

PUBLIC SECTOR GOVT. - JUSTICE

1989

JUNE - ~~AUG.~~ SEPT.

Councillors urged to obey court order

252
CAN 7-1-15 3/7/89

Staff Reporter

MEMBERS and councillors of the Lingeletu West town committee were asked at the weekend not to take the law into their own hands and to ensure that a Supreme Court order granted on Wednesday was strictly obeyed.

Mr Graham Lawrence, chief executive officer of the committee, made the request during an address to the town committee yesterday morning in compliance with the order issued by Mr Justice H L Berman.

An urgent application had earlier been brought by two Lingeletu residents who alleged they had been ordered to attend a kangaroo court sitting.

Mr Justice Berman issued an interim order calling on the town committee to show cause why a final order should not be granted interdicting and restraining the town committee and a Mr Magqaza, acting singularly or jointly with others, from participating in, assisting in, encouraging, permitting or allowing any unlawful attack on the two residents.

Mr Lawrence, as chief executive officer, was further ordered to inform all members and employees of the committee of the full text of the order within seven days.

Mr Lawrence also told the council that Mr Justice Berman had heard an application for interim relief, from which there was no appeal.

Today's Kriel verdict turns upon a single bullet

The months-long inquest in the fatal shooting of ANC guerrilla Ashley Kriel ends today, with a verdict that will decide the legality of a single gun-shot.
GAYE DAVIS reports

THE security policeman whose finger was on the trigger of the gun which fatally wounded African National Congress guerrilla Ashley Kriel acted unlawfully, it was argued this week in the Wynberg Magistrate's Court.

Jeremy Gauntlett, counsel for Kriel's family, said it was the duty of the magistrate presiding over the inquest hearing into Kriel's death on July 9 1987, to return a finding that his death was the result of an unlawful act by Warrant Officer Jeff Benzien

Benzien, who had admitted his finger was on the trigger when the shot was fired at close range, had himself rejected the generally accepted defences. that he fired in self-defence, to prevent Kriel escaping or to effect his arrest

Earlier evidence was that Benzien and a colleague, Sergeant Abels, were sent to a house in Hazendal, Athlone, to verify information that Kriel was hiding there. Wearing overalls, they posed as council employees inspecting drains

Gauntlett described the police operation as "manifestly ill-conceived"

"It was planned as a 'scouting operation', yet there was no radio, no immediate back-up, no firearm readily to hand and no plan as what to do if Kriel was found.

"These factors paved the way for a loss of control by Benzien of the whole situation, and a decision to resort to a desperate measure."

Neither Benzien nor Abels could offer any direct evidence as to how the firearm went off and the evidence of both was to be "approached with caution", Gauntlett said.

"Not only was Abels provided with Benzien's affidavit, and able to 'memorise' it, but Benzien and Abels consulted together with their legal representatives at the scene and were able to see what each other pointed out."

Benzien's evidence was unsatisfactory, Gauntlett said.

Evidence was that on the wall of his office was a Cape Youth Congress poster bearing Kriel's photograph and the legend: "Victory or death, freedom is certain." Under it Benzien had scrawled on it the words "Not for you ..."

Gauntlett said Benzien's suggestion that this behaviour was consistent with that of a normal police professional was "hardly credible".

Benzien also made an "extremely

significant slip" when, in explaining the poster, he drew the analogy of a pilot shooting down an enemy plane and notching up his score

This was not the behaviour of a policeman who had found himself involved in a shooting accident, Gauntlett said.

Had the shooting been an accident Benzien could simply have said so, but he had only belatedly conceded it might have been accidental.

When the shot went off, Kriel was no longer struggling to escape the two policemen. Slightly built, he was bent over under the weight of Benzien on his back, while Abels was helping to force him down

The shooting was deliberate, "to curtail an operation which was a nightmare from the beginning", Gauntlett said.

Forensic evidence led could not prove whether or not the shooting was lawful — just that the gun was either jammed in Kriel's back or extremely close to it when the shot was fired.

There was no evidence of the firearm catching on anything or of Benzien's trigger finger being jolted, and neither Benzien nor Abels could give direct evidence on this.

Accordingly, the shooting had not been shown to be lawful and it was the duty of the inquiry to return a finding that Kriel's death was the result of an unlawful act by Benzien

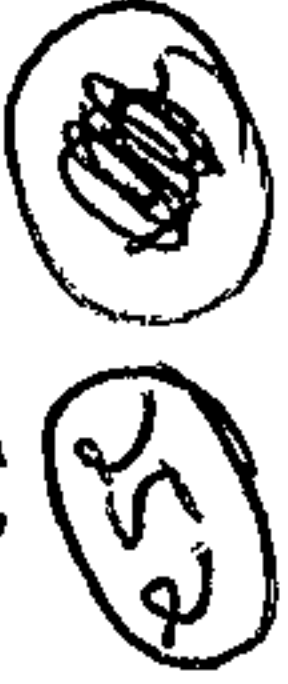
Benzien's counsel, P de Bruyn, said the security policeman's evidence should be accepted.

It was notable that he had been thoroughly cross-examined on a struggle which lasted only a few seconds and happened years ago. The only criticism of his evidence was his behaviour afterwards.

De Bruyn agreed that statements by Benzien and Abels were open to criticism because of their similarities.

Referring to the poster on Benzien's office wall, he said what was written on it was an indication of Benzien's emotional state at the time he put it up — and not of his emotional state during the struggle with Kriel.

A finding is expected today.



Justice, clashing with the Botha
over treatment of squatters"
s from Pretoria that the Southern

have lost not just another
real friend and brother," the Bishops Confer-
ence said

New light on Emergency laws

Case of Atlantis leader may affect hundreds of lives

Own Correspondent

CAPE TOWN — A precedent-setting case in the Cape Town Regional Court yesterday could affect the lives of hundreds of people placed under emergency restriction orders.

The State is charging former UDF leader and Atlantis community leader Noel Williams with having contravened the conditions of his release from detention by leaving his restricted area on September 22 last year without Security Branch permission

Williams, 42, of Alicia Crescent, Avondale, Atlantis, was released in September 1987 after three months detention on condition he did not leave the magisterial district of Malmesbury without official permission

His release was premature as his detention was to have ended when the 1987 State of Emergency expired last year.

At yesterday's hearing, Williams's counsel Dullar Omar submitted that his client could not plead because the State's charges did not disclose any offence

He said Williams's conditions of release expired on June 10 along with the 1987 State of Emergency and were not automatically renewed when the 1988 State of Emergency was declared.

The conditions of release fell away at the same time the detention would have ended, Omar said, adding that the regulation purporting to keep the conditions of release in force during the following State of Emergency were ultra vires and of "no force or effect"

Omar also submitted that the emergency regulations required the authorities to apply their minds to each individual case, however practically difficult it might be for them

State prosecutor Ian Yuill said there was no case law to indicate that the minister should re-apply his mind to restriction orders when a new State of Emergency was proclaimed

However, the accused had committed an offence and should stand trial, he argued

Judgment on the validity of the charges will take place next week

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B/Dam 4/7/89

252

Eskom²²⁰ death is ^{Star 5/17/89} referred to A-G²⁵²

Pretoria Correspondent

The Attorney-General is to investigate the possibility of prosecuting Eskom after a Pretoria inquest magistrate found there was a possibility that the commission could be responsible for the death of one of its workers who was electrocuted.

In his findings yesterday into the death of Mr Johnathan Hollis, a Kriel Power Station worker, magistrate Mr J N Theron said there had been confusion about which electrical panels were live because there were insufficient signs on those where Mr Hollis had been working.

NOT NEGLIGENT

Mr Theron found that Mr Herman Berry, Mr Jacobus de Beer and Mr Michael Lee, three Eskom workers, had not been negligent.

The court had been told there were warning signs only on the electrical panel next to where Mr Hollis was working, despite the fact that his panel was live.

SECURITY FEELING

In evidence yesterday, Professor Charles Farrel Landy, a professor in the Department of Engineering at the University of the Witwatersrand and a registered electrical engineer, said Mr Hollis had been given a false sense of security because he was doing a routine maintenance job and had expected proper procedures to have been followed.

He said the adequate warning notices had not been provided to ensure safer working conditions. Eskom should have seen to this.

New Nation journalist is acquitted

Star 5/17/89
By Brendan Templeton

A reporter from the *New Nation* was acquitted in the Johannesburg Magistrate's Court yesterday on a charge of illegal possession of a banned publication, *Umzebenzi* — Voice of the SA Communist Party.

Ms Kerry Jane Cullinan (27) of Dunbar Avenue, Yeoville, said earlier that the publication did not belong to her and could have become mixed up with her belongings when she collected them at a newspaper she had worked on previously.

The publication was found in her car by a policeman.

The magistrate, Mr T M Prinsloo, said Ms Cullinan was a reliable witness but the state's main witness, a policeman from John Vorster Square, "did not impress the court with his evidence".

Strydom's second bid to appeal

SJW
6/7/89 Pretoria Bureau 252

A second bid by mass murderer Barend Hendrik Strydom (23) to seek leave to appeal against eight death sentences began in Bloemfontein yesterday.

Mr Wim Cornelius, Strydom's lawyer, said that the basis of the latest petition was that there were mitigating circumstances and that on the facts there was a reasonable possibility of an appeal against sentence succeeding.

Strydom received eight death sentences and 30 years' imprisonment after a shooting rampage through the Pretoria city centre and at a squatter camp near De Deur in November last year. Seven people were killed in Pretoria and one in De Deur.

252

STRYDOM'S NEW APPEAL

A PETITION asking for Strydom to be sentenced to death against his eight death sentences was submitted by "Wit Wolf" Barend Strydom's legal representatives to the Chief Justice at the Appeal Court in Bloemfontein yesterday, reports SABC radio news.

Strydom was sentenced to death eight times on May 25, plus 75 years' imprisonment, following the cold-blooded killing of eight black people and wounding of 16 others.

During his trial Strydom said of his wild shooting spree in Pretoria's- Strydom Square on November 15 last year that he would act again in the same way if given the chance.

The 23-year-old former policeman failed in a bid to seek leave to appeal when Mr Justice Louis Harms dismissed the application in the

Ex-bishop is dead

FORMER Anglican Bishop of Natal for 23 years and staunch opponent of apartheid Dr Vernon Inman (85) has died in Port Shepstone on the Natal south coast.

He was consecrated as Bishop of Natal in October, 1951.

Pretoria Supreme Court last month.

It is understood that it will be several weeks before a decision is handed down.

According to Mr Wim Cornelius, Strydom's lawyer, the basis of the latest petition is that there were mitigating circumstances and that on the facts of the matter there is a reasonable possibility that an appeal against sentence might exist.

A matter of fact

AN interview conducted with the Most Reverend David Nkwe, by Soweran, and published in its issue of June 14, 1989 was intended to deal with aspects of a report in the issue the previous week concerning St Mary's Anglican Church in Dobsonville.

Certain aspects of the original news item were not dealt with in Soweran's efforts to balance out the original report and we take this first opportunity to do so.

The Church authorities wish to make it clear that there was no violence in the demonstration, as reported originally.

"During the service, people carrying placards entered the church, walked through and then left."

Allegations that congregants had to pay "large sums of money" for marriage and death rituals were also strongly denied.

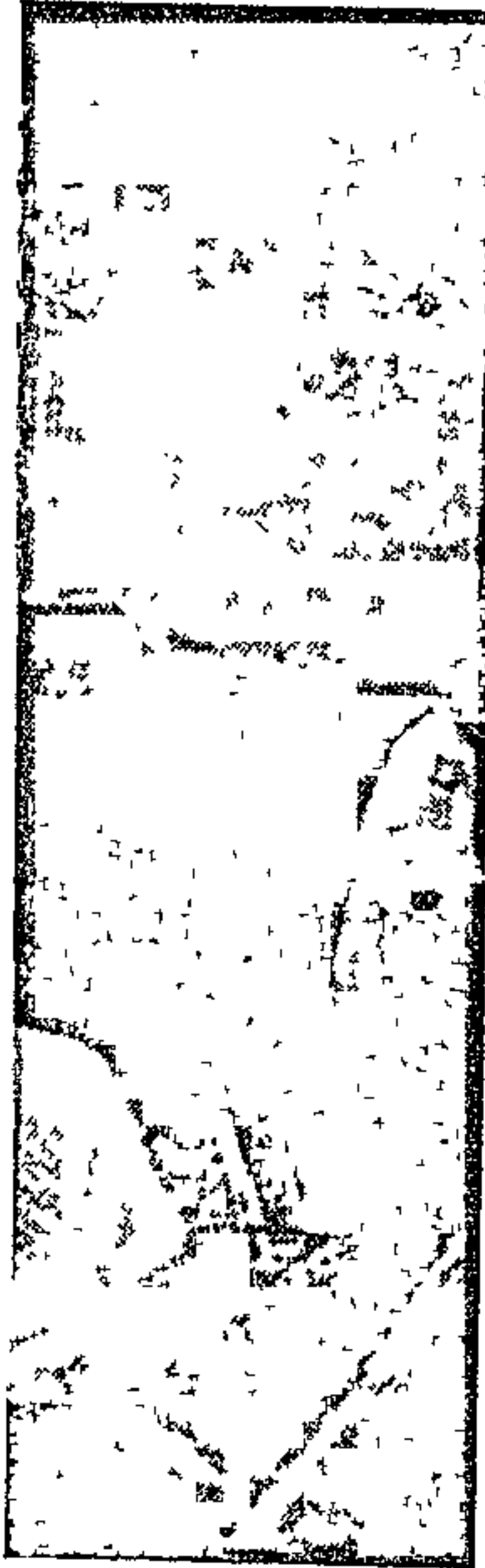
Nkwe informed Soweran that the person who, according to the original report, made the allegations against himself and the church council was not, in fact, a member of the Anglican Church.

REVEREND POLICEMAN

institution.
Medical School dean Clive
said yesterday services
al had already been seri-

Minister M H Veldman said Strijdom
Hospital's issue had been discussed
and a number of options considered.
He gave no further comment

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Biko doctors hearing results in trust fund

252

RIAAN SMIT

THE Supreme Court case in 1984,
which compelled the SA Medical and
Dental Council to hold a disciplinary
inquiry into the conduct of the doctors
who treated Steve Biko, has led to the
establishment of "The Steve Biko
Medical Ethics Trust Fund" at Wits
University. *Monday 7/7/89*

Three professors, Phillip Tobias,
Trefor Jenkins and Frances Amis, col-
lected a sum of money in 1984 to cover
possible legal costs against the council.

Costs were awarded to the profes-
sors, who then did not need the collect-
ed money. This has been divided
between Wits and UCT.

An amount of R17 000 would be used
by Wits Medical School to set up the
trust fund "to promote the highest
standard of professional ethics in
medical practice ... in particular as
they apply to the medical care of
prisoners and detainees," a Wits
spokesman said yesterday.

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at least 11 Israelis and

Dugard sees SA

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Dugard sees SA judges possibly called to account

by Dan Hys THEO RAWANA 252

SA JUDGES might be brought before court under a new regime to explain why they chose to sentence ANC and PAC combatants to death when it was possible to find extenuating circumstances, Prof John Dugard said in Johannesburg yesterday.

Addressing a public meeting convened by the Society for the Abolition of the Death Penalty, the Wits Centre for Applied Legal Studies director said a judge could find that an ANC combatant's regarding himself as a soldier reduced his blameworthiness and served as an extenuating circumstance.

Dugard said although SA refused to sign and ratify the 1977 Geneva Protocol, which granted POW status to members of liberation movements, this protocol had been widely accepted.

SA courts were precluded from treating ANC combatants as POWs, instead they had to try ANC combatants under ordinary domestic criminal law, he said.

"...It will always be proper for a judge to find that an ANC combatant tried before him had his moral blameworthiness reduced by the fact that he believed himself to be a soldier engaged in a recognised armed conflict."

The judge had a personal choice in the case; his hands were not completely tied, he said.

The professor said Israel, which like SA did not sign the 1977 Protocol, had abolished the death penalty in the West Bank and Gaza Strip

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SA stance limits judges dealing with ANC cases

By Jacqueline Myburgh

Although under South African law a judge could not accord full prisoner of war status to ANC combatants, he did have some personal choice in the matter, Professor John Dugard, Director of the Centre for Applied Legal Studies, said yesterday.

At a meeting hosted by the Centre and the Society for the Abolition of the Death Penalty, Professor Dugard said a judge should find that because the ANC combatant tried before him regarded himself as a soldier engaged in a recognised armed conflict, it would reduce his moral blameworthiness and serve as an extenuating circumstance.

"Certain judges take a very strict approach towards extenuating circumstances and there may indeed be judges who believe that their judicial duty prevents them from showing mercy in such cases," he said.

Professor Dugard said although

South Africa had signed and ratified the 1949 Geneva conventions which essentially aimed to provide protection to those involved in an international war or armed conflict, it had refrained from giving any support to the 1977 protocols which provided that the Geneva conventions apply to persons engaged in armed struggles against racist regimes, alien occupation and colonial domination.

These protocols had been widely accepted and some argued that they were now part of internationally customary law and binding upon states whether they had signed the treaty or not.

"South Africa does not regard the 1977 protocols as binding upon it. Consequently, South African courts are precluded from treating ANC and PAC combatants as prisoners of war and must try them under the ordinary criminal law of the land," Professor Dugard said.

ANC Times 7/7/89

ANC sentences: 'SA judges to be judged?'

Own Correspondent

JOHANNESBURG. — South African judges might be brought before court under a new regime to explain why they chose to sentence ANC and PAC combatants to death when it was possible to find extenuating circumstances, Profesor John Dugard said here yesterday.

Addressing a public meeting calling for the abolition of the death penalty, the director of the Centre for Applied Legal Studies at Wits University said a judge could find that an ANC combatant's regarding himself as a soldier reduced his blameworthiness and served as an extenuating circumstance.

Professor Dugard said that though South Africa refused to sign and ratify the 1977 Geneva Protocol which granted PoW status to members of liberation movements, this protocol had been widely accepted. "In some quarters it is argued that it is now part of international customary law, and therefore binding upon states whether they have signed the treaty or not"

(252) (008) (1000)
Star 12/7/89

Bill of Rights: ANC's ideas are revealed

There is a definite similarity between the SA Law Commission's proposed Bill of Rights and the ANC's legal ideas on the subject, Lawyers for Human Rights said at a press conference in Johannesburg yesterday.

LHR met ANC officials in Lusaka at the weekend for talks on protection of human rights in a post-apartheid SA, with special reference to the Law Commission's working paper.

The Law Commission's document had not been rejected by the ANC, LHR said, and the ANC had no difficulty with the proposition that the linguistic, cultural and religious rights of groups should be respected. But the ANC was opposed to group political rights and to a constitution structured on ethnicity.

RACIALLY EXCLUSIVE

LHR said the Law Commission's paper in some respects seemed to be intended to entrench white privilege. Clauses discussed in depth in this regard included article 10, which "seems to envisage retention of racially exclusive schools".

A clause relating to capitalist enterprise, it was felt, had no place in a Bill of Rights as it sought to restrict the government to the pursuit of a particular economic policy.

Article 17 also presented difficulty, LHR said, because "it seems to allow the perpetuation of racially exclusive enterprises, provided no public or State funds are involved".

"Right to life" discussions on the death penalty revealed that all the ANC delegates were against the death penalty, and LHR welcomed this opinion.

That such discussions on a Bill of Rights might influence the ANC's constitutional guidelines seems quite possible, as the already published guidelines are understood to be only a working blueprint.

LHR added: "We hope that as a result of our debate, the ANC will issue a fuller statement on its attitude towards a Bill of Rights for SA" — Sapa

Star 13/7/89

252

Father is bitter over finding on activist's death

By Abel Mabelane,
East Rand Bureau

Nobody could be held criminally responsible for the death of Daveyton activist and student leader Mr K Caiphas Nyoka, shot dead by the East Rand Reaction Unit in the back room of his parents' home in 1987, a Benoni inquest court found yesterday.

Mr Nyoka's father, Mr Moses Nyoka, said after the hearing that he felt bitter that those responsible for his son's death were not brought to justice.

Mr Nyoka said he supported a call made earlier by Mr A J Kraut, counsel for the family, who asked the court to find the killing was unjustified and those responsible should be found guilty of murder.

He said he found it disturbing that the court had rejected evidence by the family and their witnesses.

The magistrate, Mr J P Myburgh, said the court was faced with two conflicting versions, from the fami-

ly of the deceased and from the East Rand Reaction Unit.

He found the family and their witnesses to be unreliable. Their evidence could only be accepted when corroborated by other evidence.

Mr Myburgh said although he found some of the police evidence concerning events on the night Mr Nyoka died unsatisfactory, their version was more acceptable.

Hide

He rejected a defence statement that the police tailored their evidence to tally because they had "something to hide".

Mr Myburgh said the question before the court was whether a reasonable man in the position of the police could have acted differently.

Taking into account that the deceased was suspected of being a terrorist in possession of arms, a reasonable man would not have acted differently, he said.

Protest aimed at far Right mother

Pretoria Correspondent

A plea of not guilty has been noted by a Pretoria Regional Court magistrate for the Roodepoort mother who demonstrated outside the Pretoria Supreme Court on the day mass murderer Barend Strydom was sentenced to death *SAW 14/7/89*

Mrs Sandra Lucia Ewer (28), pleaded guilty yesterday to demonstrating within a 500 m radius of a court building.

A plea of not guilty was noted by magistrate Mr J A Venter as he felt that in her plea explanation, Mrs Ewer did not plead

guilty to all aspects of the charge *(252)*

Mrs Ewer said she did not realise that only one person could be responsible for a demonstration. She said she did not know there was a law against demonstrating within 500 m of a court building, but if she had known she would have demonstrated outside the radius.

Mrs Ewer said her action — holding up a placard in front of police and press — was not aimed at the State, but at the far Right.

During the week of May 22

this year, by way of the press, she said she was continuously exposed to the far Right organisations and their support of mass murderer Strydom. Their actions were in contrast to her moral and religious convictions.

Mrs Ewer said she felt the far Right was using the trial as a political platform for their racial principles.

In her actions, Mrs Ewer said she hoped the world would see that not all Afrikaners supported murderers.

Mrs Ewer was warned to appear in court on October 16.



NYOKAS'S DEATH - COPS CLEARED

252

THE three policemen who shot dead Daveyton student leader Caiphus Nyoka in his bed in 1987 were not criminally responsible for his death, a Benoni magistrate ruled this week.

Mr JP Myburgh, presiding at the inquest, said Nyoka's death, caused by multiple gun shot wounds, was not brought about by any act amounting to an offence on the part of any person.

He said the policemen who went to Nyokas's home in Daveyton and shot him nine times while he lay in his bed on August 23, 1987 did not go there with the intention to

By SONTI
MASEKO

murder and they could not be held criminally responsible for his death.

Myburgh said the two policemen, Stander and Marais, who shot Nyoka acted like any reasonable man would have acted in the circumstance that they found themselves in.

He said he did not find that the policeman acted negligently on the night of the killing

Reading his 70-minute finding to a packed courtroom, Myburgh said he found the contention that the policemen went to execute Nyoka improbable.

"I find that the version of the three policemen of what transpired on that evening to be the truth "

He said the evidence of the three youths who were sleeping in the room with Nyoka on the night of the killing was so unreliable and unsatisfactory that he could only accept aspects of it that were corroborated.

He said it was clear that the youths had consumed large quantities of liquor on that night and he found their evidence contradictory.

Myburgh rejected the submission by advocate Mr A J Kraut that the policemen had tailored

their evidence. He said the criticisms were unfair and unfounded.

Kraut represented the Nyoka family.

The magistrate said although the policemen acted wrongfully, they acted reasonably under the circumstances prevailing at the time.

The policemen, who

were going to arrest Nyoka, had been warned that he had handgrenades and other explosives, was dangerous and was likely to resist arrest

"One takes into consideration the anxiety of the situation which constituted high risk for the police at the time," Myburgh said

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were going to arrest Nyoka, had been warned that he had handgrenades and other explosives, was dangerous and was likely to resist arrest.

"One takes into consideration the anxiety of the situation which constituted high risk for the police at the time," Myburgh said.

Lawyers urge; reveal findings of probe into woman prisoner's death

CAPE TOWN — Lawyers for Human Rights has sent a letter to the officer commanding Pollsmoor Prison requesting that the findings of an investigation into the death of a 20-year-old prisoner be revealed to the public.

Debbie Meyer, of Parkwood, who was serving a two-year prison term at Pollsmoor after she was found guilty of crimes injuria, resisting arrest and robbery, died at Grootte Schuur hospital on July 2.

She was admitted to Victoria Hospital on July 1 and was taken to Grootte Schuur in a weak and deteriorating condition the next day.

Lawyers for Human Rights regional director Mr S D Raubenheimer said in his letter to Brigadier Booyesen, the officer commanding Pollsmoor, that it was alleged Meyer was kept in a straitjacket at the prison before her admission to hospital.

"The precise nature of this straitjacket is not known at this stage," Mr Raubenheimer wrote.

He said he understood that the Prisons Service was conducting an independent inquiry into the circumstances of Meyer's death and that her family had instructed attorneys to represent them.

A private pathologist instructed by the family was finalising a post-mortem investigation.

"While at this stage it is not clear whether there is any link between the alleged use of the straitjacket and Debbie Meyer's death, the implications that might be drawn are,

to say the least, disturbing," Mr Raubenheimer said.

"With this issue already in the public eye, we trust that all the authorities involved are fully committed to the principle that a full public inquiry in this matter is not only desirable, but essential."

Mr Raubenheimer asked if the use of straitjackets on inmates at the prison was a practice and how it was regulated.

He said the death of Meyer might raise fears among other prisoners and their families.

"Our respectful view is that a moratorium should be declared by the prison regarding the use of straitjackets, if indeed the practice exists, until a full public inquiry has been concluded."

"We believe as well that it is in the public interest to disclose the prison's internal investigation."

In response to questions last week, the Prisons Service said it could not disclose details about the circumstances of Meyer's death as it was "subject to an investigation."

OWN CORRESPONDENT

252

THE NEW MARBLE COLLECTION

Three men hanged in Pretoria today ²⁵²

By Carma le Grange

Three men were executed in Pretoria today

They were Joseph Lebeloane, Joseph Tsebane Manyane and Simon Tommy Selepe

The men were convicted for murdering and robbing a man at a night club in a township in 1987

The men's application for leave to appeal and their petition to the Chief Justice were both dismissed

Lawyers for Human Rights said in a statement that counsel for the men was informed on July 11 about the refusal by President Botha to extend clemency to the prisoners

The executions brought the number of people executed this year to 37. The previous execution took place 35 days ago on June 13. In 1988, 117 people were executed

Amnesty appoints SA man

Star 18/7/89
NEW YORK — Amnesty International USA yesterday announced that Mr Winston Nagan had become the first South African-born human rights activist to become chairman of its board

Mr Nagan is a naturalised American citizen and a professor of law at the University of Florida

252
"As someone who has seen the horrors of human rights violations under apartheid, I bring a perspective of the victim to Amnesty's work," he said yesterday — The Star-Bureau *252*

Last legal bid to save Upington 14

CVE Times 18/7/89
THE last possible legal step to save the "Upington 14" from the gallows was taken yesterday when a petition requesting leave to appeal against the sentences was handed to the Chief Justice.

Lawyers said the process could take several months.

The 14 residents of Upington's Paballelo township were sentenced to death on May 26 this year for their part in the 1985 common purpose murder of a municipal policeman.

A request for leave to appeal against the sentences and conviction of the 26 was turned down by Mr Justice Jan Basson — who also handed down the death sentences — on June 26.

'Detention at home' protested

Star 19/7/89
Own Correspondent

More than 3 000 petitions demanding the immediate lifting of restrictions on former detainees have been handed at police headquarters in Pretoria

The chairman of the Pretoria branch of Black Sash, Ms Kerry Harris, yesterday delivered the petitions to Wachthuis on behalf of the East London branch of the organisation

She also delivered a letter from the co-convenor of the Border Crisis Committee, Mr M George, to Minister of Law and Order Mr Adriaan Vlok

According to the letter, 33 Border people have been released — some after more than two years in detention

Mr George said the former detainees had since been restricted, which "amounted to detention in their homes rather than in prison"

"We as a group of professionals, community organisations and family members are horrified by the denial of basic human rights to the South African citizens who have not been proven guilty of any offence, and are aware the situation endured by Border ex-detainees is mirrored all over the country," Mr George said

Families of executed plead for cause Clemency petition for all on deathrow

Star 19/7/89

By Mckeed Kotlolo,
Pretoria Bureau

Family members of executed political activists yesterday submitted a petition to the office of the State President at the Union Buildings in Pretoria calling on him to grant clemency to all those on deathrow and to end capital punishment

The families were accompanied by relatives of those who were still on death row in Pretoria for their participation in politically motivated actions.

A copy of the petition, signed by about 30 family members, some of whom had travelled from Cape Town, Durban and the Eastern Cape, was read at a lunch-hour press conference attended by lawyers, activists, representatives of the Austrian, Australian and Canadian embassies

Mr Themba Xulu said the petition read. "We the undersigned are all families of the people who have been hanged in Pretoria for their participation in politically motivated actions

"We believe that our firsthand exposure to the terrible implications of judicial killing qualifies us to tell you of the horrors that are associated with it and to plead with you for clemency on behalf of those who are waiting to die"

The petition said they had experienced anguish, torment, a sense of helplessness and anger while waiting for a loved one to die

"We have all experienced the deep feelings of futility and anger when our husbands, brothers and sons have been hanged

Cold-blooded

"With respect, Mr President, there is no justification for the cold-blooded and purposeless killing of another human being. The killing of our family members has not helped matters nor changed the situation in our country to a peaceful one," the statement said

They said statistics had shown their deaths had not discouraged others from continuing to pursue ideals they regarded as noble

The hangings only perpetuated the spiral of violence which was gaining momentum in society, they said

The killing of their relatives had caused immeasurable suffering and torment to the families and "the families of those who are still to die are being punished as brutally"

The petition said what might appear to the State President as "just retribution will most certainly be regarded to future generations as crimes"

Countries around the world were abolishing the death penalty and "in South Africa it is particularly appropriate that this be done now"

The problems of the country could only be solved if the concerned parties, including President Botha, could show compassion for those at his mercy

The statement said the State President's clemency would be regarded as an act of statesmanship and a step towards reconciliation and peace

The petition was accompanied by a list of 34 death row prisoners awaiting execution

Upington 14 petition the Chief Justice

BLOEMFONTEIN — The Appeal Court has received a petition to the Chief Justice by the Upington 14 for leave to appeal against the death sentences they received following the death of Constable Lucas Sethwala. (252) (220)

The policeman was killed at Paballelo, Upington, on November 13 1985. S.M. 19/11/85

The death sentence was imposed on the 14 by Mr Justice J J Basson in the circuit court at Upington on May 26 this year after he had found there was no extenuation for their part in the policeman's death.

On June 27, the trial judge refused the 14 leave to appeal. — Sapa.

APPPEAL TO BOTHA

BY MONK NKOMO

Save the 34 prisoners on Death Row

RELATIVES of people executed for their participation in politically-motivated actions yesterday urged the State President, Mr P W Botha, to grant clemency to 34 people presently on Death Row for similar actions.

The families, from as far as the Eastern Cape, handed a petition to the State President's office at the Union Buildings in Pretoria yesterday calling on him to abolish capital punishment.

"We believe that our first hand exposure to the terrible implications of judicial killing qualify us to tell you of the horrors that are associated with it. We plead with you for clemency on behalf of those who are waiting to die", the families said. They added: "We have experienced first

hand the anguish, the torment, the sense of helplessness and the anger experienced while waiting for a loved one to die. We have all experienced the deep feelings of futility and anger when our husbands, brothers and sons have been hanged

being. The killing of our family members has not helped matters nor changed the situation in our country to a peaceful one. As numerous statistics have shown, their deaths have not prevented others from continuing with the pursuance of ideals which they regard as noble.

The petition called on the State President to grant clemency to 34 people only perpetuates that spiral". Those who signed the petition included the parents of executed African Nationalist Congress members Solomon Mahlangu, Thabo Motaung, Benjamin Moloise, Jerry Mosololi and Sibusiso Zondo.

Petition

The killing of our family members has caused us great suffering and torment. The families of those who are still to die are being punished just as brutally", the petition read. The families, who attended a Press conference before they went to sub-

mit the petition, also said: "Times are changing and today what may seem to you as just retribution will most certainly be regarded by future generations as grievous crimes. More and more countries around the world are abolishing the death penalty and in South Africa it is particularly appropriate that this be done now to make sure of a less violent future for us all."



Sowetan 19/1/78

Lawyers in last ditch bid to save 14

(252)

LAWYERS have made a last-ditch attempt to save 14 black South Africans from the gallows for their part in a politically motivated murder.

Defence lawyer Andy Durbach said a 70-page petition and 3 000-page annex were handed on Monday to South Africa's Chief Justice, asking leave to appeal against death sentences imposed on the so-called Uppington 14.

The 13 men and one woman were sentenced to hang for their part in killing a black policeman in Pabellelo township, near the remote Northern Cape Town of Uppington, at the height of a nationwide anti-apartheid uprising in 1985.

A further 11 received sentences ranging from suspended jail terms to eight years imprisonment, making it the biggest group convicted of a political crime in South African legal history.

The case received worldwide attention because most were convicted not of actual murder but of sharing common purpose with a large crowd present at the killing.

Sentencing Judge Jan Basson last month denied leave to appeal.

Lawyers said the petition, which could take several months to consider, was the last legal avenue open to save the 14 from the gallows.

If the bid failed, an appeal to the President for clemency was the only remaining route. - Sapa-Reuter.

252

15/Day 19/7/89

ANC-POW link makes history

SUSAN RUSSELL

A SUPREME Court judge made legal history recently when he accepted that the political facts and subjective perceptions which compelled four ANC combatants to take up arms lessened their moral culpability. The four were on trial for murder.

Lawyers see Mr Justice de Klerk's finding in March this year in the case of the "Delmas Four" as the first step towards granting ANC fighters informal prisoner-of-war status.

The judge accepted evidence that with the existence of a state of war between the ANC and the SA government, the four perceived themselves as soldiers in a war of national liberation.

Mr Justice de Klerk found all these factors diminished their moral blameworthiness to the extent that imposing an obligatory death sentence was not applicable.

It is significant that this is the first time in SA that a judge has taken political factors into account when making a finding on extenuation in a case of this nature.

His two assessors, however, disagreed and found there were no extenuating circumstances, which meant the judge had to abide by the majority decision and impose the death sentence. He granted leave to appeal.

When the four appeared in ANC uniform they did not make formal application for prisoner-of-war status. But they refused to plead or take part in proceedings on the basis they were prisoners of war. They also refused to take part in proceedings after

conviction, but allowed their parents to plead on their behalf.

The attorney acting on behalf of the Delmas four, Peter Harris, said the judge's finding was the first step towards informal prisoner-of-war status for ANC trialists.

He said "If such arguments are used in extenuation and judges follow the same path as Mr Justice de Klerk, as I believe they should, then this approach can bring about *de facto* prisoner-of-war status and prevent the imposition of the death sentence.

Similar finding

"The point has to be made that today's guerrillas are tomorrow's Prime Ministers. . ."

The judge's finding should also be weighed up against a similar finding by a trial court in Namibia in 1983. From that time no Swapo guerrillas in political trials were executed.

Mr Justice de Klerk's finding comes at a time when the escalation of conflict has brought an ever increasing number of ANC combatants before the courts on criminal charges which carry the death penalty. Government has also come under pressure as the ANC attains greater legitimacy

Obed Masina, Frans Ting-Ting Masango, Neo Griffith Pottsane and Joseph Elias Makhura were all "children of 1976" and among the thousands who left SA to join the ANC. After undergoing training they returned as members of Umkhonto we Sizwe — the ANC's military wing.

All except Makhura were convicted of murdering people they perceived to represent the enemy — including two black policeman and a Kangwane politician.

A murder conviction carries a mandatory death sentence in SA law unless the court accepts the existence of extenuating circumstances.

As Harris put it recently in a paper delivered at a conference on political trials "The fact that ANC combatants view themselves as being engaged in an international conflict and fighting a just cause in an army of national liberation should operate as an extenuating circumstance, reducing their moral, if not their legal guilt."

"The point must also be made that to hang these kinds of guerrillas would merely be a perpetuation of the violence in our society," Harris added.

The Delmas trial had also illustrated the difficulty a white judge in this country had in passing judgment and imposing a sen-

tence which reflected the feelings of a deeply divided community. During extenuation, evidence was led to show that people in Soweto regarded the accused as heroes, Harris said.

Potsane's aged father testified that after the killing of a black policeman people in Soweto had danced in the streets. While he believed the killings for which his son was on trial were wrong, he understood what had led him to take up arms.

Mr Justice de Klerk's finding was not accepted by his two assessors. Both found that even if the four were influenced by the factors put before the court, these *per se* did not constitute extenuation.

Since their finding of no extenuation constituted a majority decision by the court, Mr Justice de Klerk was obliged to pass the death sentence on Masina, Masango and Pottsane.

Perspective

Harris said even though the judge had spent three-and-a-half hours giving a meticulous judgment, the two assessors had come to a contrary finding in a three-minute judgment and the result was the imposition of the death sentence.

Masina probably put the trial into perspective when the four trialists were asked by the judge if they had anything to say before sentence was passed.

"We just want to say that if it were not for apartheid we would not be sitting here in this court — we would be sitting with our brothers, both black and white," Masina said.

Minds distorted by outside influence

DURING his judgment on extenuation Mr Justice de Klerk emphasised that his finding did not make the killings any less reprehensible.

There was no doubt, he said, that any civilised society would rate the moral blameworthiness of the three as serious.

"The question to be considered however remains what is the moral judgment which must be pronounced,

not only on the deed, but also on the deed and the perpetrator, having regard to the circumstances and their bearing on his state of mind, however gruesome the deed may be.

"A finding that the actions of the accused cannot be condoned by any morally accepted code, applicable in any civilised society, is not an answer to the question with which one is grappling."

The judge pointed out that an extenuation finding did not bring the moral code into disrepute.

"All that happens," he said, "is that recognition is given to the fact that human minds are susceptible to influence and the state of mind in question was so distorted by the influence and probably did not function as it would have."

Victims

He said among the most important facts emerging from the statements made by the four on which the State largely based its case, was their belief that blacks had been the victims of violence and the armed struggle had been embarked on as a last resort.

"The accused regard themselves as soldiers who were under the general command of their leaders who were involved in a war for justice," he said.

"The objective correctness of this subjective view I do not have to discuss."

