stability. He referred to the lax action taken on municipal strikes, taxi blockades and disruptions in education.

Mr De Klerk criticised the ANC-led government for not implementing the RDP, especially building houses, quickly enough.

"It is surely not that difficult to build houses. I don't know why there is procrastination," he said, pointing to the successful housing construction in the Western Cape where the NP is in power — Sapa

New bail legislation is brief but profound

H... of the people... introduction of... Constitution last year, prompted a rethink of bail and the role it plays in crime and criminal proceedings.

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...repeats the

...with or... the trial... bail proceedings

IN THE FIFTH of a series on major legislation to emerge from the 1995 session of Parliament, Political Correspondent Patrick Bulger looks at the Criminal Procedure Second Amendment Act



Sta: 31/10/95

(252)

material evidence being lost, the accused person can be detained while an investigation to secure the evidence takes place. Such investigations shall be "completed as soon as possible" after which the accused can institute bail proceedings.

A person arrested on suspicion of a crime but who has not yet been charged can be held for up to 48 hours while a charge is investigated. In earlier legislation, a schedule listed those offences for which an accused could not apply for bail. This falls away. Now an accused can apply for bail in respect of any offence which brings this provision in line with the constitution.

Also struck out in the earlier legislation is the onus on the accused to show good cause why he or she should be released on bail. The new law places the onus on the court to adopt an "inquisitorial role" and to inquire whether the provision of bail satisfies certain criteria set down in the law.

Three major factors now have to be taken into account when an accused attempts to exercise his or her constitutional right to bail. They are the likelihood that the accused will attempt to evade trial, the likelihood that an accused will attempt to tamper with witnesses or evidence and the likelihood that an accused will endanger the safety of the public or commit another serious offence while out on bail.

...which an accused can afford to forfeit bail, whether the accused knows the witnesses or has a relationship with any of the

witnesses and the degree of violence implied by the charge will all be taken into account when considering bail.

Bail can be granted up to the time of conviction or acquittal, which means another issue to be taken into account in a bail application is the period for which the accused has already been in custody, the reason for any delay in the trial, the financial loss the accused is suffering, the state of health of the accused and so forth.

Duty

Because the new law places the onus on the court to inquire whether bail should be granted, the fact that the prosecution does not oppose bail being granted does not exempt the court from the duty of weighing up the personal interests of the accused against the public interest. An accused can also be released on bail subject to certain conditions like the deposit of a certain sum of money and the provision of sureties.

The Act further gives the courts quite wide discretion to increase or reduce the amount of bail and to impose new conditions. It also provides for people out on bail to be liable to a period of imprisonment of up to one year for failing to appear in court.

Bail can also be granted by any policeman above the rank of non-commissioned officer.

The general thrust is to make the provision of bail less open to systematic abuse while retaining the thrust of the constitution which holds that accused persons are entitled to bail up to that point at which the court proves them to be criminals.