"The accused all received training in ANC camps in neighbouring countries and some of them in East Germany," said Mr Justice de Klerk.

"Undoubtedly the accused were talked into thinking that assassination of so-called enemies or collaborators is justified because a state of war exists."

He said this conclusion about the indoctrination they were subjected to was not speculation.

"No direct evidence is necessary to make one realise that no Sunday school picnic existed in an ANC camp where a war against apartheid was prepared," the judge remarked.

Strangers

"The influences to which I have referred," he continued, "can infest one's system and distort one's mind to such an extent that it could lead to extremely anti-social behaviour."

"This influence is the only probable cause or motive for the murders of people who were strangers to the accused."

The judge said an assessor or judge hearing a trial

like this had to be careful that his abhorrence of terrorism or his impression of the ANC did not affect his objectivity and better judgment.

"In no way do I wish to sound like an apologist for the accused," he cautioned.

"Their conduct will be branded as abhorrent by all civilised persons and that would also be the judgment made by history after minds have calmed down."

"According to my judgment, however, the circumstances which had a bearing on their state of mind were of such a nature that it markedly reduced their blameworthiness, irrespective of how blameworthy their conduct may still be," he said.

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252

judge

252

By MANDLA
NDLAZI

White man fined for killing student

A 27-year-old white man was yesterday fined R2000 or a year's imprisonment for killing a Soweto student in a schoolyard on August 5 1986.

Vryheid in Natal was sentenced to a further two years suspended for four years.

He appeared before Mr A Auret in the Johannesburg regional court. According to evidence Hendrick Pretorius was on a two-month stint with the South African Defence Force when his detachment was called to restore order at a school in Orlando West.

The school's principal, Mr J Mouton, then instructed about 180 pupils to get into their classrooms. Nxumalo refused and moved in another direction.

He was stopped by Corporal K Gmsburg who asked him where he was going. Nxumalo, who was well built, tried to punch Gmsburg but missed. According to evidence

before the court, Gmsburg shouted and ordered Pretorius to shoot Nxumalo, who died from a gunshot wound in the abdomen.

Mr C Kotze, who appeared for Pretorius, said in mitigation the shooting was an error of judgment. In summing up the magistrate said he took into consideration that the army, with Pretorius part of the unit, was summoned to the school. He said he would have sent Pretorius to jail had he not been among soldiers called to the school to restore order.

B/Day 21/1/89

252

Law and Order Minister must return tape

SUSAN RUSSELL

A RAND Supreme Court judge yesterday ordered the Minister of Law and Order to return an audio-video cassette confiscated from a CBS cameraman in February this year.

In a judgment handed down yesterday, Mr Justice Leveson found that police officer Capt G van Huysteen, who had purported to confiscate the tape in terms of section 5 of the emergency regulations, had exceeded his powers and therefore acted unlawfully.

Van Huysteen took possession of the tape at a meeting of hunger-strike detainees' lawyers after informing the cameraman he was confiscating the tape in terms of section 5 of the emergency regulations.

CBS immediately launched an urgent application for the return of the cassette.

Police subsequently agreed to allow CBS to broadcast the tape in the US, but the legality of the matter was disputed. After argument for both parties, Mr Justice Leveson reserved judgment.

According to Van Huysteen's affi-

davit, the cassette was confiscated for use in an investigation into whether attorney Azhar Cachalia had breached his restriction order.

Mr Justice Leveson said section 5 only authorised a member of the security force to seize an article. Confiscation, he said, involved something more than mere seizure.

"It is the taking possession of an article forcibly with the result that it is forfeited. If the confiscation is lawful, ownership passes to the authority who confiscates."

The judge said he was aware "confiscate" was sometimes used loosely in the sense of "seize", but when a person in Van Huysteen's position performed the act the onus was on him to make his meaning clear.

Mr Justice Leveson said that by his own admission, Van Huysteen had exceeded his powers under the section. His action was unlawful and must be set aside.

The judge said even if this finding was incorrect, there were other considerations.

Van Huysteen stated in his affidavit that he was not the investigating officer. He had referred the tape to the officer investigating a possible breach by Cachalia so he could decide whether it contained the necessary evidence.

"In my opinion that makes one thing clear," said the judge.

"If he was not the investigating officer, Van Huysteen had to rely on the decision of another officer in regard to whether the tape contained the necessary evidence."

At the time of confiscation he was not in a position to form the opinion that the tape's removal was necessary for public safety, maintenance of public order or termination of the state of emergency, the judge said.

It followed that Van Huysteen did not conform to the section's requirement and that his action was unlawful, the judge said.

The Minister of Law and Order was ordered to pay the costs of the application.

Star 21/7/89 (252)

Youngest brother tells court he killed guards

Vereeniging Bureau

The youngest of the four Van Straaten brothers, who have all been charged with the murders of two Vereeniging security guards, described on Wednesday how he had repeatedly stabbed one of the guards before hitting the other on the head and neck and then stabbing him

Mr Dawid Petrus van Straaten (21) of George Street, Vereeniging, told the Vereeniging Magistrate's Court he had used a sharp instrument resembling a chisel to stab the two men

This was revealed in his plea of explanation after he had admitted guilt on two counts of murder before the magistrate, Mrs Christa Massyn

He told the court it had not been his idea to kill the pair and that he had been under the influence of alcohol at the time

However, he admitted being aware of what was happening and said he realised the men could have died as a result of his actions

His three elder brothers are also facing two charges of murder. Mr Willem Jacobus van Straaten (31) of no fixed address and Mr Andre van Straaten (28) of Pine Avenue, Ferndale, Randburg, pleaded not guilty to

both counts

The fourth brother, Mr Gideon van Straaten (23), also of George Street, Vereeniging, admitted guilt on the first murder charge but pleaded not guilty to the second charge. The court, however, entered pleas of not guilty on both counts

It is being alleged that the two security guards, Mr Wanton Matshoba (35) and Mr Cyprian Qheliso (19), who were both employed by Thompson's security, were overpowered and murdered on the night of June 18 while they were on duty at a transport company in Duncanville. Both allegedly died of stab wounds and head injuries

Mr Dawid van Straaten admitted killing both security guards. He said he stabbed Mr Matshoba after an argument

Asked by the magistrate how many times he had stabbed Mr Matshoba, the accused replied: "About eight or nine times, mostly in his upper torso"

The other three accused all admitted being present at the scene of the alleged crimes

The prosecution opposed bail for Willem and Dawid van Straaten. Bail was set at R10 000 each for Andre and Gideon van Straaten

The case was postponed to August 31

been so close to me I've lost a brother
"He was very bright, very

golden era of black journalism alongside Henry Nxumalo, Professor E'skia

gratuitous, his name
shua Motjuwadi (99), a brother and three sisters

'Nightmare mission that went wrong'

Own Correspondent

252

CAPE TOWN — Suspected African National Congress member Ashley Kriel died as a consequence of an unlawful act by security policeman Warrant Officer Jeff Benzien, a Wynberg inquest court heard yesterday.

A finding to this effect was urged by counsel for Mr Kriel's family. A finding will be made today.

Warrant Officer Benzien of the Terrorist Detection Unit admitted killing Mr Kriel during a skirmish in Athlone in July 1987.

Mr Jeremy Gauntlett, SC, for the Kriel family, said Warrant Officer Benzien and Sergeant Anthony Abels' "scouting" operation into Athlone, where they attempted to find Mr Kriel, was "manifestly ill-con-

ceived" There was no radio, no immediate back-up, no firearm readily to hand and no plan of what to do if Mr Kriel was found.

"These factors paved the way for a loss of control by Benzien of the situation."

Mr Gauntlett said both policemen were unable to offer any direct evidence as to how the gun went off.

"Warrant Officer Benzien took a decision to pull that trigger to curtail a mission which was a nightmare and had gone wrong."

Mr P de Bruyn, for the Minister of Law and Order, said Warrant Officer Benzien's version of the shooting should be accepted.

"It was a mere accident, without any unlawfulness on the part of anyone."

5 Feb 21/7/87

Judge rules video seizure is unlawful (252)

~~SA~~ By Cathy Stagg

The Minister of Law and Order was yesterday ordered to return to CBS News a video tape recording seized by police at a meeting in Johannesburg on February 9 this year.

The Minister was also ordered to pay the costs of the application brought by CBS News in the Rand Supreme Court.

The application arose from a press conference called by a group of lawyers to announce they would fast in solidarity with detainees on hunger strike. After the conference, Captain G L S van Huysteen demanded that the CBS News cameraman hand over the video tape he had made.

The television company's main argument was that when Captain van Huysteen took the tape he was not even aware of the provision of the law under which he had purported to act.

RIGHT

He said he was "confiscating it in terms of the emergency regulations". He also told producer Ms Brenda Goldblatt he was seizing the tape because she had provoked the police into taking action. Then he said he needed the tape as evidence in an investigation.

Later, when CBS's attorney was called in, he read the media emergency regulations and implied he had a right to take the tape because the cameraman had not obeyed an order to leave.

Captain van Huysteen's version was that he had reasonable ground to believe a Mr Cachalia had breached his restriction order and, when there was doubt about whether the police camera was working properly, decided to seize the video.

The judge ruled that the seizure was unlawful.

Policemen fined R50: A-G 'out of touch'

Cape Times 21/7/84
252

By MALCOLM FRIED

THE office of the Attorney-General — "sometimes a bit out of touch with amounts being fined" — was responsible for recommending a R50 admission-of-guilt fine for two policemen who had assaulted a teenager, according to Cape Attorney-General Mr Niel Rossouw.

The two police sergeants were found guilty this week of assaulting a Langa schoolboy and were fined R300 each and given suspended four-month jail terms.

Wynberg magistrate Mr S L van der Walt said the policemen's behaviour deserved more than the R50 fine recommended by the state.

Mr Rossouw said yesterday that all cases involving policemen were referred to his office. His staff then decided on a recommendation.

"One of our people read the details of the case and fixed the admission-of-guilt fine.

"But we, in this office, are a

bit out of touch with amounts being fined. Sometimes the amount of the fine doesn't really reflect what, perhaps, it should be," said Mr Rossouw.

He said also that statements in a case docket did not always tell the full story.

"In this case, it's clear from what the magistrate said that he was acting on what he saw in court. When the case was tested, it fell to pieces."

Mr Rossouw said the "most important single aspect" remained that people had been charged and found guilty.

The issue had been the amount of the fine, not the finding of guilt, he said.

Mr Rossouw said the consideration of cases' facts was not always consistent. "One must remember that different people may pass different sentences."

● The convicted policemen, Gerrit Otto, 23, and Velik Mgwane, 42, may be subject to departmental steps as a result of the case, a police spokesman said yesterday.

role of NCW and its possible new role in the future.
— Sapa

Read, discuss paper on a Bill of Rights

Star 24/7/89
BLOEMFONTEIN — South African women have been encouraged by the Board of Officers of the National Council of Women of South Africa to read and discuss the working paper of the South African Law Commission on a Bill of Rights.

In its first "Notes from Headquarters" for 1989 the Board reminds members that in 1979 Mrs Sheila Mackenzie, in her presidential address to the 45th NCW conference in Pretoria, called for a Bill of Rights for South Africa.

The Board said that with the general election in September, members of NCW would be thinking seriously of the policies of the various political parties and how they would "operate your great privilege of casting your vote".

Members were urged to do their reading on a proposed Bill of Rights in good time and not to be like the man in the television advertisement who was still reading about the problems of moving the day before the removers were due. — Sapa

(Report by Enid Rhodes, 404 Colonial Mutual Building, Maitland Street, Bloemfontein)

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Racist slur for pro-Latin law camp, says academic

The Argus Correspondent *Argus 24/7/89*
 PRETORIA — Anti-Latin campaigners should stop using racist arguments in their bid to have the language dropped as a precondition for entry to the South African Bar

Addressing a seminar on "Latin and legal training" in Pretoria last week, Professor Andreas van Wyk of the University of Stellenbosch said the "anti-Latin camp" argued that "if you are pro-Latin, you are anti-progressive and, by implication, racist"

The debate raging over Latin could "do without this kind of innuendo", he said

He said that, in certain circles, it was fashionable to talk about the inevitable "Africanisation" of South Africa

Professor van Wyk said he had no problem with the idea of Africanisation if it meant there would be an "important African element" in a future South African culture, and that South Africans would stop pretending the country was a "bit of Europe"

However, if it meant the "denial of our diverse cultural riches", it would lead to cultural impoverishment and be a form of "cultural imperialism"

This should be resisted at all costs, he said

South Africa's future would be based on a synthesis of cultures and one of the country's most important inheritances was Roman-Dutch law, he said

He objected to the weakening of the core of the

South African legal system and this would happen if Latin were to be abolished

Another speaker, Pretoria advocate Mr Ernest Moseneke, called for the abolition of Latin as a compulsory subject for aspirant advocates

The main argument in favour of retaining Latin was to "protect and perpetuate a particular heritage" and legislation was used to keep it in place, he said

However, black people were "totally suspicious" of anything that needed statutory protection

"There is a perception among black legal practitioners that the desire to retain Latin is bound up with the desire to retain a certain kind of government, which would retain the position of privilege which white people have reached," he said

Call for death penalty probe

CAPE TOWN — The General Bar Council of South Africa has decided to ask the South African Law Commission to urgently investigate all aspects of the imposition of the death penalty (ASL)

5 for 24/7/89
At its annual meeting in Cape Town on Saturday the Bar Council further decided to investigate improvements to the *pro deo* system as well as the appointment of attorneys to assist counsel with *pro deo* affairs.

The Council welcomed the Law Commission's report on group and human rights and was in favour of a charter of human rights for South Africa — Sapa

Remark not racist - Derby-Lewis

25/11/89 By Gien Elsas, ~~3552~~
West Rand Bureau

The Conservative Party spokesman on economic affairs said in the Krugersdorp Civil Court yesterday that he would leave the country if a black government were to come into power

Mr Clive Derby-Lewis was being questioned by the advocate for Deputy Minister of Law and Order, Mr Leon Wessels and the National Party during a defamation of character case following a National Party advertisement in which Mr Derby-

Lewis allegedly advocated compulsory sterilisation for blacks in order to bring down the numbers of the black population

Mr Derby-Lewis is claiming R5 000 in damages

The statement was allegedly made during an interview Mr Derby-Lewis had with Mr Jaap Boekkooi of the *Sunday Star*. Mr Derby-Lewis took the matter to the Media Council and the *Sunday Star* was told to print a retraction

Advocate Mr Lappe

Laubscher, for Mr Wessels, put it to Mr Derby-Lewis that he was a racist. He referred Mr Derby-Lewis to an article of Gus Silber in *Frontline* in August 1986 in which he was apparently quoted as saying "Black people are being paid more than they need. This encourages them to frequent social facilities which should be out of their bracket."

Mr Derby-Lewis denied the remark was racist, saying racism was a relative concept

The hearing continues tomorrow

(252)

KILLINGS - COP QUIZZED

252

Teacher not paid

By PHANGISILE MTSHALI

COUNSEL for families of victims of the 1985 Mamelodi shootings yesterday told a policeman who has admitted shooting and killing people that he was giving conflicting evidence.

Mr Morris Basslian was cross examining Captain Harmanus Arnoldus le Roux at an inquest into

By ALINAH DUBE

the death of Mamelodi residents on November 21, 1985.

The hearing resumed yesterday before Mr J P Pretorius after an adjournment for three weeks.

Basslian said the policeman's testimony was in conflict with that of a cameraman who filmed the areas Le Roux had pointed out to him after he shot at people that day.

Evidence

He told the court that the photographer's evidence was that a blood-stained portion of land appearing on the video film before court was identified by the policeman. The area is situated not far from house 755 C, Mamelodi West.

Basslian referred to the evidence after Le

Roux denied having been responsible for a shooting incident at the area. The policeman had said he did not know why the photographer chose to focus on the area appearing on the video film while he had shown him house number 780 C as the scene of the shooting.

"I stated clearly in the tape that I shot and killed the man near house number 780 C. The man was attacking a casspir and it is my strong contention that I cannot be held responsible for his death," he said.

The policeman denied that all the places he pointed out in the video tape were identified by him.

The court was adjourned to enable the defence to point out the conflicting evidence of the policeman and the photographer.

(Proceeding)

A VOSLOORUS school teacher was forced to resort to begging because the Department of Education and Training has not paid her since January.

Miss Nomi Edith Mdluli, a mother of three teenagers, said her salary was not renewed when she returned from study leave in January this year.

For five months she lived on her savings but when they ran out, she started begging.

East Rand region director for the DET, Mr H Booysen, said he had apologised to Mdluli for the inconvenience caused and has promised to rectify the problem.

"The problem was due to submission of study leave forms and their entry into our computer. The matter is being settled to Mdluli's satisfaction."

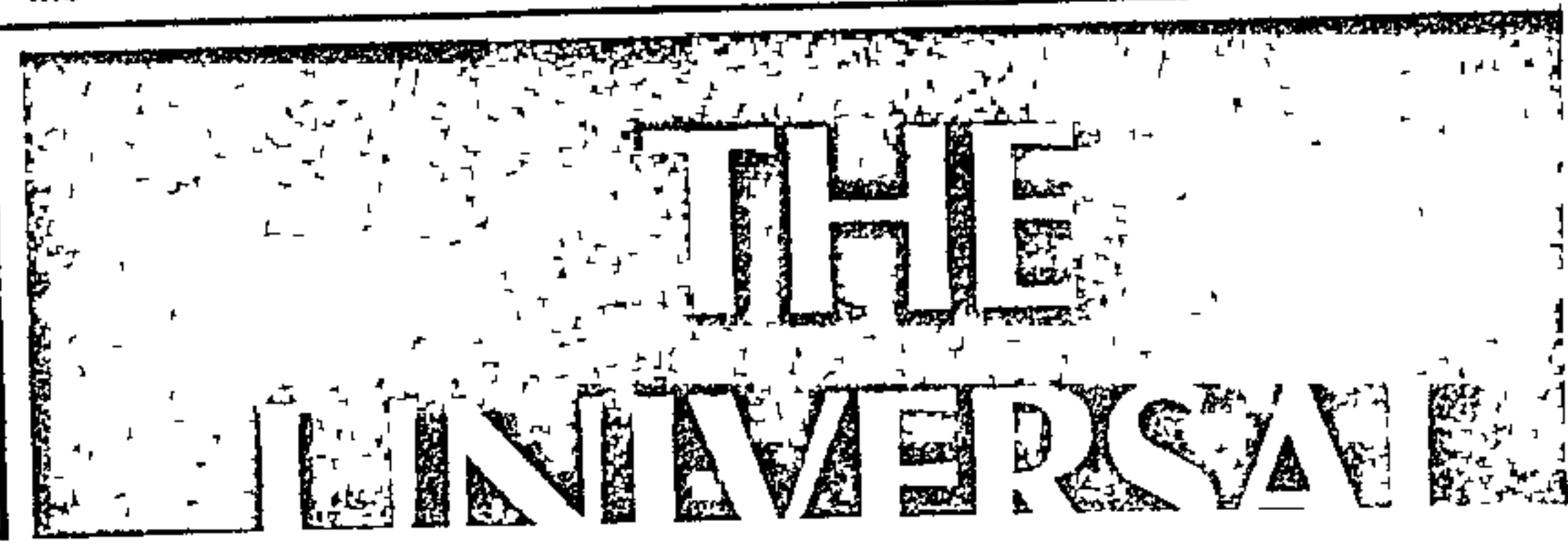
Firing squad

KAMPALA - Some Ugandan army officers may face the firing squad for letting 47 teenage prisoners suffocate in an abandoned tram, army commander Major-General Salim Saleh, said.

"Someone will have to die for this," he was quoted.

Bombs explode

THREE bombs exploded near Cape Town court-houses, killing two men. Police say they may be the first shots in a black nationalist campaign against September general elections.



SA advocates urge death penalty probe

By DAVID YUTAR
Staff Reporter

ADVOCATES have urged the South African Law Commission to investigate the death penalty as a form of punishment

This was one of many issues affecting the administration of justice discussed at the 44th annual meeting of the General Council of the Bar in Cape Town at the weekend

Other issues included the system of criminal defences

for the indigent, proposals to improve access to justice, the recent report of the South African Law Commission on "group and human rights" and better pay for judges

It was unanimously decided to request the South African Law Commission to investigate, urgently, every aspect of the death penalty as a form of punishment and the desirability of introducing reforms to the law in this regard

With regard to the pro Deo

system, there was unanimous agreement that the council should press for its reform, chiefly by requiring pro Deos to be administered by the Legal Aid Board

The council also discussed the general shortage of State-provided funds for legal assistance. It was resolved that the council should explore means of providing easier and less costly access to the courts without lowering the quality of justice

The council welcomed the Law Commission's report on human rights and adopted a motion in favour of a Bill of rights as the best means of establishing and maintaining the rule of law

Mr Milton Seligson, SC, of the Cape Bar, was elected to succeed Mr Ralph Zulman, SC, of the Johannesburg Bar, as chairman of the council. Mr Keith McCall, SC, of the Natal Bar, was elected vice-chairman

Advocates want Pro Deo reform

Supreme Court Reporter

THE Bar Council of South Africa unanimously agreed at its 44th annual general meeting at the weekend to investigate improvements in the present Pro Deo system and press for its reform.

The Bar Council wants the system to be administered by the Legal Aid Board. It also seeks the appointment of instructing attorneys to assist advocates in all Pro Deo cases.

The council noted "with concern" the general lack of funds provided by the state for legal assistance in deserving cases and "in particular the recent cut-back in funding for criminal and civil appeals and in industrial court disputes", a council statement released yesterday said.

Mr I.W.B. de Villiers SC, chairman of the Pretoria Bar Council, recently said in an article in *Consultus* — the SA Bar Council journal — that the Pro Deo system had already come under fire in the courts because errors in judgment on the part of inexperienced advocates could have fatal consequences.

"Especially in view of the fact that South Africa imposes the death penalty, we must go out of our way to ensure that accused persons in capital cases are defended by experienced advocates," he said.

It was significant that Bophuthatswana had already replaced the

Pro Deo system with legal aid and it was time that South Africa followed that example.

The Bar Councils had had difficulty with Pro Deo appointments because experienced advocates were not prepared to work for the "low" fees.

At present an advocate acting as Pro Deo counsel would earn R83 for a consultation and thereafter R200 a day for as long as the trial ran.

The Department of Justice said that "in view of the important principles underlying the concept of Pro Deo assistance, financial implications and the fact that changes in the present system may necessitate statutory amendments, it is a matter which has to be considered with circumspection".

Call for death penalty probe

THE General Bar Council of South Africa has unanimously resolved to ask the SA Law Commission to "urgently investigate the death penalty in South Africa, including its desirability or modification".

It welcomed the recent report of the SA Law Commission on "group and human rights" and said it was unanimously in favour of a Bill of Rights for South Africa "as the best means of ensuring the establishment and promotion of the rule of law in this country".

The council also welcomed the recently announced improvements in the remuneration of judges.

BUSINESS DAY, Wednesday, July 26 1989

Judge backs isolated mayor

A RAND Supreme Court judge has set aside Diepmeadow City Council's resolution this month which effectively suspended Mayor Morabe Johannes Mathala and excluded him from meetings for 45 days.

Mr Justice Leveson, in a judgment handed down this week, also declared any decisions taken by the council after Mathala's suspension on July 11 to be invalid.

The judge directed the council to pay Mathala his monthly allowance of R2 400.

Mathala last week brought an urgent application against the council and deputy Mayor Josia Mochube Matlala for an order setting aside the resolution excluding him from the executive committee.

In an affidavit he said he was appointed in November

On June 28 he chaired a general meeting of the council at which the town clerk announced he was putting forward a motion of no confidence in the executive committee for discussion by members.

SUSAN RUSSELL

Mathala said he pointed out that proper notice had not been given and the debate would therefore be irregular.

Insisted

He said in spite of his ruling the town clerk insisted he was authorised to place the matter before the council and entitled to call a special meeting.

The mayor said the matter was not discussed further on that occasion but on July 7 he received notice of a special meeting, convened by the town clerk, to discuss the motion of no confidence.

This meeting was held on July 11.

Mathala said he informed the council the meeting was irregular. A councillor told Mathala he was obstructing the meeting and warned him he would be suspended.

After some interruptions, Mathala said, he

ordered the councillor to leave the chamber. The mayor said other councillors told the man to remain and the meeting became rowdy and uncontrollable.

Mathala said he had no option but to close it. He added "Councillor Phiri, who was chairman of the executive committee, in fact proposed a motion of no confidence in his own committee which was seconded by councillor Gudhluza.

"The members of the council then purported to elect a new executive committee."

He and all other exco members, except Phiri and Matlala, were excluded from the new executive committee.

He had not been to his office since that meeting on July 11 and had subsequently learnt that Matlala had taken over the function of mayor.

He had been obliged to miss an important meeting in Pretoria on July 12 with Olaus van Zyl, a Transvaal MEC, and other members of the council, because of his suspension, said Mathala.

Bill of Rights would have economic benefits

Own Correspondent

GRAHAMSTOWN — The inclusion of a Bill of Rights in SA's constitution would have large-scale positive economic spin-offs, Mr Justice Olivier said here this week.

Mr Justice Olivier, who heads the commission which recently produced draft proposals for a Bill of Rights, spoke at Rhodes University at the start of Alesec Week on Monday.

He said the prime objective of a Bill of Rights was to unlock the full potential of the country's citizens, including their political and economic potential.

A Bill of Rights was essential in terms of constitutional and legal principles and made sound economic sense, Mr Justice Olivier said.

He said individual rights to "life, liberty and the pursuit of happiness" and political and civil rights would be enshrined within a Bill of Rights in a future constitution.

Recognition of the role of the informal economy would also have to be incorporated, Mr Justice Olivier said.

A Bill of Rights protecting these principles would lead to limited state interference in the economy.

By outlawing all discrimination based on race, colour and sex and throwing open all access to land ownership, an "enormous" amount of new

Judge 252

1 shot to kill police captain

A POLICE captain told a Pretoria North inquest magistrate yesterday that although he was a poor shot, he made sure that each bullet he fired in Mamelodi killed a person.

By ALINAH DUBE

He said he would have been killed by the mob should he have tried to alight from the vehicle before he fired

"I was faced with an emergency. The mob was attacking the casspir and I had to shoot as a result," the policeman said

He said not all people at the scene had attacked the army vehicle. He said the move appeared to have been "well organised"

He also told his colleague, a Sergeant Stroh to keep the mob away from the casspir. He could not remember if he had specifically told his colleague to use birdshot.

Stroh also fired at the people, he said

Shortly after 10am, he said they received a message that policemen's houses were being attacked in the township. While continuing with their duties, Le Roux said he shot and killed a dog which had been set on him by an unknown woman.

(Proceeding)

Buthelezi responds

THE KwaZulu Chief Minister, Chief Mangosuthu Buthelezi, has responded to a statement by the senior prince, Mcwayizeni Zulu, in which the prince said he would take the Chief Minister to court in relation to the dispute within the Zulu Royal family.

In a statement, Buthelezi said Mcwayizeni could go ahead with the court action

Captain Hermanus Arnoldus le Roux, who has admitted shooting and killing people in Mamelodi, said this under cross examination by Mr Morris Basslian, counsel for the families of the victims.

The inquest into the killing of Mamelodi residents on November 21, 1985 is being heard by Mr J P Pretorius.

Le Roux testified that he was standing on a casspir when he shot a demonstrator in the head

252


LHR Times 26/7/87
**Special inspectors:
LHR to help people**

(252)
JOHANNESBURG. — Lawyers for Human Rights are to reconstitute committees of lawyers to assist people affected by the government's appointment of 70 special inspectors to deal with contraventions of the Group Areas Act.

In a statement issued yesterday the National Director of LHR, Mr Brian Currin, said the committees were originally formed after the government announced the Group Areas Amendment Bill in July last year.

"The committees functioned very successfully throughout the country."

He said the National Directorate would put people harassed and prosecuted following the appointment of the inspectors in touch with the committee in their respective areas.

Bill of Rights 'positive for SA economy'

Own Correspondent

PORT ELIZABETH — The inclusion of a Bill of Rights in South Africa's constitution would have large-scale positive economic spin-offs, Mr Justice P J J Olivier said in Grahamstown this week.

Mr Justice Olivier, who heads the commission which recently produced draft proposals for a Bill of Rights, spoke at Rhodes University at the start of Aiesec (an international organisation of commerce students) Week

He said the prime objective of a Bill of Rights was to unlock the full potential of the country's citizens, including their political and economic potential. A Bill of Rights was essential in terms of constitutional and legal principles and made sound economic sense. He said individual rights to "life, liberty and the pursuit of happiness" and political and civil rights would be enshrined within a Bill of Rights in a future constitution.

Recognition of the role of the informal economy would also have to be incorporated.

Mr Justice Olivier said a Bill of Rights protecting these principles would lead to limited state interference in the economy.

He said that by outlawing all discrimination based on race, colour and sex and throwing open all access to land ownership, an "enormous" amount of new capital would be injected "with favourable results".

The elimination of discriminatory labour and other colour-based restraints would also boost the economy.

The economy would benefit further from improved qualifications of blacks through state spending on education on a non-discriminatory basis.

(Report by Raymond Harte, 117 High Street, Grahamstown)

'Trojan Horse' shooting: trial starts today

CAPE TOWN — A private prosecution on a charge of murder against 13 police and Defence Force members who were involved in the "Trojan Horse" shooting incident in Athlone in 1985 starts in the Supreme Court today



252

^{Star 27/7/87}
They were concealed on the back of a Sats truck and opened fire on people who were allegedly stoning passing vehicles. Two youths, Michael Miranda (11) and Shaun Magmoed (16), and Mr Jonathan Claasens were killed.

Last year a Wynberg magistrate, Mr G Hoffman, found that Lieutenant Douw Vermeulen, who was in command of the nine-man task force, and his men were guilty of negligence and had caused the death of the three

Muslims' long trial ends with acquittal

By Jovial Rantao

Twenty four Muslims from Azaadville, Krugersdorp, were yesterday acquitted by a Krugersdorp Regional Court on charges of public violence and malicious damage to property.

The court case, which lasted nearly two years, was a sequel to events that took place on March 7, 1987 when two Muslim groups, the Deobandi and the Banelvi, who hold different religious views, clashed violently at the Azaadville Civic Theatre.

The State alleged that the accused, all members of the Deobandi group, forcefully assaulted members of the Banelvi group and disturbed the public peace when they entered the Azaadville Civic Centre.

BIRTHDAY

They allegedly had weapons in their possessions and damaged the civic centre and other property.

The Banelvi group was inside the civic centre celebrating the birthday of the prophet Muhammed while the Deobandis were on their way from a mosque to listen to a debate at the centre.

Mr Sheik Mohiden Saib died from injuries sustained in the incident. The 24 were also found not guilty on an alternative charge of culpable homicide which followed Mr Saib's death.

In his judgment the magistrate, Mr J Esterhuizen, said there had been contradictory evidence from witnesses for both the State and the defence.

DRESSED ALIKE

Mr Esterhuizen said identification had been a problem during the pandemonium at the civic centre because members from both groups dressed alike.

Those acquitted were Mr Abdul Ishaq, Mr Cassim Pêar, Mr Abbas Verachia, Mr Mohammed Abubaker, Mr Suliman Ishaq, Mr Abdul Verachia, Mr Ebrahim Mohammed, Mr Hossan Bhayat, Mr Mohamid Patel, Mr Ebrahim Senei, Mr Ishmael Mohammed, Mr Zahir Rajik, Mr Shaheed Panday, Mr Abdul Vaid, Mr Rashid Lunat, Mr Iqbal Goolam, Mr Amhed Motala, Mr Abdul Amhed, Mr Moosa Memi, Mr Ebrahim Patel, Mr Hassen Moosa, Mr Abboo Verachia, Mr Ebrahim Sindi and Mr Amhed Magoon.

Evidence is questioned

25
A PRETORIA North inquest court magistrate yesterday heard of discrepancies found in statements made by members of a police squad after the Mamelodi mass shootings of 1985.

The discrepancies were pointed out to court by Mr Morris Basslian, counsel for the families of the victims. He did this while cross examining Captain Hermanus Arnoldus le Roux, before Mr J P Pretorius.

Le Roux has admitted shooting and killing two Mamelodi residents on November 21, 1985. He said his intention was to eliminate people he considered to have been leaders at the scene of unrest.

Testify

Basslian said it was of utmost importance that Warrant Officer Muller be called to testify before the inquest as a result of the discrepancies in his statement and that of Le Roux. He said although the two policemen had been together at "this crucial time," the statements differed in logic and sequence.

Quoting excerpts from Muller's statement, Basslian said the policeman admitted having fired teargas at a crowd in Makhosela Street in Mamelodi on that day. This, he said, was denied by Le Roux who said no teargas was fired while they were together.

Le Roux's evidence also differed with that of his colleague when he

By ALINAH DUBE

said Muller was struck with an object on the forehead. According to him, the impact was very hard and had caused his colleague to fall.

But in his statement, Muller said the object only struck the helmet he wore on his head. He said he went to sit down after the incident.

'Unions prefer outdated system'

SOUTH African trade unions prefer the very system from which the Soviet Union is trying to free itself, senior general manager, external relations of the Chamber of Mines, Mr Johan Liebenberg, said in Johannesburg yesterday.

He was addressing a function hosted by the SABC.

He said: "The irony is that quite a number of the major, newer unions are now fostering socialism but can only fulfill their role in a free market economy.

"From Zimbabwe and Mozambique, to China and the Soviet Union, the socialist promise has failed to materialise. The vigour of the free market is now being sought by all these countries to resuscitate seriously failing economies," he said.

**Court bomb
blast victims
are named**

CAPE TOWN — The two people who died in a bomb blast at Athlone Magistrate's Court earlier this week have been identified as Miss Colnecorr Williams (22), of Bonteheuwel, and Mr Robert (Robbie) Waterwitchcorr (20), of Glee-moor, Athlone.

The families identified the bodies yesterday. —
Own Correspondent

(27)

Mamelodi shooting inquest adjourned

252

Sowetan 28/7/89
THE inquest into the police shooting of 12 Mamelodi residents has been adjourned until January 15 next year.

When the hearing resumes in January, it will be more than four years after the incident in which police opened fire at people who had gathered at the local administrative office to present their grievances.

The hearing was set down for three days this week for further cross examination of a policeman who killed two men in the township. The hearing was in the Pretoria North Magistrate's court.

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Family court would protect children's rights

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88

THERE has been much criticism lately of the legal system's failure to protect adequately the maintenance of children of divorced couples

The original cause of the problem is, of course, the parents' selfish attitude. They want their "freedom" at any cost and the children have to pay.

They go to attorneys and are told a contested divorce can cost the earth (which it can), and they had better come to an agreement before going to court and so avoid contentious matters.

William King

a former magistrate

The clause in such an agreement will be the maintenance clause, which is not in the least important to the party who does not intend paying anyway, but just agrees to get the divorce over quickly and easily.

The solution should be a system where people contemplating divorce would have to approach a

family court before divorce proceedings could be instituted so that the children's rights and the parents' liabilities for their future support can be decided.

These courts must be given the powers to call for a probation officer's report and detailed statements of the parties' assets and liabilities.

Power to order the division of the family estate so that sufficient be set aside for the children's needs, and make such order as to future payments, and to force employers to pay these sums from

their employees' earnings.

What is left can be divided equitably between the litigating parties. The court would also be empowered to treat such children as "children in need of care" as defined in the Children's Act. It would make an order for the custody and guardianship of the child, even if it means depriving one or both parents wholly or partially of their rights over their children.

This court, after due inquiry, would make an order with the interests of the children paramount.

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Prof criticises Govt's use of the concept

Law and order in SA 'a weapon'

Political Staff

DURBAN — The concept of "law and order" has been subverted by the Government to be used as a weapon against its political enemies, says Professor Tony Mathews, dean of the faculty of law at the University of Natal

This accusation was made here this weekend at a conference of the Institute for a Democratic Alternative for South Africa (Idasa) on peace and security

Professor Mathews said that in 1950, when the National Party introduced its first legislation to maintain law and order, there was one public meeting against apartheid and one minor boycott campaign

Unrest-related incidents

But from 1985 to 1987 there were 3 500 deaths in unrest-related incidents

In South Africa, "law and order" was not a phrase used in its normally understood sense, the professor said

It had become a programme of using criminal control against political opponents

He criticised South African courts for interpreting Government proclamations in such a way as to allow officials almost total immunity from legal accountability

The Supreme Court had decided it was not entitled to deal with the merits of a case — but had to

accept the Government's view, which allowed security officials subjective discretion to decide on their actions

South Africa was being forced to reform because of the grinding down of the economy, said another speaker, Dr Gregory Treverton, senior fellow of the Council for Foreign Relations

Sanctions — and particularly disinvestment — had contributed to the situation

He said while there was a world movement away from communism, there was also a movement towards accepting that politics and economics were interlinked

Democratic Party co-leader Dr Denis Worrall warned that South Africa would face a series of international deadlines for reform after the September 6 elections

He told the conference he had found on his recent overseas trip that there was a sense of expectation with a new generation of NP leaders and the emergence of the DP

But if the expectations were not met, South Africa faced increased international isolation

The Dellums Bill in the United States legislature, calling for far tougher mandatory sanctions, would be raised again

And sanctions would be an issue at the Commonwealth Heads of Government meeting in November, Dr Worrall said

(Report by B Cameron 85 Field Street, Durban)

Judgment on representation overruled

MARITZBURG. — Legal representation is not vital to the fairness of a trial, a Full Bench of the Natal Supreme Court has decided, overruling an earlier decision in this division.

In a reserve judgment handed down on Friday, Mr Justice Howard, the Judge President, with Mr Justice Booysen and Mr Justice Combrink concurring, said the rule laid down by Mr Justice Diccott in the Khanyile case did not hold as the case had been wrongly decided.

Friday's judgment follows an application by Mr Paulos Mithwana, who was appealing against his conviction for housebreaking with intent to steal on the basis of the rule laid down in the Khanyile case.

In the Khanyile case, Mr Justice Diccott held that the lack of legal representation, because the accused could not afford it, had put them at a disadvantage that was "palpably and grossly unfair". Mr Justice Howard said on Friday that an accused enjoyed the right to

legal representation for himself, but not the right to be provided with representation that he wanted but was unable, for lack of funds, to procure.

He said the reasoning in the case of Khanyile — that a person who could not afford legal representation was in the same position as one who was denied it — was based on the false premise that a denial of a right to representation necessarily resulted in a trial which in itself was unfair.

"There is no precedent in our law for holding that a mere lack of representation, due to lack of means, constitutes an irregularity, let alone an irregularity of so gross a nature as, per se, to vitiate a trial," Mr Justice Howard said.

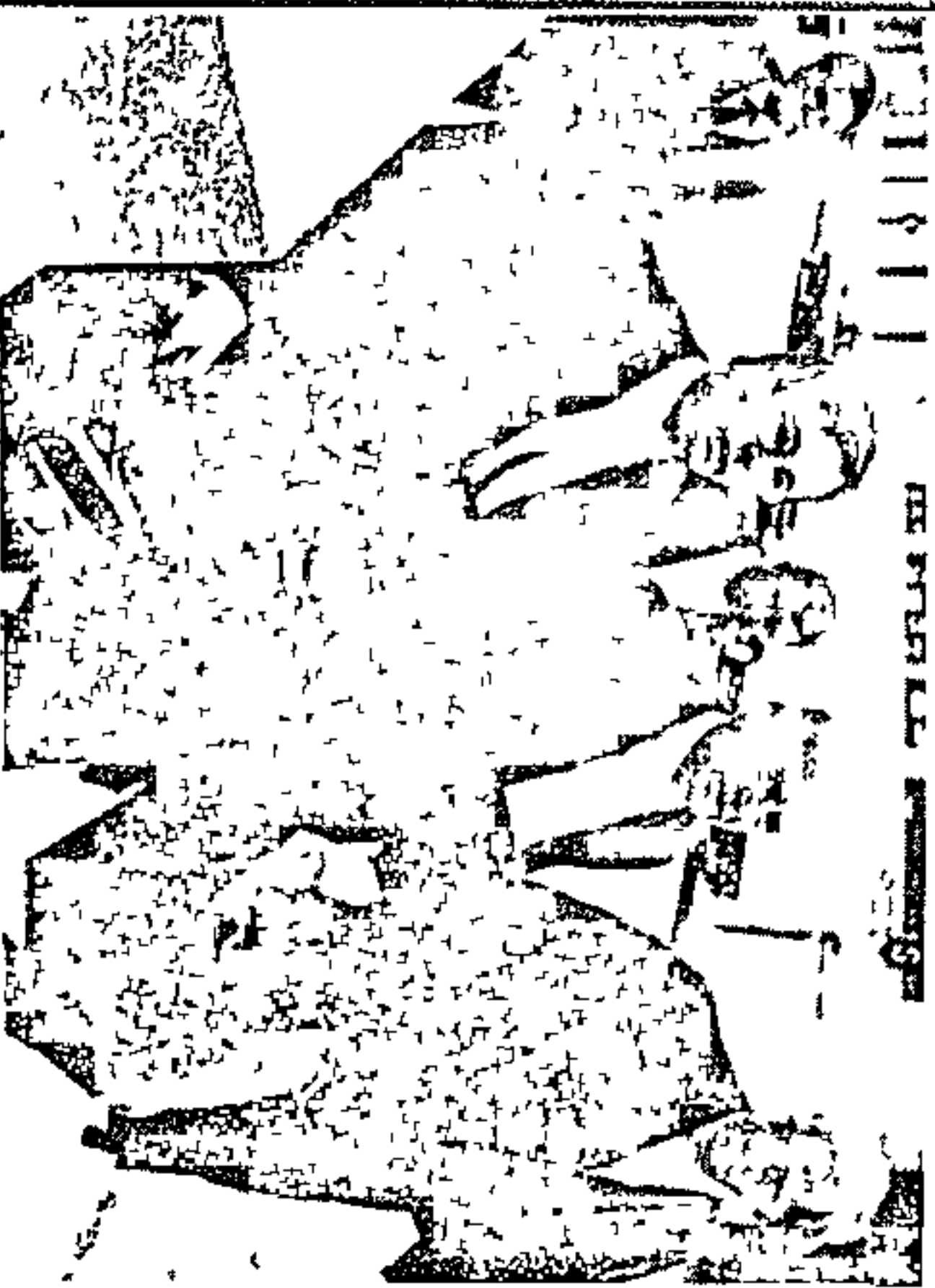
"Of course the accused must be afforded every reasonable opportunity to procure legal representation, either by paying for it or obtaining it gratis through legal aid or otherwise.

"But that in my judgment is as far

as the judicial officer is required to go.

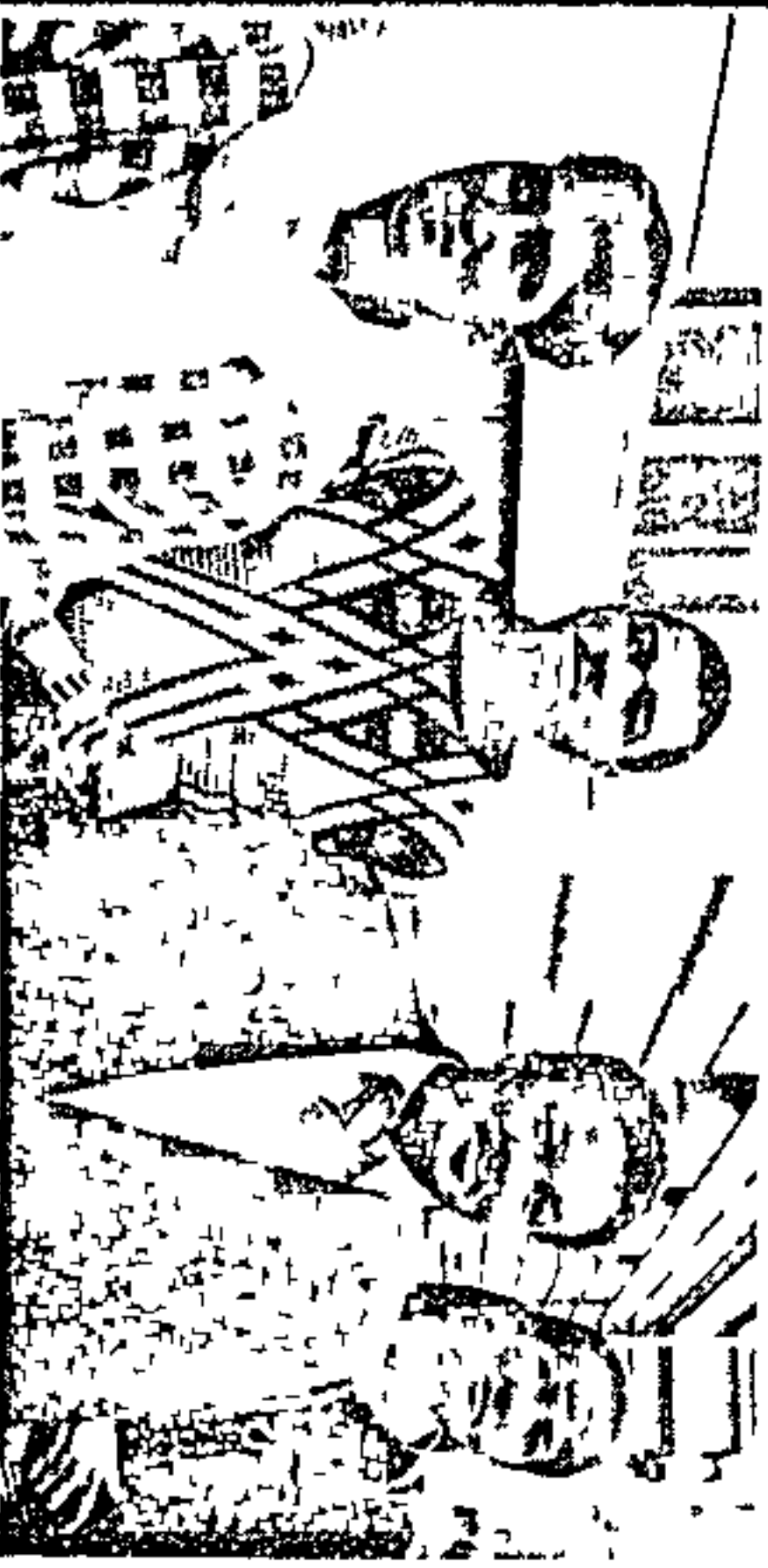
"The obverse of the right to representation is the negative duty to respect the right, not the positive duty to provide the representation."

He said it was obviously desirable for judicial officers to assist accused to procure legal representation, but there was no warrant for holding that they were under a positive duty to do so. — Sapa



Pictures DANA le ROUX The Argus

THE PROSECUTION Counsel for the families are, from front left, Mr. Jeremy Gountlett, Mr. Les Rose, Mr. Gary Jansen, the instructing attorney, Mr. Denzil Potgieter, left, and Mr. Theo Williams, Mr. Martin Magnoed and Mrs. Williams's sister, Mrs. A du Toit



THE DEFENCE Counsel for the defence are, from left, Mr. P de Bruyn, SC, and Mr. A Veldhuizen, for the three officers, and, from left, Mr. J J Wessels, for the policemen and Mr. S W Burger, SC, for the SADF officer and Commandant S Plenaar. Below Police defence team, from left, Mr. P Hattingh SC, and Mr. J Brand. One of the accused, Major Christiaan Loedolf, is behind

Costs move may halt 'Trojan' trial

By REHANA ROSSOUW
Staff Reporter

THE defence request for security of almost R1-million in the "Trojan Horse" murder trial in the Supreme Court could halt the prosecution, the court has heard.

Twelve policemen and an officer in the South African Defence Force are facing charges of murder arising from the deaths of three youths in Athlone in 1985.

The security officers allegedly planned and executed an operation in which eight policemen were hidden in crates on the back of a South African Transport Services truck which was driven through unrest-hit areas in October 1985.

Argument

When the truck was stoned the men opened fire, killing Michael Miranda, 11, Shaun Magnoed 16 and Mr Jonathan Claassens, 21.

Last year an inquest magistrate found that a police lieutenant and his task force were guilty of negligence and caused the death of the three. However, the Attorney-General refused to prosecute and yesterday's private prosecution — the first of its kind in South African legal history — was launched.

The private prosecutors are Mrs Georgina Williams, the mother of Michael Miranda and Mr Martin Magnoed. Shaun's father

The hearing opened with argument before Mr Justice D M Williams on the amount of security which should be fixed in the event of the defendants' acquittal.

Mr P de Bruyn SC, argued on behalf of all the defendants that the security should cover all the costs of their defence totalling R945 000.

The security set by a Wynberg magistrate last month of R10 000 was "totally inadequate", Mr de Bruyn said.

"The accused did not place themselves here (in court), they were brought here by the private prosecutors who should face the consequences of their actions."

Mr de Bruyn said the trial would last longer than the 20 days expected by the private prosecutors and six counsel had been appointed by the 13 accused.

Taxpayers' money

Mr J Browde SC for the prosecution, said the accused were not incurring any costs which were being paid by the State and taxpayers' money.

He said it was "extraordinary" that although the men were charged in their personal capac-

ties, the State was paying their costs.

"The accused have no chance of being called innocent victims because they are not going to be paying any costs — the taxpayers are."

Mr Browde said the application for more security was a "combined effort" to stifle the proceedings.

No means to pay

The prosecutors had no means of paying "almost R1-million" as they were supported by public-interest funding.

"If the order is granted it will not only abort the prosecution but establish a precedent where only the rich could become public prosecutors," Mr Browde said.

"A poor person would never be able to come to court and say 'I wish to become a private prosecutor'."

The accused are Colonel P Janse van Rensburg, Major Christiaan Loedolf and Commandant S Plenaar — who planned the operation — and the 10 officers on the truck, Lieutenant Douw Vermeulen, Sergeant F van Niekerk, Sergeant J J Burger, Constable W Fuchert, Constable P M du Toit, Warrant Officer A Swart, Sergeant J Sayer, Constable A J Smit, Constable A J Rossel and Sergeant A M Smit. The hearing continues today.



(252) 2/8/89

Defence team applies for security of almost R1-m

'Trojan' prosecution in jeopardy

Own Correspondent

CAPE TOWN — The defence request for security of almost R1 million in the "Trojan Horse" murder trial in the Supreme Court could effectively halt the prosecution, the court has heard

Twelve policemen and an SADF officer are facing charges of murder arising from the death of three youths in Athlone in 1985

The security officers allegedly planned and executed an operation in which eight policemen were hidden in crates on the back of an SA Transport Services truck which was driven through unrest-hit areas in October 1985

When the truck was stoned, the men opened fire, killing Michael Miranda (11), Shaun Magmoed (16) and Jonathan Claasers (21)

At an inquest last year the magistrate found that a police lieutenant and his task force were guilty of negligence and caused the death of the three. However, the Attorney-General refused to prosecute and yesterday's private prosecution — the first of its kind in South African legal history — was launched

The private prosecutors are Mrs Georgina Williams the mother of Michael Miranda, and Mr Martin Magmoed, Shaun's father

The hearing opened with argument before Mr Justice D M Williamson on the amount of security which should be fixed in the event of the defendants' acquittal

State paying costs

Mr P de Bruyn, SC, argued on behalf of all the defendants that the security should cover all the costs of their defence — R945 000. The security set by a Wynberg magistrate last month of R10 000 was totally inadequate

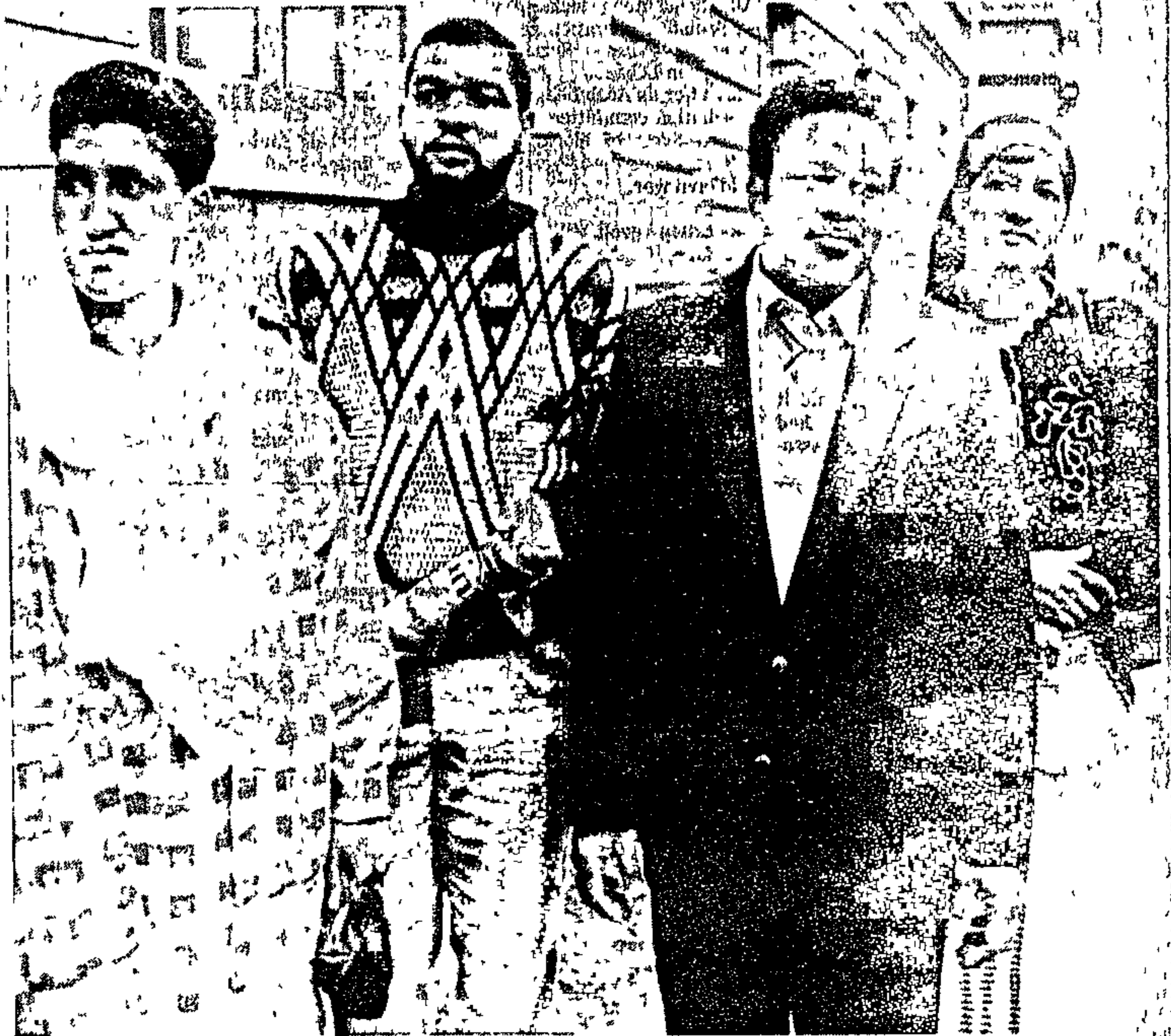
"The accused did not place themselves here (in court), they were brought here by the private prosecutors who should face the consequences of their actions"

Mr de Bruyn said the trial would last longer than the 20 days expected by the private prosecutors and that six counsel had been appointed by the 13 accused

Mr J Bowde, SC, for the prosecution, said it was "extraordinary" that although the men had been charged in their personal capacities, the State was paying their costs

He said the application for more security was a "combined effort" to stifle the proceedings. The prosecutors had no means of paying almost R1 million as they were supported by public-interest funding. "If the order is granted it will not only abort the prosecution but establish a precedent where only the rich could become public prosecutors"

The accused are Colonel P Janse van Rensburg, Major Christiaan Loedolf and Commandant S Pienaar — who planned the operation — and Lieutenant Douw Vermeulen, Sergeant F van Niekerk, Sergeant J J Burger, Constable W Puchert, Constable P M du Toit, Constable A J Smit, Sergeant J Sayer, W/O A Swart, Constable A J Rossel and Sergeant A M Smit. The hearing continues today



Making South African legal history... members of the families bringing the prosecution Mrs Georgina Williams (left); Mr Theo Williams; Mr Martin Nagmoed and Mrs Williams' sister, Mrs A du Toit

British govt asks cricket rebels to r

● From Page 1

would last only half as long as the Caribbean tour, and said "Obviously, I had to give the offer of a far shorter tour a lot of consideration. Ali Bacher phoned me from Johannesburg earlier yesterday and I told him I'd do the job"

● The decision by the 16 was condemned as "an act of treachery" by Commonwealth Secretary-General Sir Shridath Ramphal

"By becoming pawns in the hands of the South African Cricket Union, the rebel group are lending support

He said the South African tour to South Africa's efforts to destabilise international cricket"

● Sanroc's Sam Ramsamy has bitterly attacked the decision

Speaking on BBC 2, he said it was difficult to predict the repercussions, but many black countries were seeking ways of excluding Britain from the Commonwealth Games.

"These particular people should be sanctioned for whatever they are doing, and what I'd like make very clear is that this is a political exercise, not a sporting exercise. These

particular players have been invited to South Africa to give the South African Government political respectability internationally. The South African Government is deeply involved in this tour"

Referring to the England players who coached black youngsters in the townships, he said "We don't know if this is a good thing" He claimed the South African Government's motives were "very sinister" adding "They are not doing this from the bottom of their hearts to improve the cricket of blacks in South Africa"

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Trojan Horse trial may be aborted

Supreme Court Reporter

TWELVE policemen and a member of the SADF who are to be charged with murder as a result of their actions in the "Trojan Horse" incident in 1985, have asked that security for costs be increased from R10 000 to almost R1 million.

If the application succeeds, it may lead to the private prosecution against them being aborted, the Supreme Court heard yesterday.

The men were concealed in crates on the back of a SATS truck and opened fire on people who were allegedly stoning passing vehicles. Michael Miranda, 11, Shaun Magmoed, 16, and Mr. Jonathan Claasens, 21, were killed.

Last year Wynberg magistrate Mr G Hoffman found that Lieutenant Douw Vermeulen and his nine-man task force were guilty of negligence and had caused the death of the three.

The finding was forwarded to the attorney-general of the Cape, Mr Niel Rossouw, who declined to prosecute. He subsequently is-

sued a "nolle prosequi" (non-prosecution) certificate which enables anyone who thinks the attorney-general has made an incorrect decision to take the case to court.

Mrs Georgina Williams, mother of Michael, and Mr Martin Magmoed, father of Shaun, consequently brought a private prosecution.

Yesterday Mr P de Bryyn SC, for the police officers who planned the operation, said a Wynberg magistrate earlier this year set R10 000 as security for costs. However, the Criminal Procedures Act provided for the amount to be reviewed.

An amount of R10 000 was insufficient and it was "scandalous" to say the application for the amount to be increased was an attempt to frustrate the private prosecution, Mr De Bryyn said.

The trial had been set down for 20 days but could in fact last for as long as three months and all three teams of advocates wanted R105 000 for a month or a total of R945 000 for the three months the trial was expected to run. Mr J Browde SC, who is leading

the prosecution, said the extraordinary thing about the application was that there was no case for security at all.

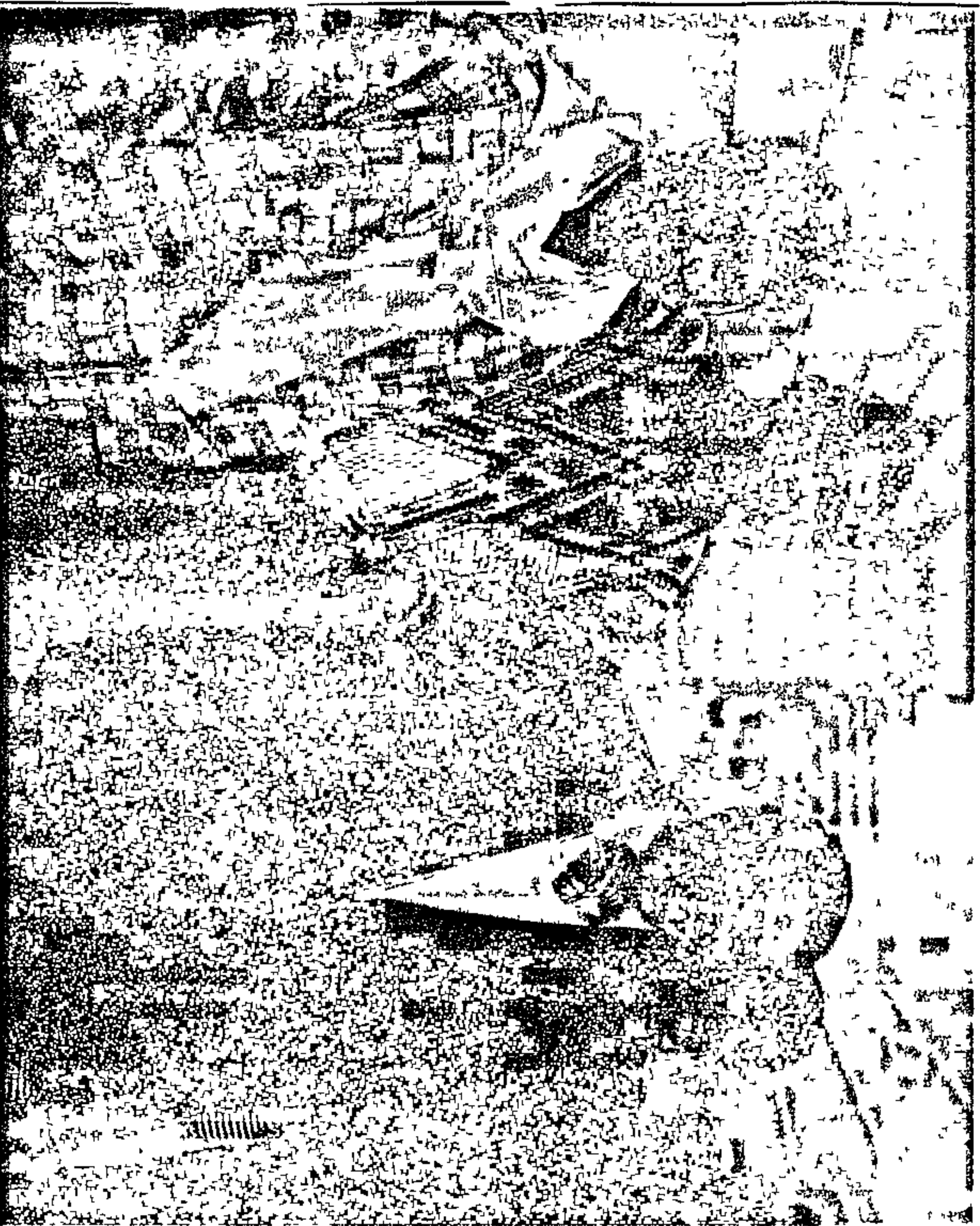
It was common cause that the accused would under no circumstances incur costs but that the state would. The policemen had also not said in an affidavit that they would pay the costs themselves and admitted under oath that the costs would be borne by the taxpayer. On that ground alone the application was ill-founded, Mr Browde said.

The separate applications made in respect for three groups of accused was a combined effort to stifle the prosecution.

If the application succeeded it would set a precedent where "only the rich would be able to be private prosecutors".

The men who have been subpoenaed are Colonel P James van den Berg, Major Christian Looisoff, Commandant S Penner, Lieutenant Denay Vermeulen, Sergeant F van Niekerk, Sergeant J J Burger, Constable W K F Pinder, Constable P M du Toit, Warrant Officer A Swart, Sergeant J Swart, Constable A J Smit, Constable A J Rossell and Sergeant A M Smit.

Mr Justice D M Williamson was on the Bench. Mr Liza Rosenkrans and Mr Daniel Roggeer, assisted by Y Ehrentham and Co. Mr Rip Harnagh SC and Mr June Wessels appeared for the state. Mr P de Jager appeared for the SADF member. Mr De Bryyn assisted by Mr Anton Veldhuizen, appeared for the police officers.



PRIVATE PROSECUTORS... Bringing a private prosecution in the Supreme Court yesterday were Mrs Georgina Williams, Mr Theo Williams, Mr Martin Magmoed and Mrs Williams's sister, Mrs A du Toit.

Picture ALAN TAYLOR

Ex-detainees sued for court costs

CPI Times
2/18/87
252

Own Correspondent

PORT ELIZABETH — Emergency detainees who challenged their detentions in 1986 are now being sued for court costs

Five ex-detainees in Grahamstown have since become liable for the legal costs of their litigation, including the state's costs in defending the applications, totalling nearly R25 000

State attorneys have issued warrants of execution against the five to recover the outstanding costs.

The chairman of the Albany Dependents' Conference, Mr T Paterson, said the five ex-detainees were now receiving punishment "for offences which the state cannot establish in court"

The five ex-detainees, who instructed lawyers to lodge Supreme Court action to secure their release in 1986, are Mr Lindile Jela, Mr Zalisile Mkontwana, Mr David Sandi, Mr Mabooi Zono and Mr Elias Njibane.

All have since been released. Law-

yers instituted three separate court applications to secure their release

The five ex-detainees have since become liable for the legal costs of the failed litigation, however, including the state's costs in defending the applications

Mr Jela and Mr Zono are jointly liable for R8 135; Mr Sandi and Mr Mkontwana for R8 923 and Mr Njibane for R7 649

Asked to comment on the claim that Mr Jela was being harassed by the security police, a spokesman for the South African Police directorate of public relations in Pretoria denied any police actions were intended to "harm, inconvenience or harass Mr Jela".

A lawyer, Mr Boni Sandi, said Mr Jela had twice been approached by security police seeking information on his client's financial position

He said he had sent a letter to the Commissioner of Police informing him of the security police's "attempts to extort information"

Soweto 4/8/89

FEBRUARY DATE FOR EX-MAYOR

252

THE murder trial of former Soweto deputy mayor Mr Patrick Ndaba will begin next year.

Ndaba (39) and his co-accused, Mr Patrick Mfeka (38) and Mr Musa Njoko (25) appeared before Mr S P Janse van Rensburg in the Johannesburg Magistrate's Court and were told that their trial will begin in the

By MANDLA NDLAZI

Rand Supreme Court on February 19 next year

Their appearance arises from the death of Mr David Nkomo (45), a Sofasonke Party member who was gunned down in Chiawelo, on August 26 last year.

They are charged with murder, alternatively conspiracy to murder and il-

legal possession of a firearm and ammunition.

They pleaded not guilty at a previous hearing

The man they are alleged to have killed would have been a Sofasonke Party candidate for the municipal elections on October 26 last year.

The accused are in custody having been refused bail at previous hearings.

'Trojan' judge refuses R1m plea

Supreme Court Reporter

THE Supreme Court yesterday dismissed an application, made by 12 policemen and an SADF member on trial for murder, that R10 000 already paid as security for costs they may incur be increased to almost R1 million.

Mr Justice D M Williamson said that if he were to order security for all costs which might be incurred by an accused — however remote that possibility might be — he would be "loading the scales of fairness unduly heavily in favour of an accused".

The trial is a private prosecution brought against the men by the parents of two youths killed in the "Trojan Horse" incident in 1985, when policemen who hid in crates on the back of a SATS truck opened fire on people who were allegedly stoning vehicles.

A Wynberg inquest magistrate found last year that Lieutenant Douw Vermeulen and his men were negligent and had caused the deaths of the youths. The attorney-general subsequently declined to prosecute and Mrs Georgina Williams and Mr Martin Magmoed decided to bring a private prosecution.

Costs R15 000 daily

Counsel for the accused applied for an order that R10 000 already paid as security for costs be increased to R945 000 as the trial was expected to run for three months.

Mr Justice Williamson said in his judgment that the 13 were defended by three senior counsel, three juniors and two firms of attorneys, their legal costs were R15 000 daily.

The accused were being financed by the state and he was "faced with a situation where the accused are not personally paying" for their defence.

The judge, who said he found it impossible to quantify the risk that the men would have to pay back the costs, said he believed the law meant to protect persons who were reasonably expected to bear the costs "personally".

"If I grant the request for further security I may be loading the scales in favour of the accused. It is personal jeopardy that the law intends to protect. Unless the accused can show that they will personally incur liability for the costs, they are not entitled to ask for security. The application is refused."



There was joy and ululation when seven members of the National Union of Mineworkers were acquitted at the Pretoria Supreme Court yesterday. The seven from the Witbank Colliery were appearing on charges of murder. Pictured with them is Num's assistant general secretary, Marcel Golding.

Num mem cleared of murder

Stratford 4/8/89

BY MOJALEFA MOSEKI

ing the 1987 miners' strike.

NINE National Union of Mineworkers members who were charged - with the murder of a miner at a Witbank Colliery, were yesterday acquitted by the Pretoria Supreme Court.

The men and their attorneys held a Press conference at the NUM's offices in Johannesburg yesterday.

They were charged with the murder of a miner at the Blinkpan Colliery in Witbank dur-

ing the strike.

They are: Mr Moses Nyakane (35), Mr Philemon Molo (29), Mr Jim Mogashoa (31), Mr Zingisile Sigala (30), Mr Jacob Mashioane (29), Mr Piet Mahlangu (26), Mr Esau Vlakazi (38), Mr Thabiso Lehuoa (50) and Mr Elvis Mubi (24).

● To Page 2

A spokesman for the attorneys, Maboia M. M. Owen and Associates said the workers were acquitted because the State's chief witness, evidence was "improbable". He said the union would apply for the compensation of the workers for the time they spent out of work because of the murder charge which they have now been cleared of. The union would also seek the reinstatement of the acquitted workers.

Golding said a Num member, Mr Nongang, from the Free State is on Death Row and the union has filed an appeal for him. Two other NUM members from Vaal Reefs were released from Death Row early this year and one more member is in the process of being released, according to Golding.

He said that 500 Num members were arrested and 600 others injured in the fracas that ensued during the strike.

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Num's assistant general secretary, Mr Marcel Golding, said "The acquittal of these workers confirms our assertion that union members were not violent at any stage during the strike. It also indicates our position which has been that all our workers arrested were not guilty. Our strike was a peaceful one."

From Page 1

they were all from Eastern Transvaal townships. Num's assistant general secretary, Mr Marcel Golding, said "The acquittal of these workers confirms our assertion that union members were not violent at any stage during the strike. It also indicates our position which has been that all our workers arrested were not guilty. Our strike was a peaceful one."

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Num 9 not guilty 252

4-10/8/89.

SA threat to close legal centre

By SHAUN JOHNSON

NAMIBIA'S Legal Assistance Centre, which has dealt with well over 400 cases involving human rights violations in the first year of its existence, faces closure if South Africa has its way.

The administrator-general for South West Africa, advocate Louis Pienaar, and South Africa's minister of defence, General Magnus Malan, have

entered a special plea in several of the human rights abuse claims brought against them — essentially charging that the LAC is not authorised to issue summons and act as attorneys on behalf of the clients.

The objection is apparently being made in terms of the Attorneys Act.

If it succeeds, the LAC will be forced to shut its doors.

According to LAC director David Smuts, an application for a declaration of rights — which would thwart the attempts to close the centre — has been opposed by Pienaar and Malan, and although the matter will be called in court in Windhoek on Monday, it could be postponed.

The threat to the LAC has prompted the Washington-based Lawyers' Committee for Civil Rights Under Law to issue a statement expressing deep alarm.

The committee believes the LAC's closure "could result in the denial of legal assistance on issues relating to fundamental human rights to the vast majority of Namibia's population".

The "Africa Watch" human rights monitor group, also based in Washington, has expressed similar concern and has appealed directly to Pienaar to "review the grounds for the application".

According to the Lawyers' Committee, the cases dealt with by the LAC which have led to litigation "primarily involved (with) human rights abuses perpetrated by the members of the security forces such as detentions, deaths, disappearances, claims for damages for unlawful detention, assaults and destruction of property by security force members".

"The defendants in the vast majority of cases have been the South African minister of defence in his capacity as head of the South African Defence Force (and its units grouped as the SWA Territory Force) and the administrator-general in his capacity as head of the SWA Police, including the dreaded Koevoet counterinsurgency unit."

Venda residents beaten, detained

By VUSI GUNENE in Thohoyandou

MORE than 90 Venda residents were detained following the banning of a meeting called to discuss escalating tension in the "homeland".

The crisis in Venda is marked by widespread student boycotts and anti-government protests.

Last week, the Northern Transvaal Churchworkers Conference, a multi-denominational committee, petitioned the state president, the minister of justice and the commissioner of police, calling on them to stop the harassment of residents.

The ministers also urged the three to "make a concerted effort in investigating cases of ritual murders".

A report-back meeting scheduled for last Sunday was banned by the authorities. Those assembled at the Anglican Church in Sibasa were allegedly assaulted and sjambokked by security force members.

That night close to a hundred people, including three ministers, were detained.

A week-long stayaway has been planned for this week. Many people did not report to work on Monday, but returned the following day. However, on Wednesday the taxis and buses were not operating.

According to residents, homeland police and the Venda Defence Force began ferrying employees to work.

But schools, colleges and the University of Venda have not reopened.



whair

whair



4-10/8/89.

Monitoring repression

A HIGH-POWERED commission to investigate assassinations and other forms of informal repression was launched in Johannesburg this week.

The board — made up of a former supreme court judge, a law professor, prominent church leaders and human rights activists — will investigate sabotage, assassination and other attacks on resistance groups.

The board said it had decided to purchase sophisticated computer equipment to monitor repression throughout South Africa. It will make use of private investigators and is in contact with the FBI over the alleged poisoning of church leader Frank Chikane.

The 10-member board includes Prof Laurie Ackermann, a former supreme court judge who is now professor of human rights law at Stellenbosch University.

wmail
4-19/8/89
152

(25)
4-10/8/89

Natal court overrules 'fair trial' judgement

By CARMEL RICKARD

THE widely-hailed ruling of Natal judge, Mr Justice John Didcott, which insisted that accused be properly represented, has been set aside by a full bench of the Natal court.

The full bench — consisting of Natal's judge president Mr Justice Howard, with Mr Justice Booysen and Mr Justice Combrink — held that legal representation was not vital to the fairness of a trial.

The judges said that accused persons did have the right to legal representation, but they did not have the right to be provided with representation they might want but could not afford.

They said the earlier judgement of Mr Justice Didcott — which made representation, in many cases, a prerequisite for a fair trial — was unworkable.

National president of Lawyers for Human Rights Brian Currin expressed his organisation's "deep distress" at the new ruling.

He said that at a time when the judiciary was not only losing credibility, but was becoming "increasingly irrelevant" to the vast majority of South Africans, the Didcott judgement "was seen to side with the plight of the oppressed and underprivileged".

Currin said that since 85 percent of accused in criminal cases were unrepresented, a public defender programme was desperately needed.

The Didcott judgement had given this idea impetus. Publicity surrounding the ruling had led to an increased awareness among lawyers and many more had begun offering their services for poor clients.

Another LHR official predicted that with the overruling of this judgement, the interest of these lawyers would decline rapidly.

Currin commented: "For the judge president of Natal to state that the rule laid down by Mr Justice Didcott would be unworkable in practice begs the question, in our respectful view.

"If the full bench were of the view that the rule was unworkable, they should rather have improved upon it. As far as we are concerned, the court should rather have found a way of making the rule work."

St Tuesday 8/89.

Costs row in 'Trojan Horse' trial (252)

By HAMISH McINDOE

A SURPRISE application for a R1-million deposit to cover legal costs failed to stop the "Trojan Horse" murder trial in its tracks this week

The Supreme Court in Cape Town refused to grant a defence request to set surety at R945 000 to cover costs in the private prosecution of 12 policemen and an SADF officer facing murder charges

The action has been brought by the parents of two youths killed when security force members — hidden in crates on the back of a truck — opened fire on a crowd in the Cape Town suburb of Athlone four years ago

This week, human rights lawyers voiced fears that the defence request for a deposit could have set a dangerous precedent had it been granted

Professor Dirk van Zyl Smit, head of the criminology department at the University of Cape Town, said private prosecutions were an "important safety valve" that stopped people from "taking the law into their own hands"

"A R1-million deposit defeats the whole object of a private prosecution"

Mr Justice D M Williamson said that, if he were to order surety for all costs which might be incurred, he would be "loading the scales of fairness unduly heavily in favour of an accused"

Judge Williamson said the accused were all being financed by the State, but might have to pay back the costs "if they forfeit the right to such cover"

"I am faced with the situation where the accused are not personally paying for the costs of their defence," he said

Back to school

A GROUP of 204 pupils locked out of their school premises sighed with relief yesterday when it was announced that they could return as the gates would be unlocked.

9/8/69
South African
The announcement was made in the Rand Supreme Court following an urgent application for an order that Mr Bernard Matthews should remove all the chains and locks on the gates of Uwezo College in Commissioner Street, Johannesburg, failing which a deputy sheriff should hire a locksmith to remove or cut the items on the gate. *252*

Postponed

A group of pupils filled the court's public gallery yesterday waiting for the outcome of the application by their school teacher, Mr Richmond Bahlekazi.

The pupils were later informed by one of the lawyers that an interim agreement had been reached.

The interim agreement was that the pupils and teachers should be allowed to return to school, a committee consisting of representatives of the PCP and the parents school committee should administer the school until the matter was resolved.

The case was postponed to August 16.

Bomb scare (252)

Pretoria man is sentenced

Star 11/8/89
Pretoria Correspondent

A Pretoria man who told security personnel at the Pretoria Magistrate's Court that he had a bomb has been sentenced to three years' imprisonment, suspended for five years.

Adolf Jacobus Swanepoel (23) of Phillip Street, Kilner Park, was found guilty by Pretoria Regional Court magistrate Mr W J van den Bergh of contravening laws governing explosives.

On Tuesday last week, Swanepoel went to pay a fine at the court building. When he passed through the metal detector, an alarm went off. As a joke, he insinuated to security personnel he had a bomb.

He was ordered to empty his pockets — and there was no bomb.

MILLION CLAIMED

A CIVIL action, in which two men are each claiming more than half a million rand from the Minister of Law and Order, began in the Rand Supreme Court yesterday.

Mr James Modjadji (31) and Mr Phineas Baloyi (29), were injured while travelling in a SAP vehicle

The responsibility for the accident and the amounts which are claimed are both being disputed.

Baloyi, formerly a policeman, is a paraplegic and has claimed R894 000

Modjadji, who was a passenger in the

vehicle, is paralysed from the waist down and is able to walk using leg calipers and crutches. He is claiming R526 254

The collision took place on November 15, 1985, at the intersection of the Soweto Highway and Valley Road

Mr Acting Justice Levy is on the bench

Mr Ed Moseneke, instructed by SC Mhinga, appears for the plaintiffs. Mr W H G van der Linda, instructed by the State Attorney, appears for the Minister

*6/8/85
Soweto*

(252)

Policemen's plea

282

Sowetan 10/8/89

IN A dramatic move yesterday defence counsel for the 12 policemen and a member of the SADF charged with murder in a private prosecution, asked that the proceedings be nullified because the prosecutors had not complied with the Criminal

Procedures Act

In statements handed to the court the men pleaded not guilty to two charges of murder and denied having acted unlawfully against Shaun Magmoed (16) and Michael Miranda (11), or that they had intended to

kill them

The shock move came shortly after the men had pleaded when Mr P de Bruyn, SC, for two of the accused, asked a postponement until today

An application would be made today for the charges and the proceed-

ings so far be nullified because the provisions of Section 10(3) of the Criminal Procedures Act had not been met.

Mr J Browde, SC, for the prosecutors, said notice of the application for nullification came as a surprise.

Task force in shack killing, inquest told

252
Smit
10-16/8/89

From PHINDA
KUZWAYO

DURBAN. — A special police task force was involved in the shack killing of four Chester-ville youths in 1986, an inquest court was told here.

The task force had travelled from Pretoria on the instructions of security police headquarters

The killings were carried out by black members of the unit, according to affidavits submitted to court.

The unit's mission was to eliminate youth who had been engaged in a running battle with a conservative vigilante group in the township known as the A-team

On June 20 the seven-person unit lured six youths into a small backyard room and fired several rounds at them at close range.

Eliminate

Four youths died instantly. Those killed were Russel Mngomezulu, Muntuwenkosi Dlamini, Russel Mthembu and Sandile Kwawula.

A total of 68 rounds of bullets were fired. All seven police were armed and participated in the shooting, with one firing as much as 21 bullets and others 16 and 13 each, according to statements taken from members of the unit by D/WO Jacobus Smit.

The hearing was adjourned to October 23 because a white policeman of the unit, detective sergeant Willem Albertus Nortjie, failed to appear in court to give evidence on the second day

In their evidence the senior white policemen, some of whom had travelled with the

killers from Pretoria, testified that the killings followed a carefully worked out mission with the intention to eliminate the youth organisation to which the "comrades" were linked.

According to Nortjie's testimony on the first day of evidence, the unit had information about the existence of the "comrades" and their conflict with the "A-team"

The black members of the unit went into the township to make contact with the "comrades".

The plan was that they would pose as insurgents who had come to assist the "comrades" in their fight against the "A-team".

One of the two survivors, Tebello Mbatha, testified that he had been sleeping at another house with two of the victims. Two other members of the comrades woke them up and warned them of an imminent attack by the vigilantes.

They then met the police unit in a backyard room where they were told the insurgent story.

"Suddenly a shot was fired and the light in the room went off and several other shots rang out. I was hit on several parts of my body — on my left thigh, left hip, right leg, right thigh and my back.

"Sandile, Rhee, Russel and Chwepheshe were killed. After the shooting I heard footsteps as if people were moving away and soon thereafter the sound of an engine being started," Mbatha said in an affidavit.

In his affidavit Nortjie wrote that the police unit left Pretoria on June 15, 1986 to investigate a "tip". They were under the command of a Lt van Dyk.

"The investigation concerned security matters and the tracing of AK47 rifles and handgrenades.

"On Thursday, June 19, 1986, as a result of information we had we went to Chesterville for further investigation. Lt van Dyk then briefed us and among other things said a Lt Hunter of the local Reaction Unit stationed at the temporary police station in Chesterville would brief us further.

It was then that the unit decided to make contact with the "comrades".

The black members of the unit proceeded to do this while the whites waited under a bridge outside the township

"On June 20, 1986 at about 00h20, Sgt Radebe and three others came to me and reported having made contact. Sgt Radebe told me the comrades needed to see something which showed them to be 'comrades'. I gave Sgt Radebe a 'che' 77 which looks like an AK47 rifle.

Retallated

"They left for the rendezvous and we followed but lost sight of them after some time.

"At about 01h45 I heard a single shot and from experience immediately recognised it as being from a pistol or a revolver. Immediately thereafter I heard several shots which I made out to be single and automatic firing.

"I noted the firing came from where contact was to be made with the 'comrades'. At that stage I decided we should rather wait since we didn't know what our colleagues had got themselves into

"About five minutes after the shooting our colleagues arrived. Sgt Radebe reported that they were shot at and had retaliated. None of them had been hit but he reported they fatally shot and injured their attacker," Nortjie stated.

(52) Source
10-16/8/89.

Served two years cleared

PORT ELIZABETH.

Two men convicted of a murder in 1986, were acquitted and released last week after serving two years in prison.

Ncamile Nomkhala, 28, and Sandile Jacobs, 21, were summonsed by officials at JC Steyn prison and told they were free men.

"I was shocked," said Nomkhala who attributes his release "to God".

Body in boot

Their attorney, Mr Thole Majodina, said their convictions and sentences had been set aside after an appeal was heard in May this year.

They had been found guilty of the murder of 73-year-old Johannes Oosthuizen in July 1986. His body was found in the boot of his car which had been set alight.

The state found them guilty and they were sentenced to 20 years each in August 1987.

Nomkhala said he only expected to be released in the year 2007.

"I did not think I would even get remission or parole, although I know I was innocent and I told my lawyer so. I didn't kill anyone. A murder is a terrible thing to be accused of," he said.

SS2
6/June 11/1982

SHOULD all those facing serious criminal charges in this country be represented by legal counsel? Almost exactly two years ago, Judges Diccott and Friedman of the Natal Division of the Supreme Court ordered the quashing of the convictions and sentences of two men accused of housebreaking and theft in the Khanyile case. They held that absence of defence counsel for accused facing criminal charges, "merely on account of their being unable to afford such services, could be so palpably and grossly unfair" as to result in such proceedings being set aside.

While the judges proposed this as a general principle of our legal system (as a logical conclusion of the basic rule that all persons are equal before the law), they recognised realistically that there would be too few lawyers available to render such a scheme practicable. They therefore suggested the following guidelines for the application of the Khanyile principle: it would depend on the inherent simplicity or complexity and gravity of the case and the accused's general ability to manage his/her defence.

The implications for the administration of the courts were obviously great, and some argued the scheme would be unworkable. On the other hand, Khanyile was widely welcomed by human rights lawyers and many others who felt this was a necessary and timely step to ensure greater substantive justice, and to restore a measure of public confidence in the criminal justice system. Reaction from judicial quarters has, however, been less than enthusiastic. Decisions in the Eastern Cape Division and the Ciskei earlier this

Public pressure could decide the legal aid dispute

HUGH CORDER in Cape Town

year, while affirming the accused's right to legal representation and to be informed of the existence of legal aid, declined to follow Khanyile in their jurisdictions. At the same time, it remained valid law in Natal, being confirmed in early June by a majority of a three-judge Bench, after extensive argument on the jurisdictional basis and workability of the decision.

This case (Davids and Diadla) gave Mr Justice Diccott the opportunity further to expand on and reinforce some of his arguments, and to deal with the criticisms from the other courts and the Attorney-General's office. On July 28, however, a different three-judge Bench in Natal effectively overruled the Khanyile principle in the Mthwana case. Judge President Howard, who delivered the judgment for the court in a case whose facts were very similar to Khanyile, agreed with the approach of the eastern Cape courts and Mr Justice Nienaber, who dissented from the majority in the Davids and Diadla decision.

The effect of this overruling is to emphasise procedural and not substantive justice: the accused must be "appraised of his right to procure legal representation and of his right to apply for legal aid" if he cannot afford to pay for a lawyer. The corresponding duty on the judicial officer is not to interfere with the exercise of that right.

Implementation of Khanyile would have required a further obligation of the taking of steps to procure some form of legal representation and the postponement of the trial until such was achieved, without which there might be an irregularity sufficient to nullify the proceedings as "intolerably unfair". There are many aspects of this fascinating dispute that cannot be dealt with here (among them, the confirmation in Mthwana of the principle that *pro deo* counsel for those accused of capital offences, while observed in practice, is not a legal requirement).

What is most striking, however, is the remarkable difference in style of judicial argument between the Khanyile and Mthwana decisions. The great American legal realist Karl Llewellyn spoke of the grand and formal styles of judicial reasoning, and there is no doubt that the contrast between the two is amply and vividly to be seen here.

Mr Justice Diccott, an exponent of the grand style, and two judges who share his views, use legal precedent and theory inventively, and make a judicial plea to the legal profession for a vast enlargement of the legal services made available as a public duty to people who were criminally charged but too poor to pay for them (Davids and Diadla). The judge is refreshingly open about this aim, which he quite correctly states "as hardly novel", and argues in a characteristically forthright but quite logical, legal and sensible manner for this vital step in the development of practical rather than theoretical justice in our criminal courts. There is no doubt that the Khan-

yle initiative would have tested the mettle, as well as the public-spiritedness, of our legal profession, but there is equally no doubt that the rudiments of such a system are already in place through a combination of the services of the state and private legal aid, the legal centres and Lawyers for Human Rights, among others. There is also doubt that our criminal justice system desperately needs such an injection of substantive fair play.

Mr Justice Howard's approach, as shared by the eastern Cape and three Natal judges, is typical of the formal style that characterises mainstream judicial thought in SA. It is marked by a cautious reliance on precedent, an unwillingness to venture beyond the traditional formulations of the trial process, a negative view of the State's obligations to ensure the basic conditions of social justice, and a lack of awareness of the critical condition in which the legal system finds itself in the eyes of most South Africans.

All is not lost. Several other provincial divisions and the Appellate Division of the Supreme Court still have to pronounce on this dispute. It is to be hoped that, when doing so, it will be borne in mind that one of the national goals listed in the 1983 constitution is "the equality of all under the law". Ultimately, however, public pressure will determine the issue. In the words of Mr Justice Diccott in Khanyile:

"Yet the public conscience of this country, the conscience of its people as a whole, can scarcely rest with any comfort on the thought of thousands standing trial in our courts daily who have no legal assistance because they are too poor to bear the costs."

□ Prof Hugh Corder is with the Department of Public Law, University of Cape Town.

Stw 11/5/89

252

Judgment set for Tuesday

Validity of 'Trojan Horse' trial queried

Own Correspondent

CAPE TOWN — Judgment on the application for the indictment in the "Trojan Horse" murder trial to be declared invalid will be handed down in the Cape Supreme Court on Tuesday.

Twelve policemen and a member of the South African Defence Force on Wednesday pleaded not guilty to two counts of murder arising from the deaths Athlone in 1985 of Shaun Magmoed (16) and Michael Miranda (11).

An inquest magistrate last year found the men, most of whom hid in crates in the back of a South African Transport Services truck and opened fire on youths allegedly stoning vehicles, were negligent and had caused the boys' deaths.

As the Attorney-General declined to prosecute, the parents brought a private prosecution. Counsel for the defence

brought the application in terms of Section 10(3) of the Criminal Procedures Act.

They claimed the indictment, naming Shaun's father, Mr Martin Magmoed, and Michael's mother, Mrs Georgina Williams, as prosecutors in both murder counts, was in conflict with the provisions of Section 10(3).

The section reads "Two or more persons shall not prosecute in the same charge except where two or more persons have been injured by the same offence".

Mrs Williams was not entitled to prosecute in the count concerning Shaun's death as she had not suffered injury, or prejudice, by his death while Mr Magmoed was not entitled to prosecute in the count concerning Michael's death, it was argued.

Counsel for the prosecution said if a separation of trial was forced, it would be a waste of time and money as the facts of the cases were the same.

New bid to stop Trojan trial

DEFENCE lawyers for 13 security force members accused of murder have made a second attempt to scuttle the Trojan Horse trial

This follows the failure of an application earlier this month for a R1-million deposit to cover legal costs in the private prosecution

In the Cape Town Supreme Court this week, judgment was reserved until Tuesday in a defence motion to have the murder charge nullified because provisions of the Criminal Procedures Act had not been followed.

Hidden

The action has been brought by the parents of two youths killed when security force members — hidden in crates on the back of a truck — opened fire on a crowd in Cape Town's riot-torn suburb of Athlone four years ago

Earlier this week, the

Sunday Times Reporter

accused pleaded not guilty to murder.

At issue is whether Section 10(3) of the Act has been adhered to

Negligent

It reads "Two or more persons shall not prosecute in the same charge except where two or more persons have been injured by the same offence"

Last year, Cape Attorney-General Mr Neil Rossouw decided not to prosecute the security force members after they were found negligent and responsible for the deaths of Shaun Magmoed, 16, Michael Miranda, 11 and Jonathan Claassens, 21, by an inquest magistrate

Mrs Georgina Williams, mother of Michael Miranda, and Shaun's father, Mr Magmoed, have brought the private prosecution

Direct talks urged on bill of rights

The most significant phase of negotiations on a new political dispensation would be opened up through direct discussions between the South African Law Commission and the African National Congress on a bill of rights, it was said at the weekend.

At the Idasa conference in Johannesburg, Mr Rory Riordan, director of the Human Rights Trust, urged the Law Commission, which under the chairmanship of Mr Justice Pierre Olivier recently presented its proposals on a bill of rights, and the outlawed ANC, which made its proposals in a document drawn up by Mr Albie Sachs, to accept each other's position as being both legitimate and powerful and get together.

"I fail to see any irreconcilable, non-negotiable differences. Sadly, both parties feel they cannot communicate directly.

"The Law Commission feels it cannot communicate with a banned organisation, and the ANC feels they cannot be seen to respond to a government body.

"From a distance, both positions, while justified, appear capable of negotiated resolution. It would thus seem a tragic lost opportunity were they not to be resolved," Mr Riordan said.

Trojan indictment to be amended 252

CAPE TOWN — The judge in the "Trojan Horse" murder trial of 13 security force members yesterday refused an application for the indictment to be declared invalid *Stw 16/8/89*

Mr Justice DM Williamson granted the prosecution an opportunity to amend the indictment. The application was brought in terms of Section 10(3) of the Criminal Procedures Act which states that two or more persons in a private prosecution cannot prosecute in the same charge except where two or more persons have been prejudiced by the same offence.

LHR to attend Ghana meeting

252

Star 17/8/89

Lawyers for Human Rights has been invited to attend a law conference in Ghana next month.

The organisation will send two delegates to the sixth biennial conference of the African Bar Association from September 17 to 22.

LHR says it regards the invitation as a significant breakthrough in becoming

part of the African and international human rights movement.

Conference topics will include human rights under the African Charter on Human and People's Rights, human rights and freedom of speech, as well as human rights and the liberty of the individual. — Pretoria Correspondent.

Trojan Horse: new charges

CAPE TOWN — The 13 accused — 12 policemen and an SADF member — in the "Trojan Horse" murder trial in the Cape Town Supreme Court will now face two charges of murder and an alternative charge of culpable homicide after the counsel for the private prosecutors amended the indictment

Mr Justice DM Williamson will decide on Friday whether to accept the amendments.

This means that the parents

of the two youths, Mr Martin Magmoed and Mrs Georgina Williams, will now lay two separate charges of murder (252)

An application by the counsel for the defence to have the private prosecution declared invalid was refused on Tuesday

The prosecution was instituted by the parents of two youths killed when the 13 accused fired at a group of stone-throwers from crates at the back of a lorry during the 1985 unrest

Indictment 'invalid'

CAPE TOWN — The indictment in the Trojan Horse murder trial of 13 security force members was declared invalid by the Cape Town Supreme Court yesterday.

Mr Justice D M Williamson ruled that the indictment linking two private prosecutions was in conflict with the law.

The prosecutions were brought by Mrs Georgina Williams and Mr Martin Magmoed, parents of two youths killed in Athlone in 1985. — Sapa



Rights bill for

Unfair past needs at

By **SIMON MATHAMBO NGOMANE**, research fellow with the Institute for Public Interest Law and Research, Pretoria.

A'GAINST the background of the state of emergency and national suppression comes the question of a bill of rights from the most unlikely initiator – the South African government

The government-appointed South African Law Commission recently published a working paper on group and human rights

This is an attempt to persuade the right wing to accept a bill of rights with race-based "group rights" as their guarantee for self-determination

The bill of rights issue has met with wide-ranging reaction from different quarters

Government supporters are applauding the government's initiative as a ray of hope signalling a new era in South Africa

The coldest response is from the black majority who regard the government's sudden obsession with a bill of rights as a delayed reaction of a desperate government trying to cling to power at all costs

Many also see it as part of the government's international campaign to rid South Africa of its polecat image – when in fact the bill is aimed at entrenching white minority rule

The question that everyone seems to be asking is whether the

country is ready for a bill of rights or not. Can it co-exist with repressive and discriminatory laws?

Many blacks think it is premature and do not expect any benefits from it unless the government meets some preconditions

Justice Moloto, director of the Black Lawyers' Association, says the government must "at a stroke of the pen" scrap all discriminatory laws, release political prisoners, dismantle bantustans, unban banned organisations, grant amnesty to all exiles and end the state of emergency – all within a year

Moloto thinks a civil war will break out and many blacks and whites will perish if a bill of rights is not urgently introduced. He warns that blacks may come into power and do what the white government does to them

Moloto expects too much from the government in such a short time. His threats of a civil war and a vengeful black government are unfounded. To him the traditional concept of "ubuntu" or humanity is not a living reality

He also feels that drawing up a bill of rights should be left to intellectuals and lawyers like himself, and not to those who are struggling with basic survival.

His opinion that the government can meet all the preconditions at a stroke of a pen is not likely. Political suicide is not on the government's agenda

Professor Dlamini of the University of Zululand believes that while many people regard the government initiative with scepticism, they should not be blind to the potential role of such a bill in bringing peace and change

Black people wanted to use it as a remedy for all the socio-economic inequities of the past, he said

In his opinion, a bill of rights offers limited help but can create a dispensation in which economic prosperity can be realised

Dlamini said blacks should not overlook the fact that the American Civil Rights Movement was successful because of the presence of a bill of rights.

However, Dlamini advocates a bill which comes from the top down. He does not address himself to the difference between the South African liberation struggle and the American civil rights struggle.

The mass democratic movement regards the bill with scepticism, though some liberally-inclined organisations believe a bill of rights can be

used in negotiations for a non-racial, democratic South Africa

The more radical organisations see the government's initiative as an attempt to head off campaigns mounted by the mass democratic movement and overseas anti-apartheid groups

They put the ball firmly in the government's court to unban banned organisations, scrap discriminatory laws, release all political prisoners, grant amnesty to exiles and end the state of emergency before negotiating for a bill of rights.

Unisa law lecturer and National Association of Democratic Lawyers vice-president, Advocate Mathole Motshekga, said for a bill of rights to be universally acceptable, it must not lose sight of the fact that 87 percent of the country is in the hands of relatively few citizens because of apartheid

He said the bill should be responsive to the peculiar circumstances of South Africa, taking into consideration our colonial history, acts of dispossession and the exploitation of the majority. This calls for redistribution of land, wealth and resources

Second and third generation rights – which are socio-economic rights and the right to peace, health and development

respectively – are also of particular relevance to country

This is because Western rights were drafted when colonialism was at its height. Third World people have nothing

Motshekga feels we must create a non-racial new South Africa in which all citizens are in solidarity and work towards a common good

He believes the government intends to introduce a bill in line with its five-year constitutional reforms and bypass the people's demand for the total abolition of apartheid

Dr John Hund of the Institute for Public Interest Law and Research thinks the Freedom Charter, which was drafted in Kiptown in 1955, can be a fusion of African and Western values and provide a blueprint for a "good government"

The charter is the first systematic political and constitutional vision of a non-apartheid South Africa and international people's and human rights norms

He said the charter was relevant because it had strong social welfare leanings which included the right to development, as found in the African Charter



ts bill for SA?

nfair past needs attention

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Can it co-exist with
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His opinion that the government can meet all the preconditions at a stroke of a pen is not likely Political suicide is not on the government's agenda Professor Dlamini of the University of Zululand believes that while many people regard the government initiative with scepticism, they should not be blind to the potential role of such a bill in bringing peace and change Black people wanted to use it as a remedy for all the socio-economic inequities of the past, he said In his opinion, a bill of rights offers limited help but can create a dispensation in which economic prosperity can be realised Dlamini said blacks should not overlook the fact that the American Civil Rights Movement was successful because of the presence of a bill of rights However, Dlamini advocates a bill which comes from the top down He does not address himself to the difference between the South African liberation struggle and the American civil rights struggle The mass democratic movement regards the bill with scepticism, though some liberally-inclined organisations believe a bill of rights can be

used in negotiations for a non-racial, democratic South Africa. The more radical organisations see the government's initiative as an attempt to head off campaigns mounted by the mass democratic movement and overseas anti-apartheid groups They put the ball firmly in the government's court to unban banned organisations, scrap discriminatory laws, release all political prisoners, grant amnesty to exiles and end the state of emergency before negotiating for a bill of rights. Unisa law lecturer and National Association of Democratic Lawyers vice-president, Advocate Mathole Motshekga, said for a bill of rights to be universally acceptable, it must not lose sight of the fact that 87 percent of the country is in the hands of relatively few citizens because of apartheid. He said the bill should be responsive to the peculiar circumstances of South Africa, taking into consideration our colonial history, acts of dispossession and the exploitation of the majority This calls for redistribution of land, wealth and resources Second and third generation rights - which are socio-economic rights and the right to peace, health and development

respectively - are also of particular relevance to this country. This is because Western bills of rights were drafted when colonialism was at its height and Third World people counted for nothing. Motshekga feels we need to create a non-racial new state in which all citizens are in solidarity and work toward the common good. He believes the government intends to introduce a bill of rights in line with its five-year plan to sugar-coat unacceptable constitutional reforms and pass the people's demand for the total abolition of apartheid. Dr John Hund of the Institute for Public Interest Law and Research thinks the Freedom Charter, which was drafted in Kiptown in 1955, can lead to a fusion of African and Western values and provide a foundation for a "good government". The charter is the first systematic political and constitutional vision of a post-apartheid South Africa based on international people's and human rights norms. He said the charter was relevant because it had strong social welfare leanings which included the right to development as found in the African Charter

for Human and People's rights. Its provisions are compatible with the classical Western interpretation of human rights. Some people rightly think a bill of rights is premature at the moment. Director of the Institute for a Democratic Alternative in South Africa, Frederik Van zyl Slabbert, said a bill of rights should not be seen as a vehicle for constitutional change or as a remedy. He believes it will be impossible for the National Party to introduce it under the current system as it will enshrine privilege for one group and lack of privilege for another - becoming a major source of conflict. Isaac Mukhari of the Institute for Public Interest Law and Research, said the Law Commission must instead call on the government to release all political prisoners, unban banned groups and encourage free and open democratic discussions by everyone. There are many different approaches to the bill of rights issue among anti-apartheid groupings, but most of them include discussion with the ANC.

Feb 21/8/89

28 MDM (252) protesters win battle for bail

DURBAN — Lawyers acting for 28 Mass Democratic Movement protesters, arrested in Durban on Saturday, later won a heated battle with the Department of Justice for bail applications to keep their clients out of prison.

Sixteen people were arrested while protesting outside the Elangeni Hotel against the World XV's rugby tour, where the players were staying. Another 12 people, all Cosatu members, were arrested at an anti-Labour Relations Amendment Act rally in Beatrice Street.

One of the attorneys, Miss Linda Zama, said she was advised at about 10 am by a Colonel Brandt of the police that her clients were to be charged for attending an illegal gathering, and that they could be released on R200 bail.

"Then as we were paying bail at about 2 pm a phone call came through from the Department of Justice in Durban saying that no bail was to be granted until the accused appeared in court."

The lawyers argued that the department had acted in bad faith and ought to arrange an immediate application under the circumstances.

"After a lot of persuasion by our senior counsel, the senior public prosecutor (Mr A Oberholzer) finally agreed to hold the bail application," said attorney Mr Krish Govender.

A magistrate arrived, the application was heard at 10 pm and bail was set at R100 —
Sapa

Pleas for ²⁵² Mac

Spurlock 21/8/89

The Natal chapter of the Society for the Abolition of the Death Penalty appealed for clemency for convicted Magoos bomber Robert McBride on Friday - the last day for the submission of appeals to the State President. The society said "very special circumstances" - existed for clemency by the Acting State President.

The most important are: Dissension on the Bench relating to the presence of extenuating circumstances. Professor John Milton in his dissenting judgment presented cogent arguments for the existence of extenuating circumstances; McBride has expressed genuine remorse for his part in the crime; his relative youth and immaturity at the time of the crime and reconciliation in South Africa would be promoted by the exercise of clemency.

The society made an urgent appeal to the Acting State President to consider the position of McBride "with the greatest possible sympathy and circumspection and not to compound an already tragic set of circumstances and to exercise his prerogative of clemency."

Convicted terrorist disrupts hearing

Sowetan

23/8/89

252

A 22-YEAR-OLD convicted terrorist Lancelot Mazibuko shouted so loudly in the Durban Regional Court that the magistrate had to adjourn temporarily.

Mazibuko was jailed for seven years while his co-accused, Welcome Vukane Mhlongo (29) and Ntombenhle Charity Mazabuko, were jailed for 10 and two years' imprisonment respectively on terrorism charges.

Mazibuko read out a political statement from the dock and shouted African National Congress political slogans at the top of his voice. The spectators who regarded

them as "heroes" responded.

Mazibuko said: "There is no doubt that Section 29 is being used by the police to torture its opponents."

He said "victory or death, the ANC will continue its struggle", adding "there is no easy way to freedom as Mandela wants it".

Mhlongo and Lancelot Mazibuko received terrorist training in Angola during 1987. They both entered the country in 1988 with a mission to kill Inkatha members.

In passing sentence, Mr T D Reed said he accepted that many black

people had reasons to be aggrieved regarding the lack of decent housing, hospital facilities, pass laws, migratory systems, labour and influx control laws. Mr Reed said he has taken these factors into account.

Mr Reed said the accused claimed to represent a part of the people in this country. But whether violence was perpetrated by people from the left or right, the court had a duty to act.

He cited the recent case in which the Pretoria Supreme Court sentenced Strydom to death because he shot several blacks out of hatred.

After passing sentence, scores of people, mainly schoolchildren, shook hands with the three.

252
Sowetan 24/8/84

HRC lists police action

THE Human Rights Commission has issued a list of what it says are the latest detentions of people and bannings of meetings.

A statement issued by the HRC yesterday gave the following list.

- Mohammed Valli Moosa, acting general-secretary of the UDF was detained from his office in Braamfontein under emergency regulations on August 18.

- Also on August 18, a small group of people singing outside the building in protest against Valli's detention were ordered to disperse by police.

- On August 19 ten people were arrested and demonstrators sjamboked by security forces in Johannesburg as the Mass Democratic Movement demonstrated against Valli's detention

- In Durban 16 people were arrested on August 19 while protesting against the World XV's rugby tour.

- The SAP and SADF used quirts and batons to disperse demonstrators at the Strand and at the Bloubergstad "whites only" beaches in the Western Cape on August 19.

- MDM rallies at Wits and Rhodes universities, where restricted organisations intended to unban themselves, were banned

- Police enforcing the banning at Wits University beat students and arrested 20.

- Police prevented 10 buses and several taxis from getting to a meeting at St George's Cathedral in Cape Town to celebrate the UDF's 6th birthday, until an urgent interdict against the police could be obtained.

"The violence that we have been seeing in the last few weeks has been on the part of the security forces. They have interfered in peaceful and legitimate protests by using undue and unreasonable force.

"Mr F W de Klerk recently said that the time is ripe for reconciliation and negotiation with the black leaders in South Africa and has also appealed to black leaders to come forward to discuss obstacles to negotiation.

"If De Klerk is sincere in his desire for reconciliation and for negotiation, then he should be talking to Mr Valli Moosa and other recognised leaders rather than detaining them," the commission said - Sapa

ASGONY OF GALLOW'S WIFE

TIME is running out for condemned ANC bomber Robert McBride as the two women in his life — his wife Paula and mother Doris — stage a last-ditch battle to save him from the gallows.

They are pinning renewed hope for clemency on the change in South Africa's presidency — and the fact that McBride, from his death-row cell, has renounced violence

This week, the two spoke of their anguish and optimism that the man they love will be spared

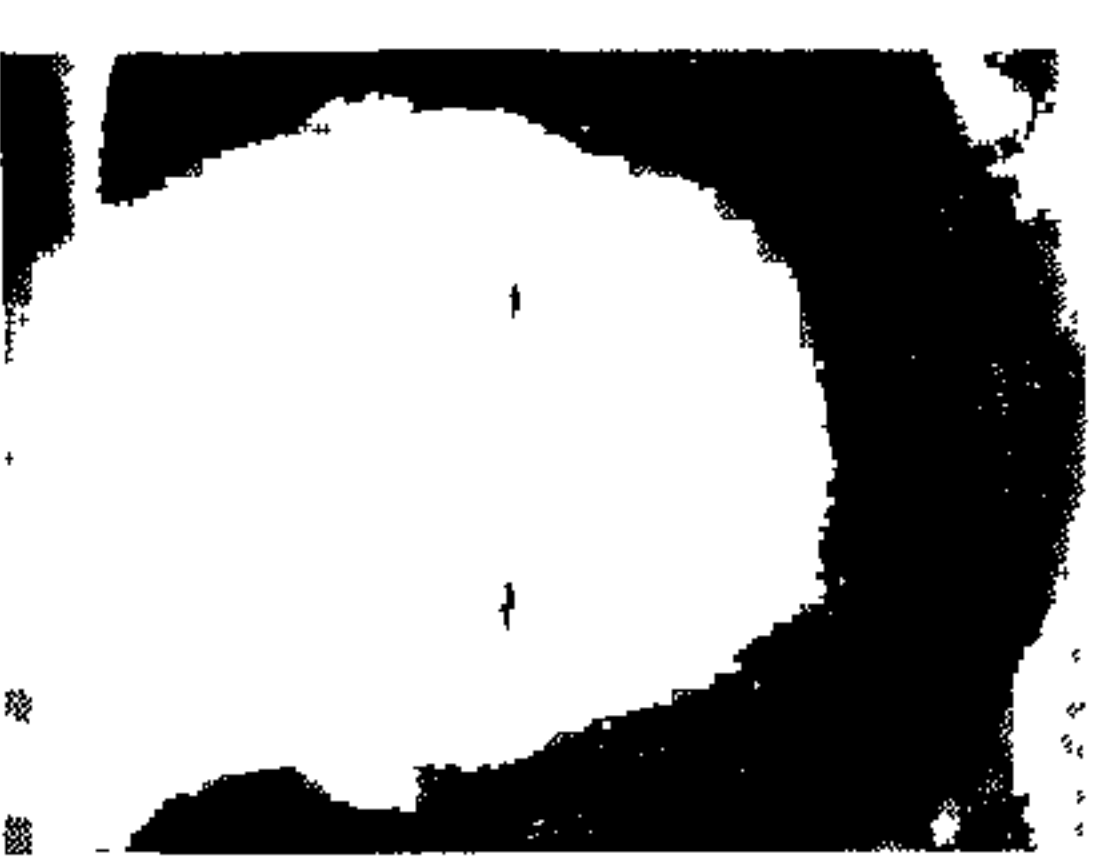
McBride received a triple death sentence and a 67-year prison term in 1987 for the part he played in the bombing of Magoo's Bar on the Durban beachfront, in which three people died. His father Derrick, also an ANC activist, is serving 12 years on Robben Island

Last year, Robert McBride lost an appeal and now only a pardon from the Acting State President, Mr F W de Klerk, can come between him and the hangman's noose

And, after over two years of waiting on death row at Pretoria's Maximum Security Prison, the Department of Justice set last Friday as the deadline for any appeals to be lodged on his behalf

Paula, the daughter of top Anglo American executive Mr Peter Leyden, created a sensation when she married

Paula's last hope: Will FW spare her bomber husband?



DORIS MCBRIDE
Still hopeful

Report: SHARON CHETTY

Pictures: JIMMY HUTTON

McBride three months ago in South Africa's first death-row wedding

She said at her mother-in-law's Durban home this week "Robert has a strong case. He has renounced violence and many organisations and people — both locally and internationally — have intervened on his behalf"

A former schoolteacher, Paula has given up her job and works full-time actively campaigning against the

death sentence, with an organisation called Families of People on Death Row

She addressed a protest meeting against the death sentence at the University of Natal's Durban campus, organised by the Society for the Abolition of the Death Penalty

Her typical day starts with a visit to McBride in prison. The rest of her time is spent in meetings with representatives of foreign embassies and pressure groups

And she's in daily contact with other families with whom she has a painful bond — a relative on death row

"The woman who has vowed 'never to let Robert die', is quick to exclude her mining magnate father from her present lifestyle

That her life revolves around Robert McBride is clear. Every day is a fight — a desperate campaign against the death sentence. "We still have time to submit our appeals. Robert has a

strong case and I think he fills the criteria needed to have his sentence commuted

"It is interesting that none of those people previously granted clemency, like the four policemen — Jack la Grange, Robert van der Merwe, Leon de Villiers and David Goosen, taken off death row last year — expressed remorse about their actions, none of them renounced violence and in total they spent only eight months on death row

"Yet they were given clemency. Robert's case is a strong one and I feel reasonably optimistic it will succeed," she said

"I do not feel the current political climate is conducive to the execution of a member of the ANC. Talk now is around the question of negotiation and reconciliation

"Also, while not wishing to overestimate the importance of the meeting between F W Botha and Nelson Mandela, I feel it has significance in this case

Clemency

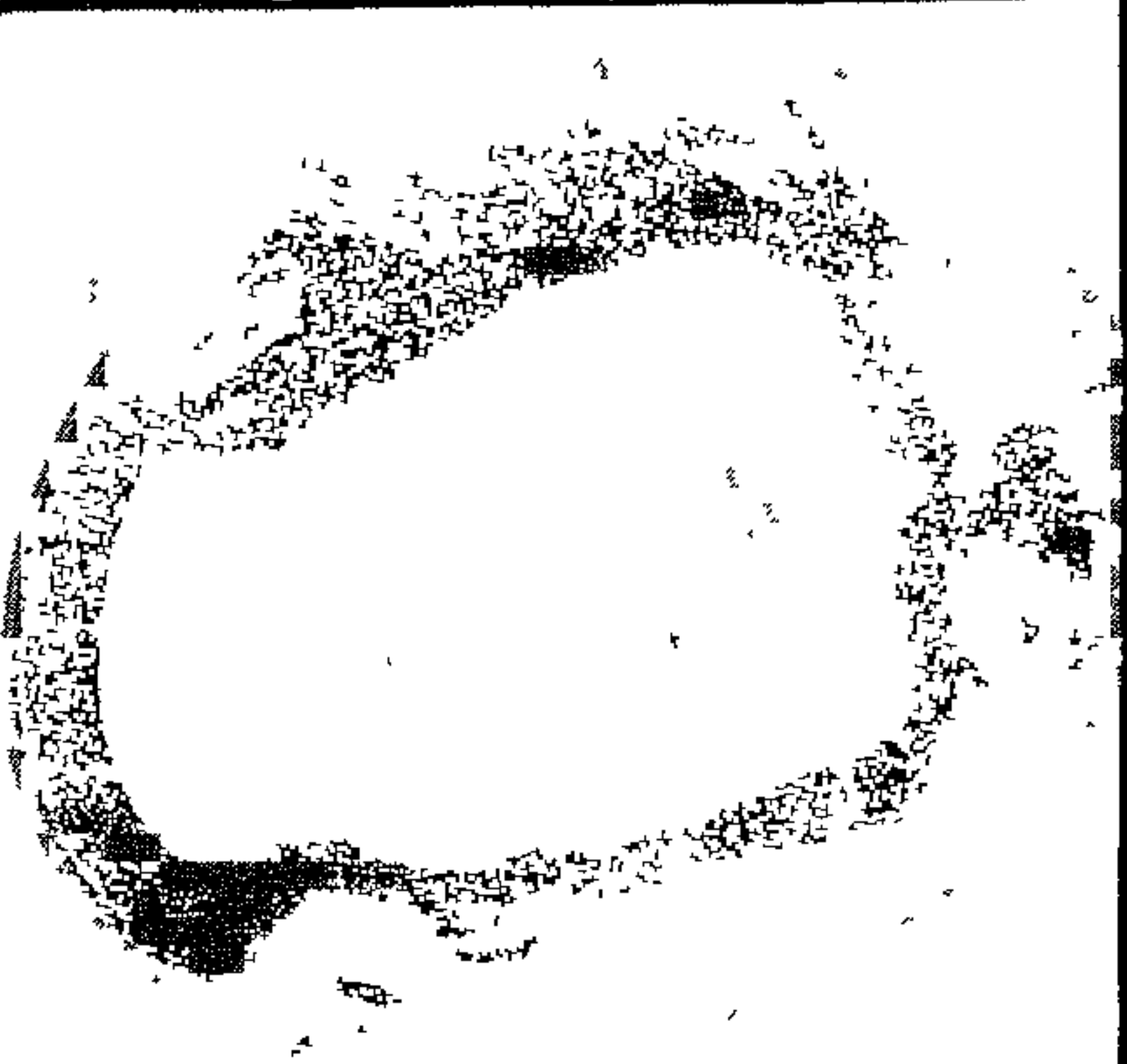
"It would be inappropriate to meet a leader of the ANC on one hand, yet execute its members on the other," she said

Her case for McBride's clemency is argued on, among other factors, the following

● There was dissension on the Bench on the question of extenuating circumstances, with one of the two assessors, Professor John Milton, arguing that extenuating factors existed

● A State witness, Mr X, the instigator of the change of plan which caused the death and destruction, is now a free man although he was not granted indemnity by the trial court

● McBride has renounced violence and has expressed remorse for his part in causing the deaths of 20 people



DETERMINED... P McBride, who seeks reprieve

Sympathy fast for 'Bongolethu 3'

Staff Reporter

C.M. Twiss
29/8/86

252 (83)

A 48-HOUR fast, in sympathy with the "Bongolethu Three" who are on death row after being convicted of murder, started at 1pm yesterday

The fast will end with a church service at the Metropolitan Methodist Church in the city tomorrow at 11am
Desmond Majola, 28, Patrick Man-

ginda, 27, and Dickson Madikane, 28, were sentenced to death on September 23, 1986

They were convicted of murder on the grounds of common purpose after an incident on November 22, 1985, in Bongolethu, Oudtshoorn, when a member of the local community council was killed

Sent back to the gallows

252

Sowetan 30/8/89

A BID to alter Joseph Chidi's conviction and death sentence failed at the end of his re-opened trial in the Rand Supreme Court.

He went back to the cells a condemned man

His lawyer, Mr Jack Unterhalter (SC) has noted an appeal against the conviction and sentence

The trial was re-opened to re-examine the evidence of Joseph Chabedi after he had told Lawyers for Human Rights that he lied when he implicated Chidi in the previous trial

But Mr Justice le Grange sitting with two assessors, found him to have been a liar still and endorsed Unterhalter's observation that "Chabedi's image as a witness has crumbled he is an unmitigated liar"

The judge rejected Chabedi's evidence and that of the other witnesses as false and contradictory. He said Chabedi's account to Mr Raymond Tucker a member of the LHA was unsatisfactory

He said a man who was bothered by his conscience as Chabedi had claimed did not tell a lie

By **MANDLA
NDLAZI**

The judge asked whether Chabedi was "the author of the scheme or an instrument of the others" when he decided to have the trial re-opened

In his statement to have the trial re-opened,

he told Tucker that "I have been deeply troubled ever since I gave evidence, and have been extremely worried that an innocent man could be hanged as a result of my false evidence"

Chidi was found guilty and sentenced for the murder of a Tembisa councillor, Mr Gideon

Moeng, in Tembisa on May 7 1986

His co-accused, Victor Bembe, was sentenced to 17 years. Jimmy Thulare, who had charges against him withdrawn, has since disappeared

They were convicted on September 15 1987, and Chidi was sentenced the following day when

the judge found there were no extenuating circumstances

Chidi still pleaded innocent before the death sentence was confirmed on Friday. Asked if he had anything to say, he said,

"I have nothing to say, because I did nothing"

PRICE SLASH



claimed, did not tell a lie.

WHITES ONLY BUS 3 HELD

Spokesman
-30/8/84
252

THREE members of the "Stand for the Truth" campaign who were arrested when they allegedly tried to board a whites-only bus on Monday afternoon will face charges of conspiracy to commit a crime, police said yesterday.

Colonel Victor Haynes of the police public relations division yesterday said the three men were due to appear in the Pretoria Regional court for staging "a campaign against a law."

The Reverend Gideon Makhanya, a Pretoria Council of Churches field and reconciliation member, his colleague, Mr Sandy Lebeso who is restricted, and Mr David Setsepa were arrested while allegedly trying to board whites-only buses in Pretoria.

Haynes said although the three were initially charged with conspiracy to commit a crime, he did not know if these charges would be altered when they appeared in court.

The three were due to appear in Court 14, according to a spokeswoman at the Pretoria Council of Churches offices.

An official at Court 14 however said the three were probably going to appear in court this morning.

ST REDI

LADIES
DRESSES

- Panties.....
- Scarves.....
- T-shirts.....
- Sweat shirts.....
- Pants.....
- Skirts.....

GIRLS
SHIRTS

Skirts.....

MENS
SHIRTS

- Rugby Shirts.....
- Trousers.....

BOYS
SHIRTS

Tracksuits.....

City crime 'declining' — safe ^{ACC} ^{30/8/80} for tourists

Municipal Reporter ^(2/1)

CRIME in Cape Town is declining, the City Council has been told in response to a claim that the city had "an international reputation as a haven for muggers"

Heated argument followed this claim, made during a speech by Mr Clive Keegan

He was commenting on Law and Order Minister Mr Adriaan Vlok's refusal to sanction the 16-man civic patrol proposed by the council. A business watch involving two pairs of policemen is to be offered instead.

Sea Point's Mr Chris Joubert said the city had by-laws it could not police.

"I believe this council is morally bound to get this patrol off the ground."

TRAFFIC OFFICERS

Rondebosch councillor Mr Arthur Wienburg said that with increased powers for traffic officers a patrol could still be formed.

Mr Keegan said the civic patrol had been debated in the council for years. It would be "unwise and insensitive" after all the previous efforts, to allow the matter to rest.

The 1980 Bloomberg report spoke of the Peninsula's "alarming incidence of crime"

TOURISM VITAL

Tourism was vital to Cape Town, but the city had to establish a reputation for safety. He quoted a recent Argus report describing the flower-sellers' area at Trafalgar Place as a haunt of muggers and pick-pockets.

Amenities and health committee chairman Mr Louis Kremer said "I am deeply disappointed" councillor Keegan has done a disservice to our tourism. It is simply not true that the crime rate is rising.

"Statistics prove crime is on the decrease" The city was "a safe haven for tourists"

Dr John Sonnenberg said the police appeared to be blaming staff shortages for not being able to combat crime properly. But police were sent in "hundreds" to the Strand and Blouberg "because of pollution of the beach by people who are not white"

City-centre councillor Leon Markovitz said he did not believe Cape Town had an international reputation as a centre of crime. Petty crime in the central area was "not a major matter".

His city-centre colleague, Mrs Patricia Sulcas, said she saw the crime reports every month and was satisfied there was a decrease.

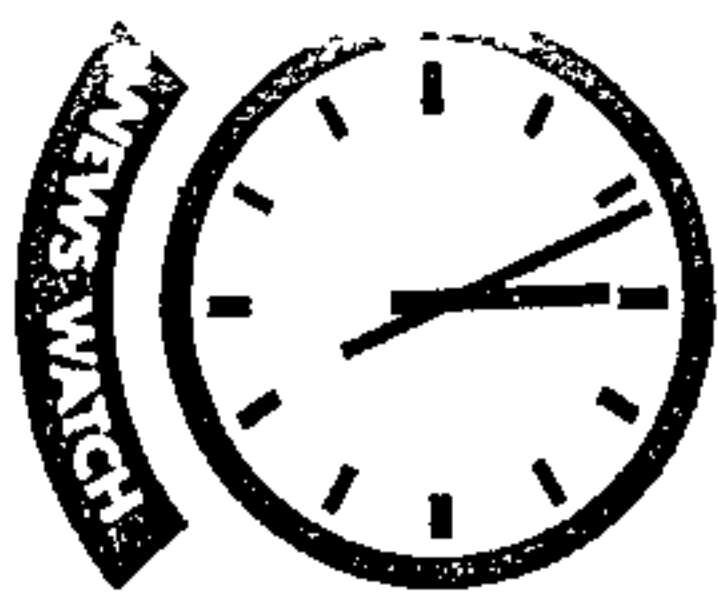
Crime in Cape Town was carefully monitored, said Executive Committee chairman Mr Dick Friedlander, who heads a crime liaison committee consisting of the council, Captour, police and commercial representatives.

A civic patrol of 16 men would mean only about five or six on duty at any one time. By comparison, the Bloomberg report called for a further 100.

Three Burgers Street protest

By DENNIS CRUYWAGEN, LINDA GALLOWAY and JOHN YELD, Staff Reporters

24 HOURS



MRS LEAH TUTU, Mrs Dorothy Boesak, Mrs Mary Burton, national president of the Black Sash, and an Anglican priest, Willemina Terry Jacobson, were among a group of 23 people released after appearing in a special sitting of the Cape Town Magistrate's Court early today

Mrs Tutu left the building at 12.30am today arm-in-arm with her husband, Archbishop Desmond Tutu

Churches president, Dr Allan Boesak, went home with friends

The group was part of a bigger group of more than 170 women arrested in Burg Street yesterday

The women started appearing from 6pm, and the batch of 23, who filed into the court at 12.10am, were the last one to appear, and were greeted by chants of *Viva Mrs Tutu* and *Viva Mrs Boesak* by a strong band of supporters who had earlier sung freedom songs and shouted *Viva UDF*, *Viva ANC*, *Viva Cape Youth Congress*, *Viva Western Cape Civic Association*

The 23, like the others who

had appeared before them, were not asked to plead and released on warning, and are due to appear for a plea on October 27

Prosecutor Mr D Moriarty told the magistrate, Mr V Gibson, that he had no objection to the 23 being released, but warned that the State would oppose bail if they were arrested on similar charges again

Earlier, attorney Mr E Moosa, who with Mr Huxley Joshua appeared for the 23, expressed his concern and dismay that police had denied lawyers access to the accused

"This is, as far as the accused are concerned, not only a travesty of justice, but de-layed the case"

Many of the accused did not want to co-operate with police because they did not know their rights

"Had we been given access to them, we would not have been sitting here in the early hours of the morning"

It was not the first time that this had occurred, Mr Moosa said

By 12.30am at least 176 people, including seven men, had appeared in two courts in front of Mr Gibson and Mr J Odendaal Mr Moriarty and Mr J M McEwan prosecuted

Mr B Wagley, Mr S Hockey and Mr E Moosa, of E Moosa and Associates, Mr H Joshua, Wilkinson, Joshua and Gih-wala, and Mr Alan Dodson of Mallinck, Rees, Richman and Cloosenburg appeared for the accused

Yesterday, police took action against more than 100 singing and chanting women who had gathered in the city centre to protest against capital punishment

The women were piled into vans and driven away as a crowd of several hundred people gathered in Burg Street and cheered

The protesters, members of the Federation of South African Women (Fedsaw) and dressed in the black and green Fedsaw colours, gathered in the Metropolitan Hall at about 12.30pm

Police sealed off Burg and Church streets and issued a warning to the crowd in terms of the emergency regulations

Earlier, the women had issued a statement saying they intended marching to the British Embassy opposite Parliament in an appeal to British Prime Minister Mrs Margaret Thatcher to intercede on behalf of the "Ung-ton 14", the "Bongulethu Three" and other condemned prisoners

They also intended asking Mrs Thatcher to put pressure on the South African government to curb harsh police action against protesters

There was a strong police presence outside the hall and Burg Street was sealed off to through-traffic

A big crowd of lunch-time workers gathered to watch

At the Central Methodist Church, a few metres away at the corner of Burg and Longmarket Streets, a 48-hour fast by students in solidarity with those on death row came to an end with a service

Yesterday afternoon, Police confirmed that about 200 women were arrested in the centre of Cape Town at 1.23pm when they failed to disperse after being given a warning

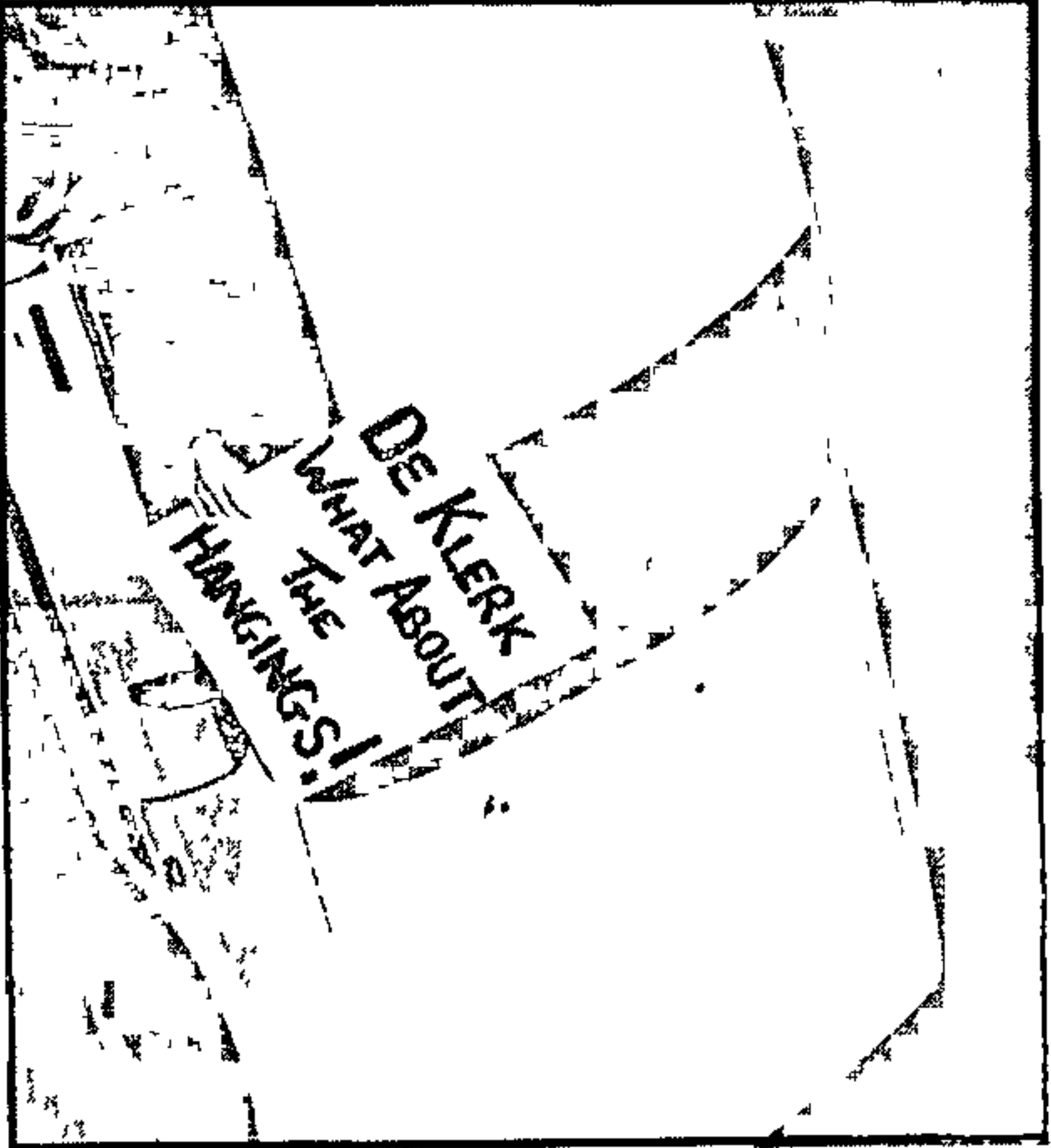
A Black Sash spokesman said yesterday the women held a short prayer service in a hall next to the Metropolitan Methodist Church

The Black Sash spokesman said the police were "Very restrained"

Report by Dennis Cruywagen, Linda Galloway and John Yeld, all of 122 St George's Street, Cape Town



PROUD OF YOU! Mrs Leah Tutu, one of those arrested, gets a warm welcome from her husband, Archbishop Desmond Tutu, after her late-night court appearance which followed an 11-hour march to the British Embassy from Burg Street yesterday in support of prisoners on Death Row



STOP THE HANGINGS This determined protester got her message across to the bitter end



STREET CHAOS Burg Street was sealed to traffic but scores of onlookers crowded the pavements as protesters were escorted to police vehicles

The Burg Street



By DENNIS CRUYWAGEN, LINDA GALLOWAY and JOHN YELD, Staff Reporters

MRS LEAH TUTU, Mrs Dorothy Boesak, Mrs Mary Burton, national president of the Black Sash and an Anglican priest, Willemina Terry Jacobson, were among a group of 23 people released after appearing in a special sitting of the Cape Town Magistrate's Court early today

Mrs Tutu left the building at 12 30am today arm-in-arm with her husband, Archbishop Desmond Tutu

Mrs Boesak, wife of World Alliance of Reformed

Churches president, Dr Allan Boesak, went home with friends

The group was part of a bigger group of more than 170 women arrested in Burg Street yesterday

The women started appearing from 6pm, and the batch of 23, who filed into the court at 12 10am, were the last one to appear, and were greeted by chants of *Viva Mrs Tutu* and *Viva Mrs Boesak* by a strong band of supporters who had earlier sung freedom songs and shouted *Viva UDF*, *Viva ANC*, *Viva Cape Youth Congress*, *Viva Western Cape Civic Association*

The 23, like the others who

had appeared before them, were not asked to plead and released on warning, and are due to appear for a plea on October 27

Prosecutor Mr D Moriarty told the magistrate, Mr V Gibson, that he had no objection to the 23 being released, but warned that the State would oppose bail if they were arrested on similar charges again

Earlier, attorney Mr E Moosa, who with Mr Huxley Joshua appeared for the 23, expressed his concern and dismay that police had denied lawyers access to the accused

"This is, as far as the accused are concerned, not only a travesty of justice, but delayed the case"

Many of the accused did not want to co-operate with police because they did not know their rights

"Had we been given access to them, we would not have been sitting here in the early hours of the morning"

It was not the first time that this had occurred, Mr Moosa said

By 12 30am at least 176 people, including seven men, had appeared in two courts in front of Mr Gibson and Mr J Odendaal Mr Moriarty and Mr J M Mcewan prosecuted

Mr B Wagley, Mr S Hockey and Mr E Moosa of E Moosa and Associates, Mr H Joshua, Wilkinson, Joshua and Gihwala, and Mr Alan Dodson of Mallinck, Ress, Richman and Closenburg appeared for the accused

Yesterday, police took action against more than 100 singing and chanting women who had gathered in the city centre to protest against capital punishment

The women were piled into vans and driven away as a crowd of several hundred people gathered in Burg Street and cheered

The protesters, members of the Federation of South African Women (Fedsaw) and dressed in the black and green Fedsaw colours, gathered in the Metropolitan Hall at about 12 30pm

Police sealed off Burg and Church streets and issued a warning to the crowd in terms of the emergency regulations

Earlier, the women had issued a statement saying they intended marching to the British Embassy opposite Parliament in an appeal to British Prime Minister Mrs Margaret Thatcher to intercede on behalf of the "Uppington 14", the "Bongulethu Three" and other condemned prisoners

They also intended asking Mrs Thatcher to put pressure on the South African government to curb harsh police action against protesters

There was a strong police presence outside the hall and Burg Street was sealed off to through-traffic

A big crowd of lunch-time workers gathered to watch

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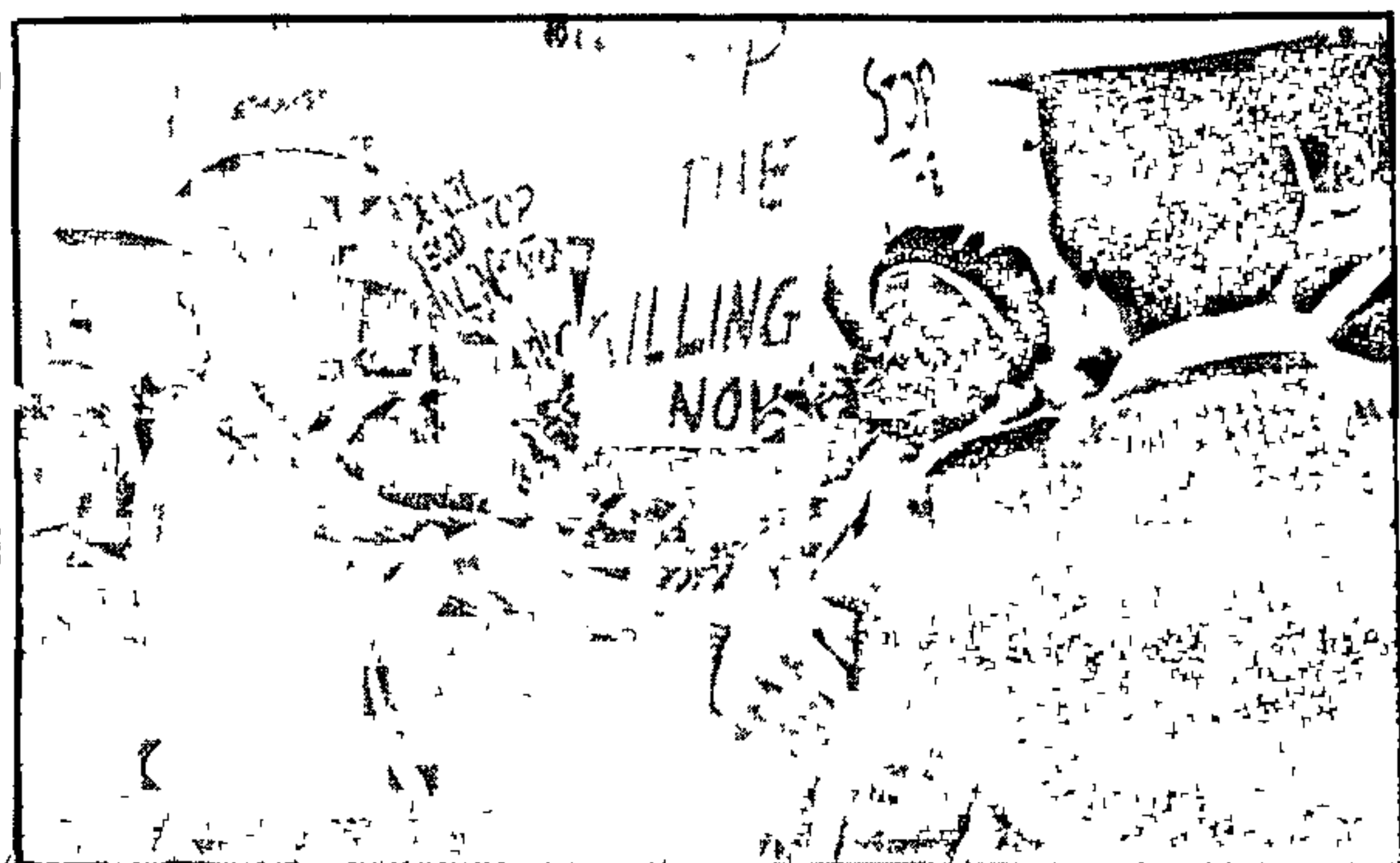
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WE PROTEST! Police surround some of the more than 170 women who were arrested

252

'His rejection of violence is no longer the main issue ...'

Hint on Mandela

Widow has no money

PARALYSED farm-worker Mr Ekathu Xaba (37) who was allegedly beaten to death by his employer in Piet Retief cannot be buried because his widow has no money

Mrs Dorcas Xaba has postponed the funeral of her husband, planned for tomorrow, to next week if by then, she will have got money to bury him

Mrs Xaba earns R60 a month as a domestic worker in an Eastern Transvaal town. Her husband's death has left her with six children - three of them are of schoolgoing age - to feed and clothe

Meanwhile, church ministers in Piet Retief's black township have formed a relief committee to raise money to help with burial costs

Chairman of the relief committee the Rev E S Serake said people who wished to help the family could send their donations to the committee at PO Box 157 Piet Retief 2380 or to the AME Church in the township. Other committee members are Mr Veli Mduli and Mr Veli Motha.

Xaba died on August 24'

THE Minister of Justice, Mr Kobie Coetzee, has hinted strongly that African National Congress leader Nelson Mandela may be released after the general election next Wednesday.

He said acting President F W de Klerk would "without doubt" give the matter further attention after September 6.

Coetzee, leader of the National Party in the Free State, was speaking in an interview with die Volksblad, the pro-NP daily in Bloemfontein.

He has had several meetings with Mr Mandela and was instrumental in setting up the surprise 45-minute talk over tea with then President



Minister Coetzee

Botha at Tynahys on July 5. Coetzee sat in on the meeting.

"Many people view you as the man carrying the key to Mr Mandela's cell," the interviewer said

in a wide-ranging discussion. "Where do we stand now with him? Is another phase coming in his apartment step-by-step release?"

Coetzee: "It began with our last public exercise when it became known that he endorsed peaceful development.

Demand

"We are not married with the demand that he should distance himself from violence before he is released. That has already been said by Mr PW Botha.

"We will judge the matter objectively - not just on the grounds of rejecting violence. I think the matter will undoubtedly get De Klerk's attention after September 6.

Stompie: 9 remanded

A group of nine people who allegedly murdered young activist James Mooketsi "Stompie" Seipei were again remanded in custody after another brief appearance in the Johannesburg Magistrate's Court yesterday.

Among them is Mr Jerry Vusimuzi Richardson (41), referred to as the coach of the "Mandela United Football Club" 252.

The others are Mr John Morgan (61), Mr Katiza Cebekhulu (21), Mr Jabulane Kubeka (25), Miss Xolisa Falatsi (35), Mr Sbusiso Mabuza (18), two 17-year-old youths and a 16-year-old girl.

The case was postponed to September 28.

Sowetan 7/9/89.

'His rejection of violence is no longer the main issue ...'

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252

Editor not guilty on quote charge

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252
sta S/Times 3/9/89

THE editor of the Sunday Times, Mr Tertius Myburgh, and a staff reporter, Mr Mandla Tyala, were acquitted in the Johannesburg Magistrate's Court this week on a charge of quoting a listed person

But Times Media Ltd (TML), which publishes the Sunday Times, was fined R2 000 after it was held to be negligent in publishing a report by Mr Tyala which quoted ANC activist Mr Harry Gwala on December 11 last year

Times Media is to appeal against the judgment

All three accused pleaded not guilty to contravening the Internal Security Act.

Misled

The report was of an interview Mr Tyala obtained from Mr Gwala, 68, who had been released, two weeks earlier, from Robben Island after serving a 26-year sentence for his involvement with the ANC

Defence advocate Mr Wim Trengove, SC (instructed by Mr David Hoffe, of Bell, Dewar and Hall) argued that the accused had followed the correct channels in checking whether Mr Gwala was a listed person

It could not be blamed for an error in the consolidated copy of listed people, compiled for its subscribers by the South African Press Association (Sapa)

Staff on duty on November 26 last year — the night the initial story of Mr Gwala's release appeared — had been



FREE TO GO... Mandla Tyala and Tertius Myburgh after their hearing this week

By SUSAN DENNY

misled by an incorrectly placed comma on the electronic print-out of the Sapa list

Miss Mandy-Jean Woods, a Business Day reporter who freelanced for the Sunday Times on November 26, told the court that the duty Saturday night news editor, Mr David Jackson, had asked her to check whether the name of Harry Gwala appeared on the list of banned persons

She found a Gwala on the Sapa list, but the Christian names were Soobramaney, alias Jack Govender.

Checks

These words were between commas and after the comma was a "T H Hall"

When she was instructed to telephone Law and Order Ministry spokesman, Brigadier Leon Mellet, to inquire whether Mr Gwala was listed, Brig Mellet said he did not know, and added that if

his name was not on the list, it would be in order to quote him

The duty news editor had also telephoned Sapa, who told him that Mr Gwala's name was not on the list

The court heard that when Mr Tyala's report was published two weeks later, staff on duty then believed that sufficient checks to verify whether Gwala's name was on the list had already been made on the previous occasion

Holiday

Passing judgment, magistrate Mr S P Janse van Rensburg acquitted Mr Myburgh and Mr Tyala, because Mr Myburgh was on holiday at the time and Mr Tyala was not responsible for the final decision to publish

But he found that while no actual harm was done by printing the story, TML had acted negligently by not checking whether Mr Gwala's name was in the Government Gazette

Witnesses tell of

'Trojan Horse' deaths

EYE-WITNESSES to the "Trojan Horse" shootings this week recalled the moment when security force members, hidden in crates on the back of a lorry, opened fire on a crowd in riot-torn Athlone in 1986, killing three youths

M. 1/1/89

Sunday Times Reporter

Giving evidence in the Cape Town Supreme Court, where 13 security force members face murder charges in a private prosecution, a bank clerk and city journalist, Mr Denis Cruywagen, gave their accounts of the incident

son agreed to an application to separate the private prosecutions which were brought by the parents of two of the dead youths (252)

Mr Cruywagen remembered thinking it was "silly" for a Government truck to expose itself to the threat of being hit by stone-throwers.

The prosecution initiated by the father of one, Mr Martin Magmoed, is proceeding against the 12 policemen and an SADF officer.

Both witnesses were asked whether stones had been thrown at the truck Mr Cruywagen said an "object" hit the windscreen

The other prosecution, brought by Mrs Georgina Williamson in respect of her dead son Michael Miranda, will be decided by the court after the first trial, which continues on Tuesday

Mr Justice DM William-

6/9/89

252

(scribbles)

Findings to be published every year

Lawyers monitor prejudiced justice

By Kaizer Nyatumba

Lawyers for Human Rights (LHR) national director Mr Brian Currin yesterday announced the launch of a programme to monitor racial discrimination in the application of justice in South Africa

Mr Currin told a press conference in Johannesburg that the programme, to be known as LHR Project Article 7, will closely monitor prosecutions, convictions and sentences and highlight cases where there was discrimination

Article 7 of the Universal Declaration of Human Rights holds that all people are equal before the law and are consequently entitled to equal protection of the law

Conclusive proof

Mr Currin said in the past 12 months the organisation's attention had been drawn to a number of cases which proved "conclusively" that there was no equality before the law

The LHR, he said, was "particularly distressed" by the following trends

- Where a group of black people were involved in a killing, "as many as can be identified" were charged with murder based on the common purpose doctrine and "vigorously prosecuted"
- Where a group of white people — "particularly farmers and policemen" — were involved in the killing of a black person, "invariably only the main perpetrator is charged with murder" while

the others were charged with offences ranging from culpable homicide to assault. The prosecution also "proceeds apologetically"

- Blacks convicted of murder, particularly when a white person was a victim, were sentenced to death "in disproportionately high percentages."
- Whites convicted of murder, particularly when a black person was a victim, were sentenced to death "in disproportionately minute percentages"

Mr Currin said of the 21 whites convicted of the murder of blacks in 1983, not one was sent to the gallows. Mass murderer and self-styled "Wit Wolwe" chief Barend Strydom was "one of the very few exceptions"

The establishment of the LHR Project Article 7 was a result of "blatant racial discrimination" in the administration of justice in this country

Equal before law

"In making this allegation about discrimination in the administration of justice, we are mindful of the fact that there are many judges and magistrates who dispense justice fairly

"For the sake of civilised standards this programme is aimed at eliminating racial discrimination in the administration of justice so that all citizens can be equal before the law," he said

The LHR will compile data and publish an annual report of cases where discrimination was a factor, and make the report "widely available" here and abroad.

Attorneys sue The Citizen for defamation

Own Correspondent 252

DURBAN — Two Durban attorneys brought a defamation application against The Citizen in the Durban Supreme Court yesterday, following a report published in 1987.

Leslie Marcus Closenburg and Charles David Paul, practising attorneys in Durban, sought an admission from The Citizen, saying the report published on September 30, 1987, under the headline "SAP asked to hold lawyers' passports" was defamatory. *B. D. van N. 11/87*

The report stated police had been asked by the Natal Law Society to seize the passports of the men and their former partner, Peter Helman, following the alleged disappearance of more than R1m from the account of the Caister Lodge Luxury Retirement Development Complex in Berea, Durban.

Closenburg and Paul claimed the report meant and was understood to mean that they had been guilty of criminal conduct, more particularly to the theft of large sums of money. They also claimed police had been furnished with information which suggested they had been parties to criminal conduct. Each claimed damages of R20 000, legal costs and alternative relief.

The Citizen 1978 (Pty) Ltd and Die Perskorporasie van Suid Afrika Beperk opposed the application, denying they had defamed the attorneys. The newspaper claimed they had the right to inform the public of the facts in the report.

The hearing continues today.

Move to check race bias in courts

THE Lawyers for Human Rights (LHR) has resolved to establish a special portfolio to monitor prosecutions, convictions and sentences in appropriate cases

The programme will be referred to as *Lawyers for Human Rights Project Article 7*. The programme was borne out of the dire need to monitor "blatant racial discrimination in the administration of justice in this country," the LHR said

"In making this allegation about discrimination in the administration of the fact that there are many judges and magistrates who dispense justice fairly - without considering the race of the accused

"Those judicial officers who are racist in their application of the law discredit the entire judiciary and legal system in South Africa," the LHR said.

By ISMAIL
LAGARDIEN

The LHR said the move was made for the sake of civilised standards and a future democratic South Africa. The programme "seeks to eliminate racial discrimination in the administration of justice so that all citizens can be equal to the law," the LHR said.

Examples

The LHR cited various examples of discrimination. Among them were the common purpose trials and the farmers who were charged with the murder of labourers

The LHR also announced the appointment of Mr Ahmed A Motala as a director. Motala's portfolio will be litigation on a national level. He will be based in Johannesburg and is said to have "immense experience in the field of human rights and will be an asset to the organisation"

Upington 14: Appeal granted

By MARIUS BOSCH

FOURTEEN Upington residents sentenced to death for the 1985 murder of a municipal policeman were yesterday granted leave by the Appeal Court in Bloemfontein to appeal against the mass-hanging judgment.

The group, known as the "Upington 14", was sentenced to death by Northern Cape judge Mr Justice Jan Basson on May 26 this year in a small courtroom in Upington after a marathon trial that started in September 1986.

On June 27, Mr Justice Basson turned down an application for leave to appeal by the 14 and 12 other residents of Upington's Paballelo township convicted of the murder of Constable Lucas Sethwala.

Lawyers acting for the group on July 17 took the last legal step to save the 14 from the gallows when a petition was sent to the Chief Justice.

Yesterday the Appeal Court granted leave to appeal against their convictions to 13 of those who had received death sentences. A further ten, who were sentenced to jail terms — some suspended on condition that six of the 25 render community service, were also granted leave to appeal against their convictions.

The group was convicted of murder on grounds of the common-purpose doctrine — also used in the trial of the Sharpeville Six — and a 26th defendant was found guilty of attempted murder.

Among the 14 granted leave to appeal against death sentences are a common-law husband and wife, both over 60 years old, and a former male nurse who intended to study medicine.

The Appeal Court granted 16 of the 23 leave to appeal against their convictions on the restricted basis that

they had formed part of a crowd that had gathered outside Const Sethwala's house and stoned it.

Justice Bekebeke, 28, was not granted leave to appeal as was aspiring artist Elisha Matshoba, 23.

The trial court found that Bekebeke had delivered the fatal blows to the policeman with Const Sethwala's own shotgun.

No application for leave to appeal was received from Enoch Nompondwana — a former mayor of Paballelo — who was sentenced to eight years' imprisonment. He was the only person convicted of attempted murder.

Cape Town lawyers acting for the group said last night that 16 of the group granted the restricted leave to appeal may not contest the lower court's finding that they were part of the crowd that had stoned the dead policeman's house.

Those who received the restricted leave to appeal against their convictions are Kenneth Khumalo, 30, and Eric Tros Gubula, 30 (death sentences), Abel Kutu, 28, (six years), David Lekhanyane, 25, Myner Gudlani Bovu, 29, Zuko Xabendlini, 32, and Andrew Lekhanyane, 29 (all death sentences), Zonga Mokgatle, 31, (death), Ronnie Masiza, 23, (six years), Wellington Masiza, 27 (death), Barry Bekebeke, 23 (six years', conditionally suspended), Evelina de Bruin, 54, Gideon Madlongolwane, 61, Zolile Yona, 25, and Albert Tywilli, 27 (all death sentences) and Sarel Jacobs, 23 (six years).

Those on whom no restriction was placed on their leave to appeal were Boy Japhta, 24 (death), Koliswa Dube, 21, and Elizabeth Bostaander (each with six years conditionally suspended), Jeffrey Sekiya, 25 (six years), Roy Swartbooi, 23, Neville Witbooi, 21, and Ivan Kazi, 22 (all with six years conditionally suspended).

252

Letter from families asks FW for clemency

FAMILIES of people in death row yesterday marched on the Union Buildings to present a letter to Acting State President F W De Klerk's office asking for clemency for all the condemned prisoners and for the abolition of the death penalty

The letter, signed by Families and Friends of Prisoners on Death Row (FO-POD) was received by chief of security Brigadier Ben Groenewald who undertook to forward it immediately to De Klerk, who is in Cape Town for Parliament

The delegation included the mothers of ANC guerilla Mthetheli Mncube and Menzi Thafeni, convicted of a necklance murder. Others were family members of the

SIPHO NGCOBO

Uppington trialists and those of ANC insurgents Ting Ting Mahlangu, Neil Potsane and Obed Masina who were sentenced to death in Delmas recently.

Police kept a low profile, and the group dispersed peacefully.

The letter said they would like De Klerk to show them he was serious in his intentions about ending violence and negotiation by granting death row prisoners clemency

"People who are dead cannot negotiate," it said



DEATH ROW APPEAL . . . Relatives of prisoners sentenced to death at the Union Buildings yesterday.

CAP-Times 12/9/89 Picture REUTER 252

Death Row clemency appeal to President

PRETORIA — An open letter asking for clemency for all those on Death Row in South Africa was handed to the State President's office at the Union Buildings by a group of relatives and friends of the condemned people

Addressed to the Acting State President, Mr F W de Klerk, it states that such a move by him would be seen as "an act of compassion and mercy, an act of good faith".

The letter, signed by the Families and Friends of Prisoners on Death Row (known as Fopod), was received by Colonel Ben Groenewald, chief of security at the Union Buildings, who undertook to forward it immediately to Mr De Klerk, who is in Cape Town for parliamentary business

The delegation was watched by a large group of foreign and local journalists — Sapa

Inquest into death of 7 reopened

CAPE TOWN — The inquest on the death of seven alleged ANC insurgents killed by security force members in 1986 in Guguletu was reopened in the Wynberg Magistrate's Court yesterday.

The Attorney-General of the Cape instructed the inquest to be reopened after new evidence came to light in the trial of reporter Tony Weaver

Weaver wrote a report of the events on March 3 1986 and was later charged with writing an incorrect report.

A Wynberg magistrate found in 1986 that the seven alleged terrorists died as a result of action by police task force members in the line of security duty

Evidence was given yesterday that the police had received information that their forces would be attacked in Guguletu before the incident in which the seven men died

The inquest continues
— Sapa

Star 12/9/87

252

252

'Death penalty the most odious form of violence'

Clemency petition for prisoners

By Norman Chandler,
Pretoria Bureau

Families of people on Death Row yesterday petitioned the Acting State President, Mr F W de Klerk, for clemency and to take steps to abolish the death penalty.

It is the second such petition to be handed in by Families and Friends of Prisoners on Death Row (Fopod). Last year, a similar document was handed to Mr P W Botha.

The petition was handed in at the Union Buildings and is being telefaxed to Mr de Klerk, who is in Cape Town for the short parliamentary session.

It was presented by Miss Irene Thafeni, Mrs Winne Mncube, Mr Aubrey Lekwane, and the Dean of Pretoria, the Very Rev Robin Briggs

Miss Thafeni, Mrs Mncube and Mr Lekwane have relatives on Death Row. The document says Fopod members "have been reading and hearing many

things" about Mr de Klerk, including promises of a new era of justice, peace and reconciliation, an end to violence and negotiations

"We would like you to show us that you are serious in your intentions by granting clemency to all the people who are now on Death Row. We think that doing this would be an act of compassion and mercy, of good faith.

"We do not believe there can be serious talk about reconciliation when people continue to be hanged.

Earlier, Mr Lekwane, who described himself as Fopod's spokesman, told the media that "99 percent of all prisoners on Death Row are black".

"It is difficult to ignore the fact that the death penalty is a political issue. It is the most odious form of violence in this country."

Mr Briggs said "A compassionate response will enhance the climate for negotiations."



A security policeman (back to the camera) speaks to the relatives of death row prisoners prior to the handing in of a petition to acting State President, Mr F W de Klerk, at the Union Buildings in Pretoria yesterday.

Court overrules Minister

Supreme Court Reporter

11643 12/9/87 (87) 252 (83)
THE Minister of Manpower has had his decision not to appoint a conciliation board in the case of a dispute over 31 Railit workers who stayed away overturned on review before the Supreme Court, Cape Town.

In the case of Mr Kolekile Lawrence Dlali and 30 others versus the Minister of Manpower and Railit, Mr Justice H J Nel, with Mr Justice J Foxcroft concurring, ruled that the Minister's decision had been misdirected and ordered that he appoint a conciliation board to deal with the dispute.

Evidence was that the workers

stayed away on June 16 last year because they feared intimidation and there was no transport available.

They were fired, but reinstated by the industrial court, which ruled on September 19 last year that their dismissal was an unfair labour practice, pending a resolution of the dispute.

However, on November 8 last year the Minister refused to appoint a conciliation board.

Mr L J Krige, instructed by the Legal Resources Centre, appeared for the workers Mr A P Blignault, SC, instructed by Webber, Shepstone and Findlay, appeared for the respondents.

Upington 14 allowed to appeal

Star 12/9/89

252 Staff Reporter

The Upington 14, sentenced to death for the murder of Constable Lucas Sethwala, were granted leave to appeal by the Appeals Court on Friday

Lawyer Mr Colin Kahanovitz said yesterday all 14 — a woman and 13 men — who were sentenced to death on May 26 were granted leave to appeal against their sentences

The death sentence was imposed by Mr Justice J J Basson in the circuit court at Upington in May this year after he had found no extenuating circumstances for their part in the policeman's death in Paballe, Upington, on November 13 1985

Mr Justice Basson refused leave to appeal on June 27 and a petition was then sent to the Chief Justice at the Appeals Court in Bloemfontein in July.

The remaining accused received sentences ranging from suspended imprisonment with community service to imprisonment for nine years

Mr Kahanovitz said 23 of the 25 petitioners convicted of murder were granted leave to appeal against their convictions

The two accused not granted leave to appeal against their murder convictions are J Bekebeke and E Matshoba. Both were granted leave to appeal against sentence

Mr Kahanovitz said 16 of the accused were granted restricted leave to appeal in that they may not contest the lower court's finding that they were part of a crowd at the deceased's house and threw stones at it

Appeal against death sentence is dismissed

BLOEMFONTEIN — The Appeal Court in Bloemfontein yesterday dismissed the appeal of Willem Jacobus Bosman, who was a deserter from the Defence Force, against a finding that there was no extenuation for the murder of a man who gave him a lift.

Mr Izak Johannes Coetzee was shot and robbed at Kersefontein in the Hopetown district on September 26, 1987.

Bosman was convicted and sentenced to death by Mr Justice A J Lategan in the Cape Supreme Court on May 27, 1988. Mr Justice Hefer, with the concurrence

of Mr Justice Joubert and Mr Justice Nes-tadt, said yesterday that counsel for Bos-man had been unable to point to any mis-direction in the trial court's reasoning on the absence of extenuation. He could also find no misdirection in it.

From previous Appeal Court decisions it appeared that a psychopathic personality defect of a murderer did not necessarily make his conduct less blameworthy. It was the task of the trial court to judge the blameworthiness in the light of the facts. Here the degree of the defect and the ex-

tent to which it had influenced the conduct played an important role.

In the present case, said Mr Justice Hefer, Bosman — despite his defect — was capable of complete self-control and to fully realise the unlawfulness of his conduct. His behaviour that day revealed no sign of impulsiveness.

No fault could be found with the trial court's decision about the limited role that Bosman's personality defect had played. The same applied to its finding that his youth had played no part — Sapa.

252

12/29/89

Madondo murder: trial in February

Star 2/9/89
By Celeste Louw

The seven people who allegedly murdered a former member of the Mandela United Soccer Club earlier this year were told by a Johannesburg Court magistrate yesterday that their trial would start in the Rand Supreme Court on February 1 next year.

The five men, one woman and a youth allegedly murdered Mr Maxwell Madondo on February 13 this year.

According to the indictment, Mr Madondo died as a result of extensive cerebral injuries.

The accused are: Mr Lerodoti Ikaneng (22), Mpeka Cili (22), Isaac Masebuko (23), Sandilo Blanket (22), Sibusiso Chili (25), Mrs Dudu Chili (47) and a youth (17).

Shebeen owner gunned down in bedroom

COPS' GET

252

Sowetan 12/9/89

11 YEARS

BCM
demo
in the
city

By MANDLA NDLAZI

TWO riot squad policemen who gunned down a woman when they raided shebeens in Orlando East, Soweto, were yesterday sentenced to a total of 11 years by a Rand Supreme Court judge.

An earlier charge of murder was converted to culpable homicide when they were convicted on Friday. Mr Justice Swart, sitting with two assessors, said this was a borderline case between murder and culpable homicide

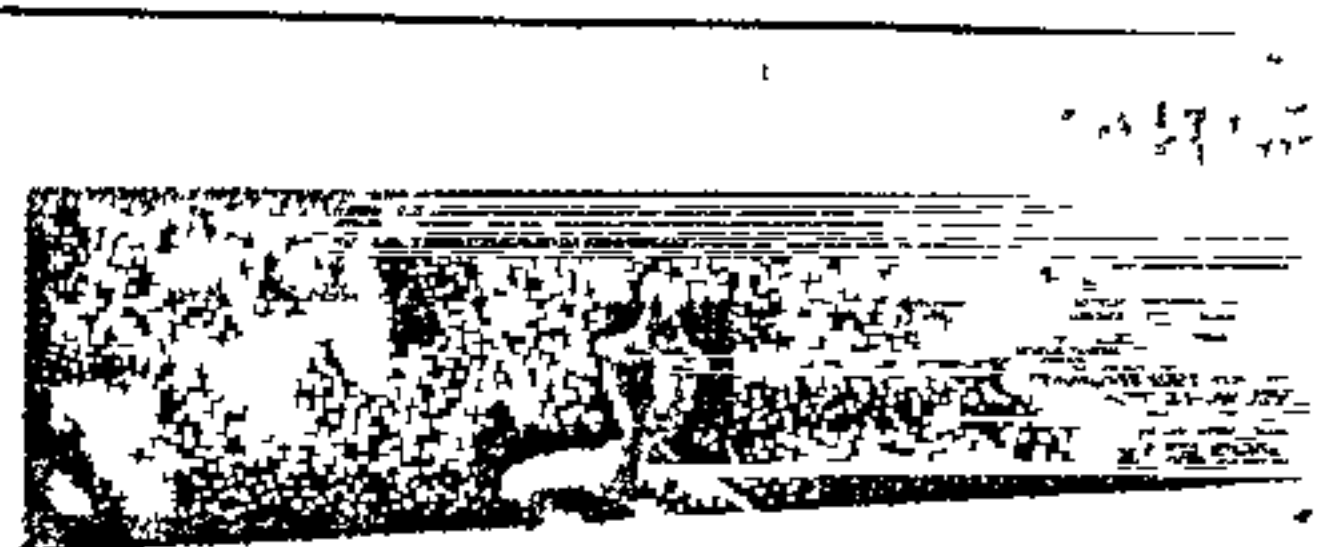
Head

The murder charge arose from the death of Mrs Matilda Shibe who was shot in the head in her bedroom by Constable Willie Scheepers on the night of September 18 last year when the two policemen raided her shebeen

The judge found that Scheepers did not intend to shoot Shibe, nor had a motive to kill her

He then found Scheepers guilty of culpable homicide. He found

● To page 2



after action.. sa



Sowetan 12/9/89 (11A) (327)
BCM supporters bearing placards march in Johannesburg yesterday before police ordered them to disperse. The picture was taken prior to a police order in terms of the Internal Security Act ordering journalists to move away from an "illegal" gathering. See pages 2 and 6.

P.T.O.

Cops (252) get 11 years

● From page 1

Constable Nico van der Merwe, who was searching the other room in the house for liquor, when the shot was fired, also guilty of culpable homicide and not murder.

Scheepers (23) of Forest Hill was then sentenced to five years for culpable homicide and robbery and two years for extortion and theft of which one year was suspended for five years. He will serve an effective six years prison term.

Van der Merwe (21) of Florida was sentenced to four years for culpable homicide and robbery, and two years for extortion and theft of which one year was suspended for five years.

He will serve an effective five years prison term.

They were acquitted on a charge of assault with intent to do grievous bodily harm. The judge found there was no evidence to support this charge.

A State witness, Mrs Joyce Ramela, wept on Friday soon after the judge had given his verdict.

According to evidence they threatened one Shebeen Queen during the raid and demanded R150 and beer from her. Both were armed with service pistols. They went to another house across the street which they thought was also at Shebeen and woke up Mrs Shibe who denied there was liquor in her house.

Scheepers did not believe her and pointed his pistol at her and pulled the trigger to emulate a clicking sound to frighten her, it was said.

He did not realise that the gun was loaded and Mrs Shibe was shot in the head and died later.

MADONDO ²⁵² 7 REMANDED

Sowetan 12/9/57
By MANDLA NDLAZI

A MEMBER of the Federation of Transvaal Women and six men, who include two of her sons, yesterday heard that the case in which they are appearing on an allegation of murder will be heard in the Rand Supreme Court next year.

Mrs Dudu Chili (47) appeared with her two sons, Sibusiso (24) and Mpiyakhe (25) and four other men, Mr Andrew Ikaneng (27), Mr Isaac Mazibuko (22), Mr Sandile Blanket (22) and Mr Nhlanhla Blanket (18).

Their appearance before Mr S P Janse van Rensburg in the Johannesburg Magistrate's Court is a sequel to the

death of Mr Maxwell Spokes Madondo, who was associated with the Mandela United Foot-ball Club.

The State alleges they murdered Madondo who was stabbed with knives, hacked with pangas, hit with iron pipes and stoned near Uncle Tom's Hall in Orlando West on January 13 this year.

No evidence was given and the case was postponed to February 1 next year when the trial will begin in the Rand Supreme Court. Mrs Chili's R500 bail was extended while her sons and the other accused are in custody.

Inquest on 'insurgents' is re-opened

THE inquest into the death of seven alleged ANC insurgents killed by security force members in 1986 in Guguletu was reopened in the Wynberg Magistrate's Court in Cape Town yesterday.

The Attorney-General of the Cape instructed the inquest to be reopened after new evidence came to light in the trial of a reporter Mr Tony Weaver

report of the events on March 3, 1986 and was later charged with writing an incorrect report.

A Wynberg magistrate found in 1986 that the seven alleged insurgents died as a result

of action by task force members in the line of security duty

Evidence was given yesterday that the police received information that their forces would be attacked in Gugulethu

Sowetan 12/9/87 Weaver wrote a report (R52)

BLOEMFONTEIN. — The Appeal Court here has refused the application of self-styled "Wit Wolf" Barend Strydom for leave to appeal against eight death sentences.

The sentences were imposed after Strydom was found guilty of killing seven people and injuring 16 in a shooting spree in Strijdom Square, Pretoria, on November 15

App 13/2/89
**No appeal for
'Wit Wolf'**

last year. He was also found guilty of killing Miss Martha Mosekili, who was shot at a squatter camp at De Deur on November 9.

Those who died in the Strijdom Square shooting were Mr Piet

Mpetsi, Mrs Catherine Mokwena, Mr Samuel Mathipa, Mrs Selina Nguna, Mr David Tlometsana, Mr Johannes Mnisi and Mr Satar Abdool Carrim.

Strydom was convicted by Mr Justice L T C Harms in the Transvaal Supreme Court. He was sentenced on May 25, 1989. On June 15, 1989 the trial judge refused him leave to appeal. — Sapa

B10 am 13/9/87
'Poll violence sparked confession to spying'

CAPE TOWN: Gregory Flatt, 21, of Mitchells Plain yesterday claimed he had been a security police informer since 1987 but that the killings on the Cape Flats on election night had influenced him to confess

Police spokesman Col Vic Haynes said last night police were aware of Flatt's allegations, which had been passed onto the security police for comment

Flatt appeared at a Press conference in Athlone wearing a "June 16" T-shirt, a UDF badge and shoes still stained purple from last week's protest march in Cape Town

He said security police had suggested he play the role of agent provocateur "This is done by inciting crowds and encouraging and actively participating in unrest. They suggested being particularly brave at barricades and throwing stones" Flatt said he had supplied security police with video recordings, including one of the service on August 20 in St George's Cathedral where various organisations had "unbanned" themselves

"In the election campaign, (Law and Order) Minister (Adriaan) Vlok quoted extensively from this recording. My security police handler subsequently conveyed Vlok's congratulations to me" He said the handler had told him Vlok wanted to display Archbishop Desmond Tutu's "clown-like" behaviour on TV to discredit him — Sapa

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Epul court action settled

SUSAN RUSSELL

A R105 500 claim for damages brought in the Rand Supreme Court against Epul by racehorse trainer-owner Charles Maree and Dr C A Hyams was settled out of court yesterday

The claim was instituted after seven of their horses allegedly became unsuitable for racing after eating contaminated feed

The claim of Maree and Hyam represented the total value of the seven horses. One of the conditions of settlement was that the terms would not be made public

Maree's horses were among those poisoned at several Transvaal racing stables in February 1985, after eating Epul horse cubes from a batch which had been contaminated by salinomycin — a substance fatal to horses

Immediately after the incident, Epul set up a panel of vets and experts to test and monitor affected horses

When the case began before Mr Justice Van der Walt on Monday, Epul conceded that horses passed as normal were subsequently diagnosed as unsuitable for racing. However, it disputed what the cause of this had been

Cosatu hearing postponed

SUSAN RUSSELL

B10 am 13/9/87
 THE Rand Supreme Court yesterday postponed to next week the hearing of an urgent application brought by Cosatu and its general secretary Jay Naidoo against Law and Order Minister Adriaan Vlok

Naidoo and the union federation are seeking an order setting aside the warrants used by police during a search of the trade unionist's home on August 31 this year, and directing the authorities to return confiscated documents

They are also seeking an order directing the police to either destroy or refrain from using videos and photographs taken of Naidoo's home

NATAL UNREST DEATHS

September 1987 to January 1989:	668
February 1989 — September 11 1989:	218
Past 24 hours' official toll:	4
TOTAL:	890

B/Dcy 13/9/89.

252

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252

Support is growing for setting up of fraud unit

THERE is growing support in SA for the creation of a specialised unit with wide-ranging powers to deal with serious commercial frauds

In the past year, the country has been rocked by the exposure of frauds and alleged frauds, particularly foreign exchange swindles, totalling hundreds of millions of rands

Justice Minister Kobie Coetsee said in September last year fraud and corruption cases involving R130m were being investigated in the Transvaal alone

In many cases, money and the opportunity to arrest the culprits have been lost to local law enforcement agencies because of poor coordination of existing staff and cumbersome investigations lasting, in at least one case, for seven years and duplicating the work of the prosecutor and police

In August this year, Coetsee told a Middleburg audience "A very valuable lesson has been learnt from the Harms Commission, namely that it is possible to evaluate rumours and to get to the crux of the matter without delay"

Coetsee said the government had taken the initiative on several occasions to eradicate malpractices and to tighten up on criminal prosecutions for corruption and fraud

"In this regard, six deputy attorney general posts, 14 senior state advocate posts and 12 state advocate posts have recently been created," he said

"A considerable number of these posts will be utilised in the government's fight against malpractices, corruption and fraud," he added

But, sources say, it is not the number of skilled staff which is the problem. It is poor coordination of investigations between police and the attorney general, resulting in the duplication which has been identified as a major problem

Senior commercial branch policemen apparently support the establishment of a special unit with powers such as a commission has, to subpoena witnesses and seize documents

Police currently have to pursue witnesses and take statements which are then submitted to the attorney general for a decision

The attorney general's office in turn often duplicates police work, interviewing the same witnesses to decide whether there is enough evidence for prosecution

Speedy action, a quick evaluation of

MANDY JEAN WOODS

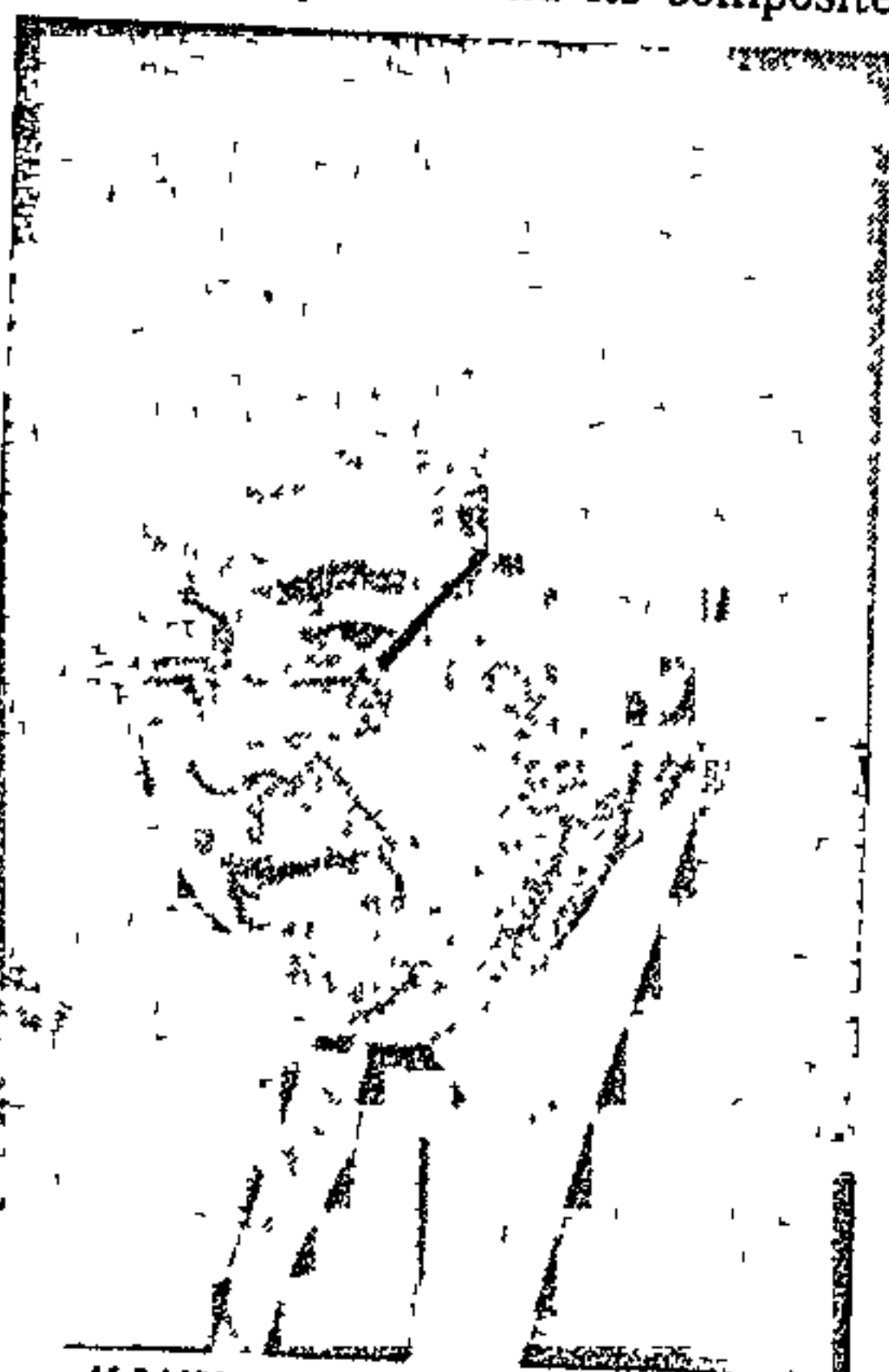
the facts and close coordination between law enforcement bodies is necessary to successfully untangle, expose and prosecute complex fraud cases

The Harms Commission has expressed an interest in Britain's Serious Fraud Office (SFO)

The SFO was set up two years ago to deal with complex commercial cases involving more than £1m

The Financial Times recently reported that the establishment of the SFO was in recognition of the fact that fraud cases were extremely difficult

The report said the SFO's strong investigative powers and its composite



KAHN - positive response

structure brought together three groups of people who were most directly involved in fraud investigations — the police, who investigated, the accountants, who applied specialised technical knowledge and lawyers, who prepared the case for prosecution

The SFO had the power to force witnesses and suspects to respond to questions or to produce documents on pain of prosecution, the report said, adding that SFO investigations were held in camera to avoid the spread of malicious or damaging rumours

The establishment of a similar body in SA could enhance the powers and effectiveness of the attorney general

as well as the Reserve Bank and police, without infringing on their existing powers.

Harms Commission chief investigating officer Advocate Frank Kahn said yesterday the existence of the Harms Commission and the strong positive response to its successes "denotes a society which enjoys a moral ethic equal to the highest in the western world"

"Irrespective of the merit of the allegations, on one hand, that corruption is rife and counter action of hastily constituted 'task forces' on the other, the fact remains there is a healthy concern for the administration of justice in our country"

But, Kahn noted, one always worried that action born of reaction tended to generate more heat than light

It was reassuring to note the Justice Department had indicated its concern of possible shortcomings in the system at an early stage and addressed the problem at a grassroots level by creating the Harms Commission, Kahn said

"Some 18 months ago Minister Coetsee made me available to the Transkeian Commission of Inquiry to report on possible shortcomings in the system"

"The Harms Commission was created shortly thereafter with a clear-cut mandate not only to investigate certain matters but also, and more importantly, to recommend effective measures to cope with commercial crime"

"We will send a report of our recommendations — based on our experience and investigations over the past nine months — to the acting State President very shortly," Kahn said

The Harms Commission's investigations and findings have also had an impact on certain legislation.

Last December, as a direct result of the Albert Vermaas case, the Reserve Bank set up a task force to investigate foreign exchange fraud loopholes.

It also created a separate department to deal with fraud cases reported to it

The Receiver of Revenue has made structural and procedural changes to counter flaws in the system exposed by the Harms Commission

An amendment to the Insolvency Act concerning the secret interrogation of provisionally liquidated companies, was also a direct result of the Harms Commission's investigations

Star 13/9/89 (252)

Legal meeting set for Pretoria

By Norman Chandler,
Pretoria Bureau

A conference on "Jurisprudence in a future South Africa" is planned by the University of Pretoria's Centre for Human Rights Studies (CHRS) and the Pretoria branch of Lawyers for Human Rights

CHRS director Professor Johann van der Westhuizen said yesterday that there had in recent years been several conferences and seminars on the role of the law in South African society

There had also been the publication of the South African Law Commission's working paper on human rights and the African National Congress's constitutional guidelines

"These documents have given rise to considerable discussion and debates have taken place on the question of whether the emphasis should be on a changing or on a changed South Africa," Professor van der Westhuizen said

He said the purpose of the conference from October 24 to 26 "is to build on some of the discussions which have taken place, inside and outside the country, and to introduce a new perspective by looking at the future".

"Therefore, the emphasis will be on a 'post-apartheid' society and on the legal issues and problems that may be expected in such a situation"

Criticism of sentence handed to policemen

Sowetan 13/9/89

252
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PEOPLE and organisations *Sowetan* spoke to yesterday criticised the sentence given to two riot squad policemen who were charged with culpable homicide in the Rand Supreme Court on Monday.

An earlier charge of murder was converted to culpable homicide when Willie Scheepers and Nico van der Merwe were convicted last Friday. They were sentenced to a total of 11 years.

By MZIKAYISE
EDOM

The Congress of South African Trade Unions said the "light" sentence given to the two was an indication of the "lawlessness" in the police force which Lieutenant Gregory Rockman, of Cape Town, recently exposed.

"Police kill innocent people and get away with light sentences. They seem to be protected by the State and in some cases some policemen who commit such acts are not brought to justice," Cosatu said in a statement.

The president of the National Congress of Trade Unions, Mr James Mndaweni, said: "The legal system in South Africa has once more shown that it is not just by the

ment sentence passed in this case. The judgment effectively endorses the violent nature of the South African system."

Mrs Sibongile Masilo of the East Rand said: "I am shocked at the outcome of the case. It is a shame that they were given such ridiculous sentences when they had killed an innocent person. They deserve a harsher punishment."

The murder charge arose from the death of Mrs Matilda Shibe who was shot in the head in her bedroom by Constable Willie Scheepers on the night of September 18 last year when the two policemen raided her shebeen.

Plumber tells court of 'Trojan' shooting

Own Correspondent

252

CAPE TOWN — A plumber who was driving in Athlone got out of his car when he saw people running and was shot in the leg, the Cape Town Supreme Court was told yesterday in evidence in the "Trojan Horse" private prosecution *Star 13/9/89*

Mr Cedric Buckton was testifying in the trial in which 13 security force members are charged with murdering Shaun Magmoed (16) who died of gunshot wounds on October 15 1985.

Mr Buckton said he needed a hardware item and drove first to one store in Thornton Road, Athlone, which did not have what he needed, and was on his way to another in Belgrayia Road when he saw many people in the street.

He got out of his car to ask what was happening and was advised by a pas-

serby to drive back towards Thornton Road. As he walked to his car he heard shots and felt a stinging sensation in his leg. He crouched down between two cars and, when all seemed quiet, walked to his car. As he was about to get in, he heard more shots and was hit again, this time higher up on his leg.

He saw a policeman approaching and got into his car, to find three people in it whom he did not know. A policeman walked up to the vehicle, pointed a rifle through the driver's window and told them to get out.

As a result of his wounds, he had been unable to work for three months.

Asked by Mr L Rose-Innes, for the prosecution, if he had thrown stones or bricks at the truck from which security force members allegedly opened fire that day, Mr Buckton said "No."

Nov. 13/9/89

252

Policeman tells how he shot man five times

Own Correspondent

CAPE TOWN — A policeman told a Wynberg Magistrate's Court that he shot a man four or five times in a reflex action in a bid to put him out of action as quickly as possible.

Warrant-Officer John Sterrenberg of Bishop Lavis Police Station was giving evidence on the first day of the reopened inquest on seven alleged ANC guerrillas who died in a hail of police gunfire in a skirmish near the outskirts of Guguletu on March 3 1986.

The Attorney-General, Mr Niel Rossouw, ordered the reopening of the inquest after new evidence came to light at the trial.

Journalist Tony Weaver who was charged under the Police Act with publishing false information about the police without verifying it was truthful. Weaver was acquitted.

Yesterday W/O Sterrenberg said he was involved in the clash with the seven men near Guguletu.

He said the police received information about the terrorists and went to apprehend them. At the scene he heard an explosion and hid behind a tree.

"I saw a man running and firing with an AK-47 gun from a hip position.

"I was about 45 metres from where he was. I took out my pistol and fired rapidly about four to five times at the man. I wanted to put him out as quickly as possible.

"He appeared to be fiddling with something. I did not know whether other policemen had been firing at him, but shots were continuing even after the man fell," he said.

The man's body was attached to a rope to be rolled over because the police suspected he had a handgrenade under him.

Defend themselves

Cross-examined by Advocate F van Zyl, for the Minister of Law and Order, W/O Sterrenberg said the police were told to effect arrests, but had to defend themselves when fired upon.

Sergeant Peter Viljoen described to the court how he shot an alleged ANC guerilla, who was wielding an AK-47 rifle, several times with a shotgun.

Sergeant Viljoen said that after being shot the man ran towards a tree and fell down. He went closer and saw the man trying to get up. He then shot him in the head with a pistol.

The man had not been shooting at him specifically. He had seen no one else in the area. He went closer to the man to shoot him to prevent other people getting hurt.

He was not sure whether the man had seen him approaching. He was very nervous and had aimed specifically at the man's head.

He then went to direct traffic to make sure that no vehicles entered the area.

The inquest is continuing.

Strydom to ask De Klerk for clemency

252
1965/13/9/87
The Argus Correspondent

PRETORIA — Convicted mass murderer Barend Strydom was visited by his parents on death row today as desperate efforts were being made to save him from the hangman's noose.

Pretoria attorney Mr Wim Cornelius, who was part of Strydom's defence team during the headline-grabbing trial of the self-styled leader of the Wit Wolwe, confirmed he was to register an appeal for clemency to Acting State President F W de Klerk today.

He said he had received a mandate to do so after the Appeal Court in Bloemfontein yesterday refused Strydom leave to appeal against eight death sentences.

PETITION DRIVE

Leader of the right-wing Boerevolkstaat Party Mr Robert van Tonder, who has been spearheading a petition drive to save Strydom from the gallows, said the campaign would intensify.

If anything, the appeal ruling would mean more public support for Strydom, he said.

Mr Van Tonder would not speculate on how successful the campaign had been but said he would call for the return of petition forms in a few week's time. "Obviously we want this to go as far afield as possible."

Strydom's mother, Mrs Daphne Strydom, said she had received the news of the Appeal Court ruling "very well".

"My husband and I were ready for bad news" But they had every hope that efforts to save her son's life would be successful.

1989

Call for drastic overhaul of SA education

GERALD REILLY

PRETORIA — Education in SA was in crisis and in need of drastic restructuring, just like education in the rest of Africa, Pretoria University vice-rector Flip Smit said yesterday.

Speaking at a seminar on "Education in Africa — There are Solutions" he said adjustments to demographic and economic realities would be painful and politically difficult.

But without these adjustments education in Africa and in SA could never accommodate the growing numbers of potential pupils.

Standards would sink further and education would be unable to play its role in the raising of productivity and general living standards.

The fact that conditions were worse in other countries than in SA helped little in alleviating the problem.

Smith said pupils in tertiary education in Africa had increased from 20 000 in 1960 to more than 500 000, while the number of universities increased from 21 to more than 100 and graduates from 1 200 to 70 000 in 1983.

In SA too this was the pattern, with more than 50% of black graduates in the humanities and only about 6% in physical sciences.

The cost per student was unbelievably high — 60 times more than for primary education.

Bl Day 14/9/89

Top judge calls for system to aid defendants

Bl Day 14/9/89

252

SUSAN RUSSELL

EASTERN Cape Judge President Mr Justice Kannemeyer has asked the Cape Law Society to assist in evolving a system which will give accused people in all criminal courts access to an attorney.



MR JUSTICE KANNEMEYER

According to a Press statement released by the Association of Law Societies yesterday, the Judge President also asked the Cape Law Society to make attorneys available at a reasonable rate to assist *pro deo* counsel during capital offences heard in the Supreme Court.

Mr Justice Kannemeyer expressed his concern at the fact that attorneys were not briefed to assist counsel in capital offences. The judge was also concerned at the large number of accused people who were undefended in all courts.

He criticised the Supreme Court's *pro deo* system where young and inexperienced advocates were left to defend accused people facing a possible death sentence without the services of an attorney.

"This is hardly the most satisfactory manner of defending a man whose life is at stake," he said.

"Any accused in this position will certainly face his trial and his future with certain apprehension."

Mr Justice Kannemeyer said it was also very disturbing that the system provided for a plaintiff in a divorce action to receive either legal aid or a pauper assistance with the services of an attorney and counsel.

At the same time a person whose personal liberty was at stake and who might be sentenced to a long term of imprisonment, was often left to defend himself.

He said that while some protection afforded by controls would be forfeited, sav-
gated to speed up government's
tion process

Editor ordered to appear before magistrate

815am 14/9/89
SAPA editor Edwin Linington has been ordered to appear before a Johannesburg magistrate today to give information the State wants about alleged offences by the Congress of South African Trade Unions (Cosatu)

The order, issued in terms of the Crimi-

(252)
nal Procedure Act, states that Linington is "a person who is likely to furnish material and/or relevant information as to the alleged offences" committed by Cosatu during its national congress in July.
Linington is to apply for a postponement of the hearing — Sapa

'Evidence of ⁽²⁵²⁾ Trojan Horse

witness untrue'

^{STW 14/9/89}
CAPE TOWN — A prosecution witness in the "Trojan Horse" trial agreed in the Cape Town Supreme Court yesterday that a video showed him walking unaided after being shot, he had said in evidence he had to be assisted

Mr Cedric Buckton was being cross-examined by three counsel for members of the security forces who have been charged with murder after Shaun Magmoed (16) was shot dead on October 15 1985

During his evidence-in-chief, Mr Buckton said that after he had been shot a second time, he and three other people who were in his car were taken to the corner of Thornton and St Simons roads to join others being held under police guard. He was assisted by other people to the corner, he said

Yesterday, a police video recording, showing him walking unaided, was shown. When told his evidence in that regard was untrue, Mr Buckton agreed.

Asked why he had been quoted in a newspaper report as saying he was on his way home when he was shot, he replied he could not have said that and that the report was misleading.

Asked why, in his evidence on Tuesday, he only then for the first time said he had been shot a second time, while he did not say that at the public-violence trial or at the inquest, Mr Buckton said he could not answer

The trial continues today — Sapa.

Own Correspondent

JOHANNESBURG — The Judge President of the Eastern Cape, Mr Justice Kannemeyer, has asked the Cape Law Society to assist in evolving a system which would give accused people in all criminal courts access to an attorney

Judge asks for attorneys' aid for all accused

CAPE TOWN 14/9/89
252

According to a press statement released by the Association of Law Societies yesterday, the Judge President had also asked the Cape Law Society to make attorneys available at a reasonable rate to assist pro Deo counsel during capital offences heard in the Supreme Court.

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The judge was also concerned at the large

number of accused people who were undefended in all courts. face his trial and his future with certain apprehension"

He criticised the Supreme Court pro Deo system where young and inexperienced advocates were left to defend accused people facing a possible death sentence without the services of an attorney

"This is hardly the most satisfactory manner of defending a man whose life is at stake," the judge said

"Any accused in this position will certainly

Mr Justice Kannemeyer said it was also very disturbing that the system provided for a plaintiff in a divorce action to receive either legal aid or a pauper assistance with the services of both an attorney and counsel

At the same time a person whose personal liberty was at stake and who might be sentenced to a long term of imprisonment, was often left to defend himself

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TANIA LEVY

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nominations of the three
Houses, may nominate 25
members.

Editor in court

SAPA editor Edwin Linington was granted yesterday a postponement to October 3 by a Johannesburg magistrate who had ordered him to appear in terms of Section 205 of the Criminal Procedures Act to give information the State wants about alleged Cosatu offences.

The order calls on him to produce books, papers and documents regarding the Cosatu congress and issued or distributed during the congress in July this year (252)

Cosatu is alleged to have contravened the emergency regulations.

- Sapa 81 Day 15/9/89

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Star 15/9/89 (25)

Minister says no to call for judicial inquiry

CAPE TOWN — The Minister of Justice, Mr Kobie Coetsee, has rejected a call for the appointment of a judicial commission of inquiry to investigate the recent unrest and loss of life in the western Cape

Speaking in a House of Assembly debate on the security situation in South Africa, he said it would conflict with the investigation ordered by the Minister of Law and Order into allegations of unlawful actions by members of the riot squad

The motion on the security position in southern Africa put by the Conservative Party was defeated yesterday with the National Party and the Democratic Party voting against it

'Not a magic formula'

Mr Coetsee said the establishment of a commission of inquiry was not a magic formula for providing instant answers

Such a commission could double the investigative workload

The matter was being investigated urgently and the Attorney-General was acting in an advisory capacity on the facts sought. He urged witnesses to report what they had seen

Mr Coetsee asked whether Mr Tian van der Merwe (DP, Green Point) accepted the march had been orderly because it had taken place within the prescribed legal framework

Mr van der Merwe replied that no-one believed this argument. "The Government only gave that permit because it was driven into a corner by political circumstances

"Why does the Government not try to let such a protest

march become part of the democratic process in SA rather than an embarrassment to the Government?"

The organisers and instigators of the unrest over the past six weeks — and no one else — had to bear the blame for the senseless deaths of innocent people, the Minister of Law and Order, Mr Adriaan Vlok, said

He said that on September 6 there had been 600 incidents of unrest in the country.

And during that night 26 policemen were injured, some by bullets, in the western Cape

Women with small children in their arms were placed deliberately at the front of crowds storming down on polling stations in an attempt to prevent police taking action

Mr Vlok said he and the SAP regretted that people were injured or died because of police action in the unrest

He and the SAP were not prepared to approve any police action which did not meet accepted norms. If mistakes had been made, action would be taken against the guilty

But he would never allow the police to be falsely accused

He wanted to put into perspective the events which the police had been expected to deal with recently

Revolutionaries had wanted to prevent people exercising their right to vote. Burning roadblocks were put up on routes to polling stations, and pedestrians were attacked and intimidated into not voting

Policemen were fired at and some motorists had to shoot at attackers in self-defence

More than 600 private vehicles were damaged as well as more than 70 buses — Sapa

Hearing ^{ster} 15/9/89 postponed



By Celeste Louw

252

The editor of the South African Press Association (Sapa) appeared before a Johannesburg magistrate yesterday in terms of section 205 of the Criminal Procedure Act to give information about alleged offences by the Congress of South African Trade Unions (Cosatu).

Mr Edwin Linington appeared before a magistrate in his office and the matter was postponed to October 3.

Mr Linington was ordered to appear before the magistrate to give information regarding offences allegedly committed by Cosatu during its Third National Congress from July 12 to July 16 this year.

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Paper union attacks 'bid to break workers'

Star 15/9/89 By Drew Forrest (1409) (150)

Cosatu's paper affiliate has accused management of trying to break worker resistance to the Labour Relations Act (LRA) after the arrest of 43 workers at the Mondi group's New Scotland sawmill, near Ermelo, during a strike this week

Paper, Printing, Wood and Allied Workers Union spokesman Mr Ernest Masala said the strike, by about 300 employees, followed the dismissal of three members after a stayaway last

week in protest against the elections. (252)

The arrested workers appeared in the Ermelo Magistrate's Court on Tuesday, apparently in connection with allegations of assault

In addition to calling in the police, management had brought an interdict against the strike.

● Sun International's (SI) George Lazley said management would be meeting the Commercial, Catering and Allied Workers Union over the firing of 65 workers who staged a sit-in at the Riviera Hotel as part of last week's stayaway.

252
Lawyers want
inquest laws
to be revised

Stev 13/9/89
By Louise Burgers

Lawyers for Human Rights (LHR) has urged the Law Commission to establish a commission of inquiry into the inquest laws in South Africa and make recommendations to eliminate the appearance of bias and other shortcomings

LHR recently completed research into South Africa's inquest laws to determine whether the recent development of the "notorious informal inquest" was a "judicial aberration or an evolutionary development within the ambit of the 1958 Parliament's legislative intent"

At an informal inquest a magistrate makes a finding on the basis of documentary evidence without providing the opportunity to interested parties to cross-examine witnesses on their affidavits

LHR has suggested Section 13 of the Inquest Act be redrafted so that it asserts the priority of oral evidence.

Hangings: Judge's feelings 'crucial'

JOHANNESBURG — A judge's personal feelings about capital punishment played a crucial role in explaining a significant disparity in the number of death sentences passed by individual judges, according to the findings of a two-year research project conducted in the Cape Provincial Division of the Supreme Court.

The results of the project, published in the latest issue of the South African Journal on Human Rights, was conducted from 1986 to 1988 by three legal academics from UCT's law faculty.

Ms Christina Murray, Ms Julia Sloth-Nielsen and Mr Colin Tredoux said their statistics showed significant disparities in the use of capital punishment by individual judges for comparable caseloads.

They stated that the difference between the actual number and the

expected number of accused sentenced to death for the caseload showed that the disparities in death sentences handed down could not be due to the uneven numerical distribution of criminal cases among individual judges.

"We believe a judge's personal predisposition to the imposition of capital punishment does indeed play a crucial role in explaining our statistics," said the researchers.

Their statistics revealed that three judges — Mr Justice J Baker, Mr Justice J Lategan and Mr Justice J Williamson — heard only 15% of the cases during the two-year period, but had sentenced 51% of the accused in the sample used. Another group of three judges —

Mr Justice J Marais, Mr Justice J P Munnik and Mr Justice J Rose-Innes — tried 32% of the cases, but had sentenced only 12% of those condemned to hang during the period covered by the research.

The researchers said it could be alleged some judges were routinely assigned to cases where the death penalty was more probable, while others were given less serious cases.

This would imply some judges received a far larger proportion of cases to try where the death penalty was likely, they said, and there was some evidence that differential allocation had taken place in political cases.

In provincial divisions the Judge President organised the Supreme

Court roll and the criteria used to allocate criminal trials were currently obscure, the researchers pointed out.

They said any allocation procedure which could not be openly assessed had to be rejected.

A system where the Judge President allocated cases likely to carry the death sentence to judges he thought were reluctant to pass the death sentence would be just as unacceptable as the opposite, according to the report.

"It necessarily means that by some private process the JP intervenes in advance to influence the outcome of a trial," they said.

"Any system which permits the unrestrained manipulation of such factors cannot be condoned.

"It undermines the fundamental principle of equality before the law."

The researchers state that the influence of personal philosophy was more relevant when the death sentence was imposed in a case where the judge had a discretion.

"Our statistics reveal 16 of the 18 discretionary death sentences were imposed by only two judges."

Mr Justice Lategan imposed 10 and Mr Justice Munnik imposed 6.

"Whatever other factors may contribute to the wide disparities our research reveals, we cannot ignore the wealth of evidence from judges and researchers alike that personal views on penal policy are an important factor in explaining differing sentences," they said.

Natal ^{Capt} magistrate ^{Tricks} gunned ²⁵² down

Own Correspondent

DURBAN. — An Umlazi magistrate was gunned down at point-blank range at his home early yesterday by two unidentified assailants after being called to the door.

Mr J T Msweli, 34, the magistrate at Umlazi C Court, was hit in the face and side of his body.

Police said his sister answered a knock at his six-bedroomed Umlazi home about 5am and was confronted by two men demanding to speak to Mr Msweli.

After hearing two gun shots, she saw the two men running down the driveway. She found Mr Msweli lying on the ground.

He was taken to a hospital in Lamontville, where he later died.

The motive for the killing did not appear to be political, police said.

Cosatu goes to court to recover seized documents

By Mike Siluma,
Labour Reporter

The Congress of SA Trade Unions (Cosatu) and its general secretary, Mr Jay Naidoo, will ask the Rand Supreme Court today to order the return of documents and other articles seized by security police about two weeks ago.

The action is a sequel to a security police search at the Johannesburg home of Mr Naidoo and a search at Cosatu's city head office, in which a large number of items were taken by police.

The searches occurred on August 31.

DECLARE INVALID

In its application, Cosatu is asking the court to

● Declare invalid two search warrants upon which the searches were based.

● Direct the police to return articles seized during the searches to Cosatu and to Mr Naidoo.

● Refrain from showing video recordings and photographs taken by police during the searches.

● Direct the police to either surrender to Mr Naidoo the video recordings and photographs, or to destroy them.

SA called on to end executions

LONDON — SA is one of six governments called on by Amnesty International to stop using the death penalty and to help end the "cruel and arbitrary killing of prisoners held defenceless by states around the world".

The London-based organisation said yesterday a change in the practices of SA — along with China, Iran, Iraq, the USSR and the US — "could turn the tide of state-sanctioned killing".

It had documented at least 1 600 judicial executions worldwide during the first eight months of the year, but said it believed the true number of people executed by states was much higher. — Sapa.

Ryklief 'shivering and near tears'

Distressed witness delays Trojan trial

Own Correspondent

CAPE TOWN — The "Trojan Horse" trial was yesterday adjourned because a witness became distressed during cross-examination and was unable to continue.

Mrs Janap Ryklief was being cross-examined by defence counsel in the trial of 13 security force members charged with the murder of Shaun Magmoed (16) on October 15 1985.

Prosecution counsel Mr Les Rose-Innes told the court after the morning tea break that Mrs Ryklief was not in a position to carry on as she was anxious and stressful.

Medication

"I've just seen her outside and she is shivering and close to tears," he said.

After the lunch break the court was told she was still un-

able to continue. The case was adjourned until this morning when a new witness will be called.

Mr Rose-Innes said afterwards that Mrs Ryklief had seen a doctor and had been given medication.

Earlier, she said under cross-examination that she had opened the door of her house when one of the children had said he wanted to go home.

Some of the children went outside to see him off. She did not particularly notice who went outside but she knew who came back in when the shooting started moments later.

She agreed that the children were probably curious about what was happening outside.

"I was curious myself," she said.

However, she denied the children had gone out to join the activities of the crowd.

The private prosecution alleges the security forces planned an operation that day in which nine armed men hid in crates on the back of a railway truck which then drove on a pre-planned route.

Shooting

When the truck was stoned in Thornton Road, it stopped and the men emerged, shooting at the crowd and killing three people, they allege.

The accused are Colonel Pieter Janse van Rensburg, Lieutenant-Colonel Christian Loedolff, Commandant Salmon Pienaar, Captain Douw Vermeulen, Warrant Officer Andre Swart, Sergeants James Sayer, Frank van Niekerk, Jacobus Burger and Albertus Smit, and Constables Andre Smit, Wilhelm Puchert, Alexander Rossel and Pieter du Toit.

Family of ANC men 'in despair'

(252) The Star's Africa (302)
252) News Service

HARARE — The relatives of six ANC men awaiting execution in South Africa said last night they were disappointed at not being able to see President Mugabe to ask for his support in saving the men's lives. *Star 20/9/89*

Four mothers, an aunt and a father of the condemned men have been in Zimbabwe for a week and will be returning to South Africa later this week.

Mrs Doris McBride, whose son, Robert, is on Death Row, said the families were feeling desperate. They wanted their children to be regarded as prisoners-of-war.

Mrs McBride said she would rather not comment on suggestions that there could be a prisoner exchange involving people under sentence of death in South Africa and three men under sentence of death here for their part in an attack on an ANC house in Bulawayo when a man was killed.

She said she held out little hope of any relief under Mr F W de Klerk's rule.

"We have exhausted all channels," she said.

"We want the international community to intervene for us, our children and all the others awaiting execution," Mrs McBride said.

She hoped the relatives would be able to speak to someone in the Zimbabwe government before they returned home.

in the only mishap one car crashed into the sea after it was lifted by the

the cost of the fuel use would be carried by the helicopte company - Sapa

SA urged to end death penalty

stay 20/9/89 London Bureau (252)
Amnesty International has called on the South African Government to stop using the death penalty and help end what it calls "the cruel and arbitrary killing of prisoners held defenceless by states around the world".

Five other countries - China, Iran, Iraq, the USA and the USSR - are also targeted in the appeal.

Amnesty estimates that there have been at least 1 600 judicial executions worldwide during the first eight months of the year, but adds "The true number of people executed by states was much higher."

The organisation believes that if these six countries revoked the death penalty, they would help "turn the tide of state-sanctioned killing"

The largest known number of executions this year is 1 200, carried out in Iran. More than half were for drug offences, and hundreds of people were shot or hanged for political offences. Amnesty has the names of 1 700 political prisoners reported executed after August last year.

So far in 1989, 37 people have been reported executed in South Africa.

Amnesty singles out the death sentence passed on 14 men and women who were convicted of murder in connection with the killing of a police officer in Upington. Thirteen of the defendants threw stones at the victim's house and were convicted of sharing a 'common purpose'. Only one man was found guilty of delivering the fatal blows

Cooper said, ...
Minex's directors refused to hand over share certificates for the SA companies.
"My investigations in London disclosed transactions which prima facie and according to the documents constitute a fraud upon Trust-

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Action against (252) FM withdrawn (253)

Blom 20/9/89 RIAAN SMIT

PRETORIA publisher Thinus Strydom, whose printing contracts with the Department of Education and Training (DET) had been investigated by the Van den Heever commission of inquiry, has withdrawn a R250 000 defamation action against the Financial Mail (FM).

The action was instituted after the FM published a report on June 17 1988 about printing contracts amounting to R2,5m between Strydom and the DET. Strydom is the son of DET deputy director general Jaap Strydom.

Strydom and his company Forma Publikasies sued Times Media Ltd, FM editor Nigel Bruce, political editor Eddie Botha, and KNL Printing Pty Ltd for R250 000. Strydom snr also sued the four parties for R150 000.

The trial date for the action between Strydom snr and the FM has been set for October 24. Attorney David Hoffe, acting for the FM, has subpoenaed DET Minister Gerrit Viljoen, his deputy, Sam de Beer, and other DET officials to give evidence during the trial.

Soon after the FM report was published, Viljoen appointed Cape Supreme Court judge Miss Justice van den Heever to extend her commission of inquiry into alleged irregularities in the DET to also investigate the contracts. During its year-long hearing in Pretoria the commission learnt that the majority of the contracts had been concluded without the necessary state Tender Board regulations being adhered to.

It is expected that Miss Justice van den Heever will soon hand over the commission's second report to government.

Court order postponed

Over 1 600 executions in 8 months

APR Times 20/9/89 252

LONDON. — Amnesty International, lumping the United States with nations like Iran, China and South Africa, yesterday condemned the continued use of the death sentence.

The London-based organisation, which monitors human-rights violations against prisoners and detainees worldwide, said it had sent special appeals to the governments of the US, the Soviet Union, South Africa, Iran, Iraq and China.

"Amnesty International has documented at least 1 600 judicial executions worldwide during the first eight months of this year — but the true number of people executed was much higher," Amnesty said.

It explained that it had been impossible to document every execution because nations like China and Iraq, for example, did not release figures.

US ruling 'a retrograde step'

In the United States, Amnesty said, 2 210 prisoners were on death row at the end of August. It said a US Supreme Court ruling in June upholding the death sentence for convicted juveniles and mentally retarded people was "a retrograde step which flies in the face of international human-rights treaties and standards, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights".

It cited the case of 28-year-old Horace Dunkins, one of 13 people executed in the US this year, who took 19 minutes to die when his execution by electric chair in Alabama on July 14 was nearly bungled.

But Amnesty, which obtains its information from activists, governments, diplomats and other interest groups, singled out Iran as having the worst record.

"At least 1 200 people have been executed in Iran this year, more than half for drug-related offences. Hundreds were executed for political offences. Amnesty has the names of 1 700 political prisoners reported executed in Iran since August last year," it said.

"Hundreds of people are reported to have been executed in Iraq but precise figures are difficult to obtain because of government secrecy." — UPI

176 us 20/9/89 (252)

7 death sentences commuted

PRETORIA. — Seven condemned prisoners had their death sentences commuted to imprisonment by President-elect FW de Klerk just hours before his inaugural day, Lawyers for Human Rights said today.

The organisation said it saw the decision as a positive reform move.

“However, there are still many people on Death Row whose fate is still undecided. For these we reiterate our call for a moratorium to review this barbarous form of punishment,” a spokesman said. — Sapa.

'Positive' reform seen in reprieve for seven

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TUKS
21/9/89

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PRETORIA — Seven condemned prisoners — one of whom necklaced a policeman — had their death sentences commuted to imprisonment by the State President-elect, Mr F W de Klerk just hours before his inauguration, Lawyers for Human Rights (LHR), said here yesterday

Among those reprieved was Johannes Moseki, a Tembisa township "Comrade" who was sentenced to death in the Rand Supreme Court in 1987 for the necklace murder of a police constable in 1986

Moseki's sentence has now been commuted to 20 years' jail

LHR lauded the decision to commute the death sentences, and described it as a positive reform move in the capital-punishment debate

"However, there are still many people on death row whose fate is still undecided. For these, we reiterate our call for a moratorium to review this barbarous form of punishment," LHR said

The other six reprieved prisoners are Mogapi Mohapi, Nicolas Booyesen, Dimitrios Skoularikes, Fredrich Brenner, Khethowake M Ngubane and Gabhu P Sigubudu — Sapa

Judgment reserved in Cosatu action

21/9/89

Stew

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By Cathy Stagg

Judgment has been reserved in the case brought by the Congress of South African Trade Unions and its general secretary, Mr Jay Naidoo, against the Minister of Law and Order and a Johannesburg magistrate.

The application was heard by Mr Justice Roux in the Rand Supreme Court yesterday

A photographic survey

Mr Wim Trengove, SC, submitted that search warrants, used by the police when they searched Mr Naidoo's home and Cosatu's offices on August 31, were invalid and everything done as a result of them was therefore unlawful

Even if the warrants were valid, the police were not entitled to use the occasion to make a video and photographic survey of the inside and outside of Mr

Naidoo's home

Mr Hans Bornman, who appeared for the Minister, submitted the warrants were valid. But even if there was something technically wrong with them, the police were entitled to act without a warrant in terms of the emergency regulations

In an affidavit Mr Naidoo said at about 7 am on August 31, about 10 policemen under the command of Captain C A Zeelie of the Security Branch arrived at his home in Bellevue East, Johannesburg

His attorney, Mr Peter Harris, arrived about 45 minutes later and told Captain Zeelie the search warrant was invalid but the policeman insisted on proceeding with the search

Mr Naidoo said he was particularly concerned about the video recordings and photographs taken during the search because there had been attacks on persons or property belong-

ing to organisations opposed to government policies.

"For instance in 1987 Cosatu's premises in Johannesburg were badly damaged by a powerful explosion. The person or persons responsible for this act have not been found," he said

Mr Naidoo said if the widely held suspicion that elements of the police may be involved in attacks was true, the videos could be seen by such persons and may be used to plan an attack on him or his home

He did not know what the police had done with the video recordings and photographs and was afraid they may be copied and fall into wrong hands

The search at Cosatu's offices lasted from about 11 am until 4 30 pm. He said trade unions which were Cosatu affiliates had about one million members and the articles which were removed were needed for the day to day running of Cosatu.

FW commutes death sentences

Seven Death Row prisoners, one a woman, had their death sentences commuted to imprisonment by the State President, Mr F W de Klerk, hours before his inauguration. Lawyers for Human Rights (LHR) said in Pretoria yesterday

The Department of Justice confirmed the news It could not be determined whether Mr de Klerk had commuted the sentences to mark his inauguration

LHR said the decision was a

positive reform move away from capital punishment

The seven are, M Mohapi, N Booyesen, D Skoularikes, F Brenner, K M Ngubane, G P Sigubudu and J Moseki

The sentence of the woman, Mohapi, was commuted to 15 years' jail, as was the sentence of Sigubudu Booyesen, Ngubane and Moseki will serve 20 years and the other men 25 years

Booyesen is coloured, Skoularikes and Brenner are white and the others black

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CITY LATE

139 due to appear today

252 Star 25/9/89

By Norman Chandler, Pretoria Bureau

A total of 139 people are to appear in the Pretoria Magistrate's Court today in the wake of Saturday's violence at Church Square, the Union Buildings and in Church and Bloed streets.

They include members of the Women Against Repression coalition of 29 groups — organisers of a march on the Union Buildings which was banned — along with journalists, photographers, trade unionists, activists and members of the public.

All those arrested were released on their own recognizances on Saturday after their particulars were taken.

The incidents arose during a protest rally by the Afrikaner Weerstandsbeweging (AWB), the Afrikaner Volkswag, the Boerestaat Party and the Vereniging van Oranjewerkers.

Speakers who took the rostrum at 9.45 am told "people who were not the Boerevolk" to leave the square.

AWB khaki-clad members hustled blacks off the grass verges, saying that the organisation had "hired the whole of Church Square". There was also swearing at the black spectators.

Whites who remonstrated with the right-wingers were told to mind their own business and white men were then seen to physically attack some blacks.

As Mr Eugene TerreBlanche, the leader of the AWB, was addressing the rally of about 200 supporters and nearly 1 000 spectators, police reinforcements were called for as fighting spilled down Church Street.

At 11 am police instructed the AWB to stop the rally.

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September 25 1989

'Carletonville shoppers back in town' Court ruling ends consumer boycott

Star 25/9/89

By Kaizer Nyatumba

The Carletonville consumer boycott triggered by the Conservative Party-controlled town council's re-introduction of petty apartheid early this year is now over, according to Carletonville Chamber of Commerce president Mrs Annetjie Claasen.

Mrs Claasen said the Pretoria Supreme Court's overruling of the town council's policies about a month ago made black people return to the town in droves to shop there again.

"The people are back in town. They feel that we succeeded in showing that the council's insulting policies were the cause of the boycott," she said.

She said although the boycott was not formally called off by its organisers in the labour movement, blacks returned to the town when the "whites only" signs were pulled down by court order.

"There was a big change in town after those offensive signs were removed. Businessmen have

gladly welcomed their customers back and some of them have even taken back the staff they laid off during the boycott," she said.

Mrs Claasen conceded that some people's buying habits had changed and some of them might never do their shopping in the town again.

Returned to town

A spokesman for the organisers confirmed that the boycott was never formally called off. A number of people had returned to town, the spokesman said.

The spokesman said it was felt the situation would be reviewed during the present two-week period of national consumer boycott, which started on Friday and will go on until October 6, in protest against the Labour Relations Act.

The Carletonville boycott organisers, the spokesman said, did not view as a victory the Pretoria Supreme Court's ruling, but considered it "a step forward".

September 25 1989

'Carletonville shoppers back in town'

Court ruling ends consumer boycott

Star 25/9/89

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AN OLD friend wandered into my office last week clutching a batch of secret Broederbond documents dealing with impending constitutional changes and with proposals for a bill of rights.

Among them is one which suggests that when President de Klerk decided to order his "expert study" of possible constitutional models for South Africa, he already knew very well what answers he wanted.

As it happens, I am something of an amateur authority on Broederbond papers, having worked closely with Ivor Wilkins and Hans Strydom on the massive leak of documents which led to the publication of their bestselling book, *The Super-Afrikaners*. I still have a box of fading membership lists under the bed. The Wilkins-Strydom papers, woefully ignored by academic writers and historians (presumably because they were first published in the successful Sunday Times), gave advance notice of the constitutional and political changes that were to follow in the Eighties.

The tricameral system, for example, was essentially a Broederbond idea, thrashed out during the chairmanships of Wimpie de Klerk (the man who gave such a celebrated outline of policy to the DP founding congress), and Gerrit Viljoen, who now presides over constitutional reform.

The latest documents — I have no doubt they are genuine — show that the Broederbond has conducted a similar pathfinding operation for the planned constitutional changes of the Nineties.

My friend is incensed because he believes that the Broederbonders who have assumed prominence in the DP — co-leader Wynand Malan, and his economics adviser Sampie Terreblanche — must have known what the Broederbonders of the National Party were planning before the election.

LAW Commission encounters a rival

252

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Set of human rights

KEN OWEN

He says the documents make nonsense of their claims shortly before the election that the Broederbond was — wait for it! — nothing but a cultural organisation.

In fact, the documents show that as late as last June the Broederbond was most certainly a political planning organisation, deeply immersed in the problems of thrashing out a bill of rights and a new constitution.

An early version of the constitutional guidelines in my collection struggles with unfamiliar concepts of freedom, using rather quaint terminology to demand protection for at least the following rights: freedom of religion and worship, freedom of speech, freedom of privacy (sic), freedom of association, freedom of political participation, freedom to form political parties, freedom of movement, free access to the courts (*rye toegang tot regbank*), freedom of language and cultural behaviour, including the right to mother-tongue education, and freedom of property ownership.

A later version, distributed to Broederbonders less than three months before the election and leaked at the time by the right wing, follows the

more sophisticated proposals for a bill of rights which had in the meantime been published by the Law Commission.

Personally, I am happy to leave it to Broederbonders in the DP to reconcile, as best they can, their support for one political party while bound by solemn oaths to a secret organisation which pursues different aims.

What interests me is how the Broederbond ideas fit — or don't fit — the thinking displayed in the Law Commission's list of basic rights, in particular "the right of every person or group to disassociate" from other groups or individuals.

While the Law Commission recognises the right to "disassociate", and backs it up with the right to privacy, protection against arbitrary arrest or invasion of one's property, and so forth, it does add an essential qualification:

"Provided that if such disassociation constitutes discrimination on the ground of race, colour, religion, language or culture, no public or

state funds shall be granted directly or indirectly to promote the interests of the person who or group which so discriminates."

In other words, you can have your own school provided you pay for it. Perhaps you can even have your own, exclusive town, provided you don't collect any rates or taxes. It's an interesting idea.

The Broederbond plan gives the matter quite a different twist (which may explain why President de Klerk shows such an alarming reluctance to endorse the work of the Law Commission, and why he wants more studies done).

I am reluctant to cite clause numbers from the documents because the Broederbond uses numbering codes to trace leaks, and I have been caught out before, but I translate:

"The association of individuals within the groups for which constitutional provision is made must be voluntary. The right of individuals to associate within a group context (my italics) is therefore recognised and protected, just like the rights of individuals who do not wish to associate within particular groups.

"The right of a group to determine

whether an individual is a member must also be taken into account. It is important for the Afrikaner that he, alone or in combination with other groups with whom he wishes to associate, is entitled to protection."

The Broederbond sets the goal of establishing a unique constitutional model which will provide for the creation of units (*deeleenhede*), which may be either groups or geographical areas. Every individual will, besides enjoying constitutional protection of his own rights, have the right to participate effectively, but within the context of his unit, in all government decisions that affect him.

This constitutional model incorporates certain assumptions firstly, each unit will have maximum recognition and autonomy; matters of common interest will be decided on the basis of consensus.

Secondly, the division between authority over the autonomous interests of the unit, and authority over common interests must be firmly entrenched.

Thirdly, where conflict arises between the unit and the common interest, the issue must be decided by a constitutional court (or similar body).

Fourthly, each unit will be entitled to decide for itself the character and nature of its own internal government institutions.

Fifthly, group participation in both legislative and executive functions of the the central (common affairs) government must be protected. There must be provision for consensus in common affairs, and autonomy in the "own affairs" of each unit.

That, in short, is the hidden agenda. It will be interesting in the coming months to see which school of thought prevails the Law Commission's universality of rights, or the Broederbond's sectional obsessions. The decision lies with Broederbonders De Klerk, Viljoen, and the rest of the Cabinet.

LETTERS

Lawyer's

plea fails

Comet 25/9/89
(252) ~~252~~

THE appeal of Mr Donald Kgalake Nkadimeng, of Pietersburg, against the striking of his name from the Roll of Attorneys was dismissed, with costs, by the Appeal Court in Bloemfontein last week.

His name was struck from the roll, by the Transvaal Supreme Court on June 4 1987 in an application by the Law Society of the Transvaal.

Mr Justice F H Grosskopf said that Nkadimeng did not succeed in showing that the Transvaal court misdirected itself in any respect when it decided to strike his name off the roll.

Ellis Park

By Celeste Louw

Both the men who fired shots from the balcony of a Hillbrow flat told a Johannesburg Regional Court magistrate they had fired into the air and thought it safe to do so. One of the bullets hit a rugby spectator.

Two British citizens, Mr Norman Seville (43) of Madison Square, Kapteijn Street and Mr Frank Daniels (41) of Winton Joy Hotel, Kapteijn Street yesterday pleaded not guilty to a charge of attempted murder after Mr Johan du Plessis was struck by a bullet on April 18 this year while watching a rugby match at Ellis Park stadium.

Both men have pleaded guilty to a charge of

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Editor's trial is postponed

CAPE TOWN — The trial of the former editor of South newspaper, who allegedly contravened emergency regulations, has been postponed in the Cape Town Magistrate's Court to October 11 pending the Attorney-General's decision.

Mr Rashid Ahmed Seria (38) of Surrey Estate has not been asked to plead to charges of contravening emergency regulations on May 11 1988 by publishing an article entitled "It's 1985 in the schools again", with news comment on a school boycott. — Own Correspondent.

26/9/88

252

FW reprieves four death row prisoners

Pretoria Correspondent

25.2

The State President, Mr F W de Klerk, has reprieved another four death row prisoners, bringing the total of condemned prisoners he has reprieved since his election to 11.

The four men who have been reprieved are Jabulani Zondi (25), Mhlawubi Desemele (24), Msokoli Willie (23) and Isaac Mggqatsa (25)

Four others have been given notices of execution. They are Alfred Ndlela (24), Naftan Mchunu (25), Mangena Boesman (36) and Jacobus Freeman (30). Their executions are scheduled for Friday

Mggqatsa was sentenced to death on November 22 1988 in Cape Town for the murder of a 37-year-old man and an 18-year-old woman

Zondi, a former policeman, was sentenced to death in Maritzburg for the murder of Mrs Mina Ngcobo.

Ndlela, also a former constable, and Mchunu were sentenced with Zondi for the same murder. They are to be hanged on Friday.

Willie and Desemele, who have both been reprieved, were sentenced to death in Grahamstown on July 29 1988, with Boesman, for murdering Mrs Melina Fass Boesman is to hang

Lawyers for Human Rights said yesterday it would try to save those condemned to hang this week

Special 'appeal' for Delmas 11

BLOEMFONTEIN — The Appeal Court in Bloemfontein has granted an application by 11 men convicted in the Delmas terrorism trial for a special entry (as amended) on their trial record to be heard as a preliminary appeal, separate from the main appeal.

The special entry concerns whether, in connection with or during the proceedings, there were irregular and/or illegal departures from and infringements of the formalities, rules and principles of procedure which the law requires to be observed.

When the application was argued before the court on August 24, it was submitted that the irregularities were, "per se", irregularities that would vitiate the proceedings of the trial in which Gcnumuzi Petrus Malindi and 10 others were convicted by Mr Justice K van Dykhorst in November last year.

The trial, which stretched over 37 months, is believed to be the longest trial in South African legal history.

The basis of the argument for the special entries is that the trial court was not properly constituted after the trial judge ruled that one assessor, Dr W A Joubert, had to recuse himself. The trial had then proceeded before the judge and remaining assessor.

A basis for the special entry to be argued as a preliminary appeal is the expense and time that would be involved to prepare a full record of the trial, which will be needed if the main appeal has to be heard.

However, if the Appeal Court

should find that the trial was irregular, the convictions and sentences will have to be set aside and there will be no need for an appeal against them.

The estimated cost to prepare the trial record is between R388 000 and R480 000.

Mr Justice Nicholas (acting judge of appeal), with the concurrence of the Chief Justice Mr Justice Corbett and Mr Justice Botha, said that, in his opinion, this case was of the exceptional kind which justified an order for the appeal to be heard in two stages.

"For the reasons advanced by the appellants, it falls into a very special category. The proposed course would be convenient to all parties and the court, and it would not result in disadvantage to anyone," said the judge.

He added that a consideration not so far mentioned in his judgment was that some of the appellants were serving sentences of imprisonment. If their convictions were to be set aside, that should be done at the earliest stage possible.

Mr Justice Nicholas said the first three sub-clauses of the special entry, at least, raised points of substances which, if decided in favour of the appellants, would probably be decisive of the appeal. The arguments advanced in support of them were cogent.

He said the argument for the fourth sub-clause (which dealt with the trial judge's ruling that certain parts of reports by Dr Joubert were inadmissible) was not as strong. — Sapa

FW reprieves Death Row 4

STATE President F W de Klerk has reprieved another four Death Row prisoners.

Since his election as State President, De Klerk has reprieved 11 condemned prisoners

Last week De Klerk granted clemency to seven Death Row prisoners.

Notices

The four men who have been reprieved are Jabulani Zondi (25), Mhlawubi Desemele (24), Msokoli Willie (23) and Isaac Mqgatsa (25)

Meanwhile four men - Alfred Ndlela (24), Naftan Mchunu (25), Mangena Jeffrey Boesman (36) and Jacobus Freeman (30) -

SOWETAN Correspondent

have been given notices of execution.

Their executions are scheduled for Friday.

Mqgatsa was sentenced to death on November 22, 1988, in Cape Town for the murder of a 37-year-old man and an 18-year-old woman

Zondi, a former police constable, was sentenced to death in Maritzburg along with Ndlela, also a former police constable, and Mchuna for the murder of 35-year-old Mrs Mina Ngcobo on April 7 1987

Willie and Desemele were sentenced to death in Grahamstown on July 29 1988, along with Boesman for murdering a 51-year-old school-teacher Mrs Melina Fass,

who allegedly broke a consumer boycott

According to a statement issued by the Lawyers for Human Rights in Pretoria yesterday, the organisation has contacted some of the attorneys who represented those prisoners due to be executed

Moratorium

"We are in the process of investigating each case with a view to seeing whether anything can be done to save the lives of these persons," the statement said

The organisation further reiterated its call for the Government to grant a moratorium on all executions and to appoint a commission to review the issue of capital punishment in South Africa

"Executing people is definitely not a demonstration of sincerity and honesty to any government professing to be committed to reform," Lawyers for Human Rights said

This year 37 people have been executed while 47 condemned prisoners have been reprieved

Biday 26/9/89 (252) (327) (208)

2 held after court singing

PRETORIA — Two people who were among 139 scheduled to appear in the Pretoria Magistrate's Court yesterday in connection with Saturday's planned women's protest march were arrested again yesterday after a crowd began dancing and singing in the court complex.

And near the court, Women Against Repression (WAR) vowed to mount another march, after police stopped their attempt to get to the Union Buildings on Saturday.

At a news conference in the Martyrs' Chapel at St Albans Cathedral, which was sealed off with coils of barbed wire by police on Saturday, WAR members said they would again not ask for permission for the march because peaceful protest was "a democratic right".

A total of 113 accused were warned to re-appear on November 30.

Provisional warrants for arrest were issued against 25 who allegedly failed to appear.

The National Medical and Dental Association (Namda) yesterday condemned the arrest of doctors and nurses who were providing medical care to the injured after the protests in Pretoria at the weekend.

Six doctors and two nurses were picked up by the police while they applied first aid to victims of police action.

"One doctor was arrested while actually providing first aid to people injured when the police baton-charged protesters. While inside the cells, our members treated 15 people with a range of injuries consistent with baton assaults."

Namda said that while in the cells, the doctors became aware that no medical treatment was available to injured detainees.

Police said yesterday they had defused an potentially explosive situation by acting against the women protesters, who had defied a Supreme Court order not to march on the Union Buildings.

The police statement said media reports of the events on Saturday were conflicting and in some cases, negative.

The statement said although there were always people who were of the opinion that the police either did too much or too little, "the facts prove that there was good planning and discretion on the part of the police to defuse an explosive situation" — Sapa

REJECT INQUEST

Released from
detention

By Stan Hlophe
Star 27/9/87
Restricted United Democratic Front leader Mr Trevor Manuel was released from detention in the Free State yesterday and is expected home tonight.

Mr Manuel, the secretary of the UDF's Western Cape region, went on a hunger strike after he was detained without charge under the emergency regulations last month, his attorney, Mr Essa Moosa, said.

HEALTH

Mr Moosa said there was concern over Mr Manuel's health, particularly as he had taken part in previous hunger strikes

Mr Manuel was detained on August 8 after savouring freedom for less than 80 days.

He was freed on July 7 after spending almost two years as an emergency detainee.

record - defence

Star 27/9/87 Own Correspondent 252

CAPE TOWN - An objection to the admission of an inquest record has been lodged by defence counsel for the 13 security policemen in the "Trojan Horse" trial.

The defence counsel for the 13 policemen accused in a private prosecution of the murder of a 16-year-old boy in October 1985 have lodged an objection against the admission of an inquest record because of certain irregularities pertaining to the proceedings

An inquest was held after three people died when police opened fire on a group who allegedly stoned a SATS truck in which the men were hidden

They also object to the admission of the testimony of two of the accused in previous criminal proceedings relating to the case.

Advocate F Hattingh, for the defence, argued that the inquest magistrate failed to adequately warn the men against incriminating themselves

REPRESENTATION ADEQUATE

He asked for this evidence as well as the rest of the inquest records to be disregarded

Arguing on behalf of the prosecution, Mr Jules Browde SC said the witnesses, now the accused, had adequate representation at the time of the inquest.

He said Mr Anton Veldhuizen, who had appeared on behalf of the Minister of Law and Order at that time, had therefore also appeared on behalf of the policemen because they were part of his department

Mr Veldhuizen, now on the defence team, had also objected on several occasions on behalf of one of the witnesses against questions put to him. On one occasion this witness had refused to answer a question, Mr Browde said. When asked why, Mr Veldhuizen had stepped in and given an explanation.

The case continues

Star 27/9/89

Court ruling strengthens unions' hand

252 By Drew Forrest

In a watershed ruling, the Appellate Division yesterday upheld workers' right to impose a boycott on overtime where there is no contractual duty to perform it

The judgment, on an appeal by SA Breweries, will greatly strengthen the hand of the trade unions in their current national overtime ban. It has prompted SAB to call for changes in the Labour Relations Act "in the interests of labour peace".

Binding on all ordinary courts, it is likely to influence the Industrial Court in deciding whether to grant employers interdicts against the ban, lawyers said.

The appeal was against a Rand Supreme Court judgment last year. This had rejected an SAB application for an overtime ban by Food and Allied Workers Union members to be declared an unlawful strike.

Upholding that decision, the Appellate Division ruled that an overtime ban was not a strike and that employers could protect themselves against such action only through contracts with employees.

Reacting to the ruling, SAB said it hoped employers would "not now be forced to make overtime contractually compulsory". It called for amendments to labour legislation to plug the "loophole" highlighted by the ruling.

Cosatu wins case

Sowetan 27/9/89

Mr Jay Naidoo and the Congress of South African Trade Unions yesterday won their urgent application against the Minister of Law and Order and a magistrate for the return of all goods seized during a Security Police raid on his home and the union's offices in August

Naidoo, general secretary of Cosatu, had his home searched and filmed on August 31

Seizures

Cosatu's offices were searched later that day and various items seized from the two addresses

Handing down judgment in the Rand Supreme Court yesterday, Mr Justice Roux declared the two search warrants, issued in terms of a new section of the Criminal Procedure Act, were invalid and that everything done as a result of them was unlawful

Concerned

He ordered the Minister, through members of the South African Police, to return the items seized in terms of the warrants, plus any copies made of the documents

Naidoo had expressed concern about video recordings and photographs taken during the search falling into the wrong hands

The judge interdicted the Minister and the police from showing these to anyone

Option

He gave the Minister the option of giving the originals and any negatives or prints to Naidoo or having them destroyed and swearing under oath that that had been done

The Minister was ordered to pay costs including the costs of the two counsel

After the judgment Naidoo said "We have been vindicated"

Govt 'asking courts to censor' 252

GOVERNMENT censors — police or the Home Affairs Department — are increasingly asking the courts to do the work of silencing government opposition, the Anti-Censorship Action Group (Acag) says in its August report

Acag says the number and gravity of censorship-related incidents in August is startling

"Most notable is the long and growing list of court actions intended to enforce censorship"

Already this year, Vryeweekblad and the Sunday Times have been found guilty of quoting listed people, says Acag. Four other journalists face similar charges

The report says that by the end of the year, Sowetan editor Aggrey Klaaste, New Nation acting editor Gabu Tugwana, Weekly Mail co-editor Anton Harber and reporter Thami Mkhwanazi could have suspended sentences hanging over their heads as fines are not an option

TANIA LEVY

According to the Director of Security Legislation's annual list, a total of 534 people could not be quoted in terms of the Internal Security Act in August this year. Acag says this is an increase of 70 people from the previous year. 307

"The length of the list and adding of names all the time makes this an extremely hazardous law for journalists, who have to look out for quotes from any of 534 listed people." *B/Dam 28/9/89* 252

Many of the new names are people convicted of political crimes in the past year, including the Delmas treason trialists.

According to the report, censorship action in August also focused on ex-detainees labouring under severe emergency restriction orders. A number of these detainees have been arrested and charged, after choosing to defy their restrictions.

Policemen should know their rights, court told

Own Correspondent

CAPE TOWN — Policemen should know not to incriminate themselves in evidence in court because of the nature of their work, the Cape Supreme Court was told yesterday.

This was said by Mr Jules Browde, SC, in reference to evidence given by policemen in an inquest which followed the "Trojan Horse" incident in 1985.

Mr Browde, for the prosecution, was addressing the court on the admissibility in the present trial of the inquest and trial records after the incident.

This followed an objection by the defence against the admission of the records because it believed the witnesses were not warned of their rights not to answer questions which could incriminate them.

AWARE (252)

Mr Browde argued that the men were, in fact, warned and that as they were represented by counsel, they were protected against incriminating themselves.

He also said that, being policemen, they should have been aware of their rights.

The inquest in question was held on the deaths of three youths in October 1985 when police hiding in crates on the back of a Sats truck opened fire on a group of people who allegedly stoned the truck.

The present trial is a private prosecution brought by the father of Shaun Magmoed, one of the three youths who died in the shooting.

Mr Browde asked that if the court found certain parts of the inquest records to be incriminating, it disregard only those sections and not entire testimonies.

Star 28/9/87

282

One time 28/1/89

WCC asks FW to stop 4 hangings

GENEVA — The World Council of Churches (WCC) yesterday asked South Africa's President, Mr F W de Klerk, to stop the execution of four prisoners due to be hanged tomorrow

"We plead with you to exercise your discretion and grant them clemency," the Geneva-based council said

It named the prisoners as Alfred Ndelela, 24, Naftan Mchunu, 25, Mangena Boesman, 36, and Jacobus Freeman, 30. All four have been convicted in separate cases on murder charges

● Their plea was echoed here at home by Mr Yakoob Makda (Solidarity, North-Western Transvaal), who said in the House of Delegates yesterday that there was "an imperative need to determine whether capital punishment is a justifiable retribution demanded by society"

The Black Sash also voiced its opposition to the hangings in a statement in Cape Town yesterday, saying the organisation had learned "with a shudder" of the proposed executions — Sapa-Reuter

Swords drawn over 'brown-coloured spirit'

1972, 28/9/8 Own Correspondent (252)

CAPE TOWN — The producers of Macleans Gold Label Whisky have conceded to an interdict against their advertising of the product in a way which suggests that it is pure Scotch whisky, legal counsel told the Cape Supreme Court yesterday.

However, the question of unfair trading by "passing off" the blended spirit as Scotch whisky, and of damages is still to be decided by the court.

In argument before judgment, Mr C Puckrin, SC, for Cape Wine and Distillers and the other defendants, said it was improper of the complainants, William Grant and Sons and Justerini and Brooks, to "drag up" the question of advertising to "colour their argument" after they had agreed to the interdict.

The issue was whether the label was misleading or not and whether this had resulted in damages.

'11 YEARS HAD ELAPSED'

The case was "truly remarkable", both on facts and argument, because some 11 years had elapsed before the applicants had taken legal action and this was "more than passing strange".

The Scotch Whisky Association, which is backing the complainants, wished "to exercise a monopoly on Scots-sounding names when used in relation to brown-coloured grain spirit," Mr Puckrin said.

He contended that three lay witnesses who testified to having been misled by the Macleans label had, in fact, been confused by the word whisky on the bottle as the word had become synonymous with Scotland.

"The confused, like the poor, will always be among us," Mr Puckrin told the court. He said it was not enough for the applicants to allege they had suffered damages and they had not proved this although they had had 11 years to do so.

Mr SA Cillier, SC, for the applicants, yesterday argued that everything about Macleans, from the name, colours on the label, crest, advertising and point-of-sale marketing emphasised the Scottish content to the exclusion of the South African component.

The hearing continues.

Star 28/9/89

Forensic tests throw police evidence awry

CAPE TOWN — A police ballistics expert yesterday placed doubt on the evidence of two policemen implicated in the "Guguletu Seven" inquest in Wynberg

Brigadier Albek van Schalkwyk told the court he had reason to believe that Warrant Officer H Barnard could have misjudged the distance at which he shot dead an alleged ANC terrorist in bushes near the N1 in Guguletu

According to W/O Barnard's statement he was about seven paces behind the deceased. "I would conclude that his own momentum must have carried him closer than he realised," he said.

Brig van Schalkwyk also said that although Constable T J Mbelo had testified that his arms had been parallel to the ground when he had fired several pistol shots into another alleged terrorist near the Guguletu intersection of NY11 and NY111, he could well have lowered his hands to fire the second

shot into the falling man.

Forensic evidence indicates that one of the shots that killed the man that Const Mbelo fired at travelled upwards through the man's body, thereby throwing into question the angle at which the shot was fired.

"He could have overcompensated in trying to return his hands to a parallel position after recoiling from the first shot," Brig van Schalkwyk said

The inquest into the deaths of seven alleged ANC guerillas in Guguletu on March 3 1986 was re-opened this month following the emergence of new evidence during and after the Police Act trial, and acquittal, of *Cape Times* journalist Mr Tony Weaver.

Mr Weaver was charged with publishing untrue matter about the police by saying the men had been shot in cold blood and that the police had then "planted" weapons on the deceased

The hearing continues. — Sapa.

29/9/89 (252)

Jailed killer of boy can appeal

BLOEMFONTEIN. — Shane John Mitchell of Florida Park has received leave from the Appeal Court here to appeal against a 10-year sentence for the murder of an eight-year-old black boy.

The child, Ronnie Pitso, was killed in Honeydew on October 12 1987, when he was hit by a paving stone thrown from a moving vehicle.

Mitchell and Timothy Lee Bedingfield, also of Florida Park, were both sentenced to 10 years jail.

Earlier this month, Bedingfield was granted leave to appeal against his conviction and sentence — Sapa

De Klerk urged to halt executions

By EDWARD MOLOINYANE
Staff Reporter

ANOTHER call had been made to President De Klerk to halt all judicial executions until an independent commission had been appointed and completed its work, speakers said last night at an inter-faith service to pray for clemency for people on Death Row.

The service was attended by about 200 people in the Woodstock Town Hall.

"Promotes killing"

Professor Dennis Davis of the law faculty at the University of Cape Town, who is national director for the Abolition of the Death Penalty, said if Mr De Klerk was sincere "in his recent noises" about a just South Africa, he should immediately suspend the executions.

"Recent findings have shown that

no evidence supports the claim that the death penalty is a deterrent to crime. There is, however, evidence suggesting just the opposite — that the death penalty promotes killing," he said.

He said by executing more than 100 every year, the country had not reduced the crime rate and was executing people not only for murder but for crimes such as treason, child stealing, abduction, rape, robbery and crimes in terms of the Internal Security Act.

"The very administration of justice is called in question, only adding to the image of South Africa as a brutal society along with Iran, China and Nigeria," he added.

Recalling the reprieve of the Sharpville Six by former President Botha, he said "The arbitrary nature of the reprieve is itself a powerful argument for the abolition of the entire system of capital punishment."

Group Areas cases postponed

STAR 29/1/89
By Celeste Louw

252
holding near Regents Park

Two separate cases of people who have allegedly contravened the Group Areas Act by allowing blacks to live in "white" areas were postponed yesterday in the Johannesburg Magistrate's Court to next year.

The case of Mr Henry Jooste (38) of Klipriviersberg was postponed to January 25.

According to the charge sheet Mr Jooste had allowed "disqualified" people to live on a small-

The case of Mr Mark Steel of Mitchell Street, Berea, was postponed to February 22. He allegedly allowed coloured and Indian people to live on premises in Turffontein West.

The magistrate, Mr S van Rensburg, said that cases involving the contravention of the Group Areas Act would be postponed pending the judgment of a similar case in the Rand Supreme Court.

11th-hour stay of execution

STAR 29/9/89
By Jovial Rantao and
Pretoria Correspondent

252

A death row prisoner who was scheduled to be hanged today was granted a stay of execution after a Pretoria Supreme Court order.

Mphikwa Alfred Ndlela was granted the stay yesterday by Mr Justice de Klerk, who ordered the Minister of Justice to stay the execution, pending a petition to be filed with the Department of Justice and to the Chief Clerk of the Attorney-General.

Ndlela was told to file the petition before November 3.

Another representation by the LHR to Mr Justice de Klerk for a stay of execution failed later yesterday. Jacobus Freeman (31) is therefore scheduled to hang with two other prisoners, Naftan Mchunu (25) and Jeffrey Boesman (36), this morning.

Stay of execution for Freeman was refused after Counsel for Freeman, Mr SM Katzew, asked the court to halt the execution pending the outcome of a petition to the State President.

Alternately, the court was asked to halt the execution for the referral of the matter back to the trial court.

Freeman told Mr Justice de Klerk in an affidavit that he would not have participated in the murder and robbery of, which he was found guilty, if he had not been under the influence of alcohol.

The stay for Ndlela was granted after a last-minute court representation by Lawyers for Human Rights to save the lives of Ndlela and the other condemned men.

LHR Pretoria regional director, Mr Peter Motlhe, said after all legal avenues had been exhausted representations were made to State President Mr F W de Klerk for clemency.

Earlier this week Mr de Klerk reprieved another four death row prisoners.

Speak
Out!



This week's Eastern Transvaal river disaster, which killed thousands of fish and other aquatic life, shocked the nation. All too often big industries are allowed to severely damage the environment without any form of punishment. Is it not time that South Africa had its own environmental party along the lines of the Greens Party in Britain and Europe? If so, would you support such a party? Give us your views in **Speak Out!** (011) 834-7747 or 633-2560 this evening between 5.30 and 7 pm. Readers' opinions will appear tomorrow in the Saturday Star.

2 executed as (252) court bid fails 29/9/89

By Kaizer Nyatumba STAR

Two men, Mangena Jeffrey Boesman (30) and Jacobus Freeman (36), were executed in Pretoria this morning, bringing to 39 the number executed in South Africa since January.

A spokesman for Lawyers for Human Rights (LHR) said he had received confirmation of the executions.

Last night Mr Justice de Klerk dismissed an urgent application to the Pretoria Supreme Court for a stay of execution for one of them.

Yesterday the Pretoria Supreme Court granted Death Row prisoners Mphikwa Alfred Ndlela and Naftan Mchunu (25), a stay of execution.

A total of 47 death row prisoners have been reprieved so far this year.

Two hanged after clemency pleas fail

The Argus Correspondent

JOHANNESBURG. — Mangena Jeffrey Boesman, 30, and Jacobus Freeman, 36, were executed in Pretoria today, bringing to 39 the number of people executed in South Africa this year.

A spokesman for Lawyers for Human Rights said the organisation had received confirmation that the men were executed as scheduled after an urgent application to the Pretoria Supreme Court for a stay of execution to be granted to one of them was dismissed by Mr Justice de Klerk last night.

An LHR spokesman said yesterday that representations were made to President De Klerk and the Department of Justice for clemency to be granted to Boesman and Freeman, after all legal avenues had been exhausted.

SUCCESSFUL PLEA

The executions came a day after the Pretoria Supreme Court granted two other Death Row prisoners, Mphikwa Alfred Ndlela and co-accused Naf-tan Mchunu, a stay of execution.

Mr Justice de Klerk ordered the Minister of Justice, Mr Kobie Coetsee, to stay the executions pending a petition to be filed before November 31 with the Department of Justice and the chief clerk of the Attorney-General.

9
y, September 29, 1989

Death row stay raises hope

JOHANNESBURG. — A last-minute stay of execution has been granted to two of four prisoners due to hang at dawn today, human-rights lawyers said yesterday.

The independent Lawyers for Human Rights group said the Supreme Court had granted a temporary reprieve to two men, Alfred Ndela, 24, and Naftan Mchunu, 25, to allow them time to appeal for clemency to President F W de Klerk

The group's spokesman Mr Selewe Mothle said "These would be the first executions under Mr De Klerk's govern-

ment. It would do him a lot of good if he were to grant a reprieve to all of them"

The lawyers hoped that a third prisoner, Jacobus Freeman, 30, might also win a stay of execution, but it was unlikely that the fourth condemned man, Mangena Boesman, 36, would escape the gallows as all legal channels for him had been exhausted

Mr De Klerk granted clemency to 11 death row prisoners during his short term as acting State President, raising expectations that he might limit the use of capital punishment.

Between 1985 and 1988 South Africa had

the third-highest execution rate in the world after Iran and Iraq, the London-based human-rights group Amnesty International reported.

Last month a random survey among all race groups by the Human Sciences Research Council found that most South Africans support the death penalty.

Yesterday the anti-hanging lobby won surprise backing from right-wing extremist Mr Robert van Tonder, who said too many people were being executed for politically motivated crimes and the penalty did not deter freedom fighters from the left or right. — Sapa-Reuter



Pretoria AWB meet... rightwing rage lashing out

impression that government intends to adhere to the spirit of the law and not make use of emergency regulations. This is in keeping with the spirit of the (State President's) speech."

Mothle now hopes the action will set an official trend and give civil rights lawyers the opportunity to respond to intended government action. However, he says, courts should be consistent, a reference to the magisterial permission granted at the same time to white rightwingers to hold their gathering at which blacks were abused.

Wits Applied Legal Studies director John Dugard says the switch in tactics was smart. "Government realises the courts have more credibility than they have. Also, the Left has relied heavily on interdicts against the executive in the past so this was a way of playing the Left at its own game. I have no doubt that there was not much sympathy for the women for violating a court order."

Meanwhile black Boksburg residents — organised in the Save Boksburg Committee (SBC) — narrowly persuaded a local magistrate to allow their march on the council at the weekend. Another court action, similar to that which produced the Supreme Court ruling prohibiting petty apartheid in Carletonville, is also under way.

It is being brought by Butch Jantjes, chairman of the neighbouring coloured area of Reiger Park. Lawyers for Jantjes have served a letter of demand on the council stating their intention to seek Supreme Court intervention. Proceedings will probably start early next year.

Town clerk Johan Coetzee says the council will decide on Thursday whether or not to contest the case. The *FM* learns, however, the council believes Boksburg's case is different to Carletonville's because Boksburg "has no whites-only signposts" and only Boksburg Lake was closed to blacks after the council took over. All the other parks are apparently

open, a source says

It now remains to be seen how action affects a consumer boycott the SBC started in December. Court intervention may end the boycott

29/9/89.

PROTEST MARCHES — 1

252

Civil behaviour

Final

Human rights lawyers this week found themselves approving of Pretoria for approaching the Supreme Court for an interdict prohibiting a women's massive march on the Union Buildings. This was a peculiar situation for the lawyers. They are the ones who normally approach the court for relief from government agencies.

Friday's interdict, they point out, showed a will on the part of government to return to accepted legal channels and ought to be welcomed. By implication there was criticism of the march organisers who seemed to believe it suited their politics to refuse to defend the action and defy the court ruling.

Lawyers for Human Rights director Peter Mothle says the government move was "unprecedented and to be welcomed. It gives the

Watershed judgment on overtime

W/C. 1/16/45 30/9/87
JUDGMENT this week in the Appeal Court about overtime bans did two things it has cleared up the confusion around this question and highlighted problems of justice being done over long periods of time

The Appeal Court judgment related to a dispute between the Food and Allied Workers' Union (Fawu) and South African Breweries in 1987, during which the union imposed an overtime ban

Breweries took the matter to court, seeking a ruling against the union and the ban. This failed and the matter was appealed

Before this there had been several judgments on overtime bans in different divisions of the Supreme Court which gave rise to confusion over the issue

The judgment handed down this week upheld the right of employees not to work overtime

where they were not contractually obliged to do so

The court held that "under the common law no employee can be directly or indirectly compelled to perform work he is not contractually obliged to do, no matter whether in refusing to do such work he acts individually or collectively with others, and irrespective of the reason or purpose for such refusal.

LABOUR AFFAIRS



DICK
USHER

Withhold labour

"The right of workers to withhold labour they are not contractually obliged to perform is an important weapon they possess in the bargaining process that underlies the theory of modern labour law"

Fawu welcomed the "watershed judgment"

It came at a time when the union movement has instituted a national overtime ban as part of its campaign against the Labour Relations Amendment Act and is likely to take the wind out of the sails of some employers who had gone to court seeking interdicts against employees upholding the ban

But the definitive ruling took two years to get and labour spokesmen point out that, where worker rights are concerned, such lengthy periods make many attempts to seek justice almost pointless

Practical terms

For instance, in Natal a dispute during 1985 between the National Union of Metalworkers (Numsa) and BTR-Sarmcol led to the dismissal of more than 900 workers.

The dispute then went through an application for a conciliation board, a board hearing, an Industrial Court hearing which started in November 1986 and ended in July 1987 with a decision handed down about September, a review by the Supreme Court in Pietermaritzburg which was followed by the company entering an appeal

A Numsa spokeswoman said this week that they did not expect the appeal to be heard until about May next year.

By which time it's difficult to see, in practical terms, how justice can be done to the workers, if the Appeal Court decides in their favour

Another objection

They would have been out of work for about five years and it can hardly be expected that the court could order their reinstatement where would that leave the employees the company has employed in the meantime?

Five years' back-pay is unlikely, so what would a ruling that their dismissals had been unfair mean to them?

Which question again points to another objection the unions have to the Amendment Act — it further complicates the procedures that have to be adhered to for legal industrial action and adds a further intermediate step in the search for justice.

PUBLIC SECTOR GOVT. JUSTICE

1989

OCTOBER — DECEMBER

Briefing

The handling of power, the apartheid system and secrecy in Government are among major factors pinpointed last week as possible causes of corruption and maladministration in South Africa

The growing spectre of corruption, especially in Government administration, came under the spotlight at a two-day conference attended by about 250 delegates at the University of Stellenbosch

The conference was told that certain forms of political corruption in South Africa were closely linked with the maintenance of the apartheid system and the situation needed urgent attention

Among those who took part in the discussions were leading academics, judges and top State officials

The conference was arranged by the university's Department of Public Administration and its Centre for Applied Ethics

Attention also focused on corruption and maladministration in the private sector.

Corruption growing in SA — professor

Delegates were given a detailed account of the manifestation of corruption and maladministration

Features of corruption were summed up as:

- A misuse of public trust in the public administration
- A misuse of authority and violation of public responsibility
- A sacrificing of public benefit for private gain, and
- An obstruction of law enforcement and of the execution of punishment to prevent it

Professor J S H Gildenhuys of Stellenbosch University's Department of Public Administration, said "The number of instances over the past decade or more is a cause of grave concern. The concern is that what has been exposed lately could only be the tip of the iceberg

Corruption, especially in Government administration, comes under the spotlight

FRANS ESTERHUYSE reports

"In spite of promises of so-called clean administration, maladministration and corruption kept on occurring, and some Ministers and senior public officials had to resign under a cloud of suspicion"

Professor Gildenhuys identified apartheid as a central factor behind some forms of political corruption

Apartheid and its inhuman consequences, he said, was gradually converting South Africa into "a cauldron of political instability, structural violence and conflict"

This inevitably culminated in civil disobedience, official violence against peaceful and non-peaceful demonstrators, and eventually in

detention without trial

Quoting from the findings of international experts on public service ethics and bureaucratic corruption, Professor Gildenhuys listed various forms of corruption, including:

- The rigging of bids on supply contracts
- The use by public officials of advance and confidential information to produce profits for themselves
- The use of public assets or service for private purposes
- "Stealing" from the Government by the delivery of low-quality materials, lower than specified in contracts.
- Cash "kick-backs" for public officials who co-operate in such forms of corruption

Forms of political corruption include election fraud, official violence, domestic spying, and foreign intervention by governments, in-

volying contraventions of international law and convention

Dr Erwin Schwella of Stellenbosch University's Department of Public Administration pointed out that corruption was difficult to prove, but said it appeared there had been an increase in corruption in recent times

The findings of several commissions of inquiry, resignations of people in high position and the extension of the powers of the Auditor-General and the Advocate-General gave some indication of the incidence of corruption

Professor David Welsh, of the Department of Political Studies at the University of Cap Town, said racial discrimination was a form of corruption

Professor Lourens du Plessis, professor of public law at the University of Stellenbosch said it had been shown repeatedly in history that certain defects in law went hand in hand with corruption

Law should neither be seen nor be used as a mechanism for social engineering, he said.

252

21/10/89

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Charges include fraud, defamation.

Full house expected as Rajbansi trial begins

252

Own Correspondent

DURBAN — There is expected to be standing room only in the Durban Regional Court today when Mr Amichand Rajbansi, the former chairman of the Ministers' Council in the House of Delegates, appears to face several criminal charges.

No extra seating will be provided during the 10-day trial, unlike the special arrangements made last year to accommodate the large number of people who

daily attended the James Commission hearings.

Mr Rajbansi, the leader of the National People's Party, was the main witness before the commission. His appearance in court this week follows certain allegations before the commission.

The politician is due to face two charges of fraud and charges of defamation, contravening the Commissions Act and contravening the Criminal Procedures Act.

Mr Rajbansi told The Star he did not know how his many friends and relatives, who were expected to attend, would be accommodated in court.

On the first count of fraud, the State alleges that in March 1980 and December 1982 Mr Rajbansi, with Mr Nizam Ebrahim Khan, made unlawful misrepresentations to the former Department of Community Development regarding a butchery in Chatsworth.

On the second count of fraud it is alleged that Mr Rajbansi, with Mr Paraw Seebran, a "displaced trader", made unlawful representations to the department regarding an application to run a butchery at the Montford Shopping Centre in Chatsworth.

Another charge is that Mr Rajbansi allegedly contravened the Commissions Act — read in conjunction with the Riotous Assemblies Act — in that he unlawfully and intentionally incited, instigated or procured Mr Govindasamy Pillay to give false evidence before the James Commission.

A further charge is that on June 25 1987 and August 25 1988 Mr Rajbansi made conflicting affidavits before commissioners of oaths.

Appeal granted in Mogopa eviction

The Mogopa tribe, ordered earlier to leave the farm Zwartland in the Western Transvaal, was yesterday granted permission by the Pretoria Supreme Court to appeal against the ruling.

The court ruled earlier that all members of the tribe who occupied the farm illegally should leave it and that all structures on it should be dismantled. The court had ruled in favour of an application by the Ministers of Agriculture and Water Affairs, and of Education and Development Aid, that members of the tribe

were occupying the farm illegally after it had been expropriated by the State.

Mr Justice W J Human found tribe members did not have the right to occupy the farm after the Government had expropriated the farm, bought by the tribe in 1916.

LEASED

252

Zwartland is at present being leased by the Department of Agriculture and Water Affairs to the Koster and Ventersdorp agricultural unions.

Mr J Browde, SC, for the tribe, said the Government refused to sell the farm to the tribe, regardless of what they were prepared to pay.

He argued the expropriation had been invalid because it had not been effected for public purposes, as required by the Expropriation Act of 1975, and that it had been effected in bad faith and for an ulterior purpose.

Mr Browde said no valid reasons for the expropriation were given, except for an affidavit by a Water Affairs official.

— Sapa.

Rajbansi pleads not guilty to various charges

DURBAN — The leader of the National Peoples Party, Mr Amichand Rajbansi, has pleaded not guilty in the Durban Regional Court to charges of fraud, defamation, contravening the Commissions Act and contravening the Criminal Procedures Act.

Appearing before Mr J J Augustyn, yesterday's hearing was largely legal argument regarding the admissibility of certain evidence.

It has been alleged that in March 1980 and December 1982 Mr Rajbansi and Mr Nizam Ebrahim Khan made unlawful misrepresentations to the former Department of Community Development regarding a butchery in Chatsworth

It is also alleged that Mr Rajbansi and Mr Paraw Seebran made unlawful representations to the same department regarding an application to run a butchery in Chatsworth (257) (10/89)

Mr Rajbansi is also alleged to have unlawfully instigated a Mr Pillay into giving false evidence in the James Commission.

Finally Mr Rajbansi is alleged to have made conflicting affidavits on June 25, 1987, and August 28 last year before a Commissioner of Oaths

In a summary of substantial facts read out to the court by Deputy Attorney General B Schonfeldt, it was alleged that during

1968 Mr Seebran had various business premises expropriated as a result of the Group Areas Act.

In May 1982 Mr Rajbansi opened a banking account and was the sole signatory for the Montford butchery.

Mr Seebran was initially under the impression he had a 51 percent share but later discovered he had only one share

Regarding the charge of defamation, Mr Rajbansi is alleged to have attempted to discredit Mr Baldeo Dookie as Minister of Local Government, Housing and Agriculture in the House of Delegates

The hearing continues. Sapa

ctals disbanded the notorious Kooxvoet police unit and returned them to commu-

five DTA supporters were attacked at a general store and bar — known as a cuca

rested another man, Mr Johan C questioning on the attacks

25 000 ^{CAM-3/10/87} march in ^{11/12} Umtata ^{25/2}

JOHANNESBURG — An estimated 25 000 people demanded clemency for two condemned ANC guerillas yesterday in the largest protest march ever held in Transkei

The marchers, most of them schoolchildren, paraded peacefully through the centre of Umtata. Some carried ANC flags and placards urging the release of the two guerillas

The protest came a day after Transkei's military leader, Major-General Bantu Holomisa, declared at a funeral service that he would consider holding a referendum to let homeland voters decide if they wanted to rejoin South Africa — Sapa-AP



FINAL REST ... Amid a blaze of colour, the remains of the late Paramount Chief Sabata Dalindyebo are interred at Bambane, Transkei, at the weekend.

Picture ERIC MILLER

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(yoffe) wreaks hav-

Heated exchanges at trial of police officers

Rockman charges political — accused

Own Correspondent

CAPE TOWN — Two riot policemen charged with assault after pre-election incidents in Mitchell's Plain believed charges against them were politically motivated by fellow policeman, Lieutenant Gregory Rockman, the Wynberg Regional Court was told yesterday

Cross-examining Lieutenant Rockman at the trial of Major Charles Roger Brazelle and Lieutenant David Johan Roos yesterday, Mr J Els, SC, for the defence, said Lieutenant Rockman had laid charges against the two policemen because

of political bias.

Major Brazelle and Lieutenant Roos have pleaded not guilty to a charge of assault.

The State alleges that on September 5 they gave orders to members of their riot unit to use batons and quirts in an unlawful manner to disperse an illegal gathering in the Mitchell's Plain town centre.

The policemen, who have been charged by the State following an investigation by the Attorney-General of the Cape, Mr Niel Rossouw, are being defended by Pretoria advocate Mr Els, instructed by the State Attorney.

In response to a question by Mr Els, Lieutenant Rockman told the court he was not involved in politics.

After an objection by the State, Mr Els was prevented by the court from asking questions about a statement Lieutenant Rockman had made about the release of Mr Nelson Mandela, or about a visit to Dr Allan Boesak.

At several points during the cross-examination, the exchange between Mr Els and Lieutenant Rockman became heated. At one point, Mr Els told the policeman he did not like his attitude.

Placards

Mr Gareth Paul Mars (33), a South African Transport Services worker who lives near the centre, told the court he had gone there to shop.

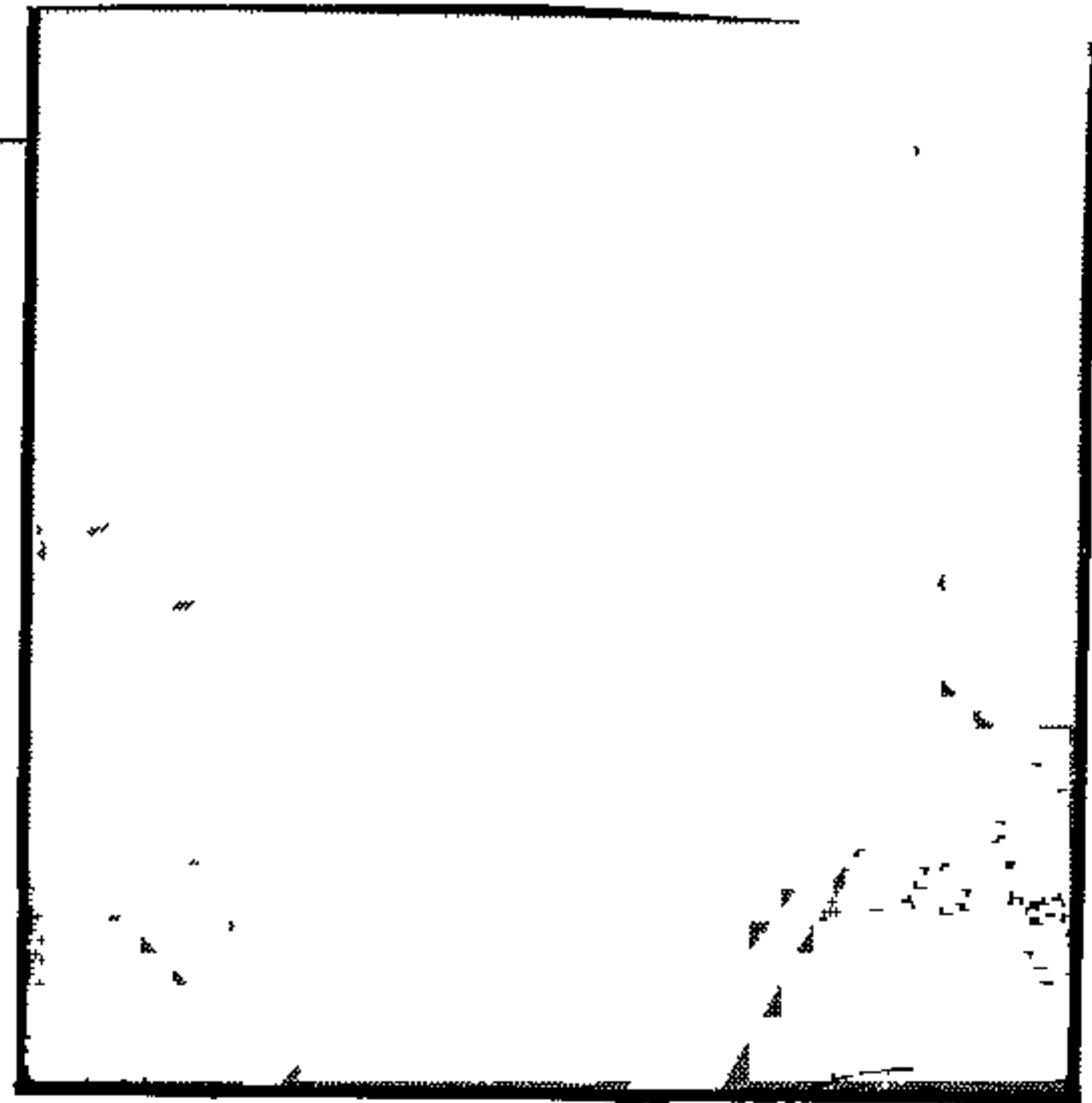
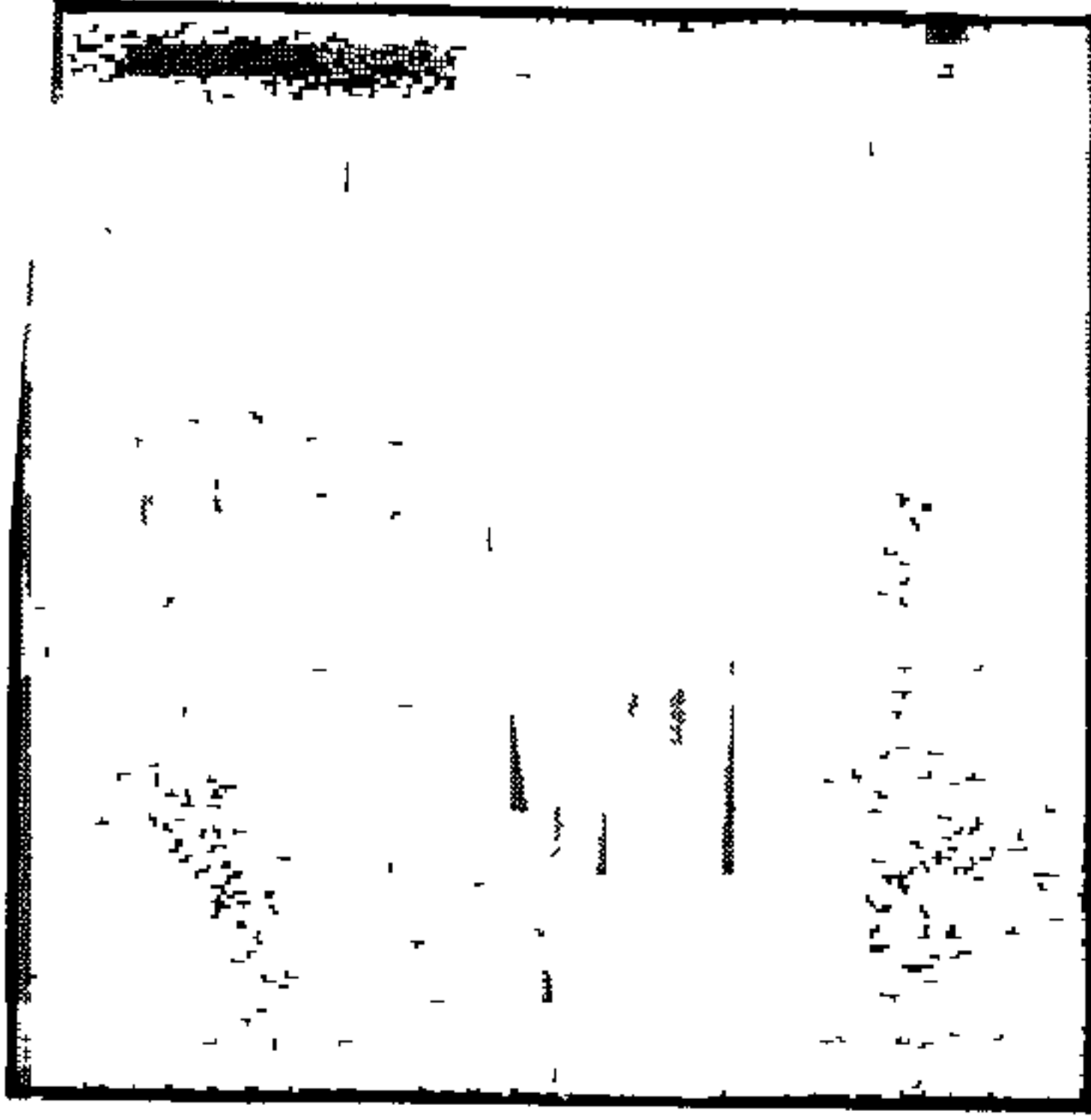
He had seen about 20 schoolchildren with placards on a platform.

He moved nearer to see what was going on and was standing next to Lieutenant Rockman when, at 9.40 am, the policeman told the children their gathering was illegal and they should disperse by 10 am.

When Lieutenant Rockman was out of sight, policemen who had earlier been standing nearby stormed the youths. He said there was "definitely no warning given" before the attack which took place inside the 20 minutes the youths had been given to disperse.

He watched several charges by the police on the crowd. He had seen Lieutenant Roos, with a megaphone in his hand, "laughing and smiling".

The hearing continues.



Chris Ball

AR643 4/10/89

P W Botha

252 ~~388~~

Judge by the bounce of the Ball

By BRUCE CAMERON
Political Staff

RETIRED President P W Botha's attack on former chief executive of Barclays Bank, Mr Chris Ball, for assisting in the funding of a UDF newspaper advertisements two years ago has resulted in a major parliamentary investigation

A joint committee of Parliament on Parliamentary Privilege under the chairmanship of deputy Minister of Justice, Mr Danie Schutte, has now tabled an 81-page report with 26 recommendations which include a stiffening up on measures to prevent members of parliament abusing parliamentary protection for free speech and increases in penalties for contempt of parliament.

The committee was appointed on the recommendation of a parliamentary select committee which looked into claims that Mr Dave Dalling MP (DP Santon) had abused parliamentary privilege by accusing the chairman of the Ball Commission of Inquiry, Mr Justice George Munnik, of being unable to be impartial when he found Mr Ball knew the true purpose of a R100 000 overdraft he granted to businessman, Mr Yusuf Surtee, who used the money to pay for UDF advertisements.

Mr Ball maintained he had not known and in a parliamentary debate Mr Dalling claimed Mr Justice Munnik should have recused himself because he was a friend of Mr Botha and because Barclays Bank had closed the Judge's account more than

once because of overdraft problems.

The committee has recommended that reflections on the conduct of a Judge, including reflections on his character, honour or motives and charges of a personal nature "cannot be made unless the discussion is based on a substantive motion.

"The conduct of a judge as a member of a commission of inquiry may be discussed provided there is no reflection on a judge in his judicial capacity or on his character, honour, motives or personal conduct.

"The judicial decisions of a judge as to fact or law may, within reasonable limits and in moderate language, be argued, provided there is no reflection on his competence, character, honour, motives or conduct."

Three murderers (252) executed in Pretoria

CAA 7/10/89

PRETORIA — Three murderers were hanged at Pretoria Central Prison yesterday, a Justice spokesman confirmed.

This brought the total number of executions so far this year to 42, while 54 prisoners on death row were reprieved.

The three executed yesterday were Khethokule Stephen Mchunu, 26, Samuel Sam Kokoi Mogohlo, 23, and Alphius Thantsha, 35.

A fourth man due to have been hanged yesterday, Leon Faasen, was granted a stay of execution pending a Supreme Court application.

In Johannesburg, the Lawyers for Human Rights national directorate said it was "extremely perturbed" by recent executions.

"It would appear that the short break we had between July 19 and September 29 this year was simply a political ploy by the government before the elections" — Sapa-Reuter

...this down gung after putting ... week's coup attempt ...

... 11/17 ...

Woman beaten, court told

Police 'did not' warm protesters'

CAPE TOWN — Riot police spanked a woman who was a "committed Christian" across the breasts and ankles shortly after she had discussed the principles of non-violent protest with a riot squad officer, the Wynberg Regional Court heard yesterday.

University of Cape Town law student Ms Patricia Terry said this in the trial of Major Charles Brazelle and Lieutenant David Roos who have pleaded not guilty to a charge of assault arising from riot squad action in the Mitchell's Plain town centre on September 5.

Children

Ms Terry said she was one of a group of UCT law students who had gone to the town centre on that day to monitor a protest by schoolchildren.

When she arrived at 9 am there were about 30 to 40 children in Harmony Square holding placards.

She said that after a policeman with a loudhailer had told the group to disperse, several youngsters and shoppers gathered around a policeman.

man It was a very pleasant exchange. I saw his name badge . . . 'Rockman'."

Ms Terry said riot police armed with quirts arrived about 9.45 am and formed up in a line near the square. When the last member of these policemen joined the group, one yelled "Kom ons vat hulle" (Come, let's get them). No warning was given.

"The police charged straight into the crowd with their quirts. Several people were hit. Some stumbled and fell, got up and continued running."

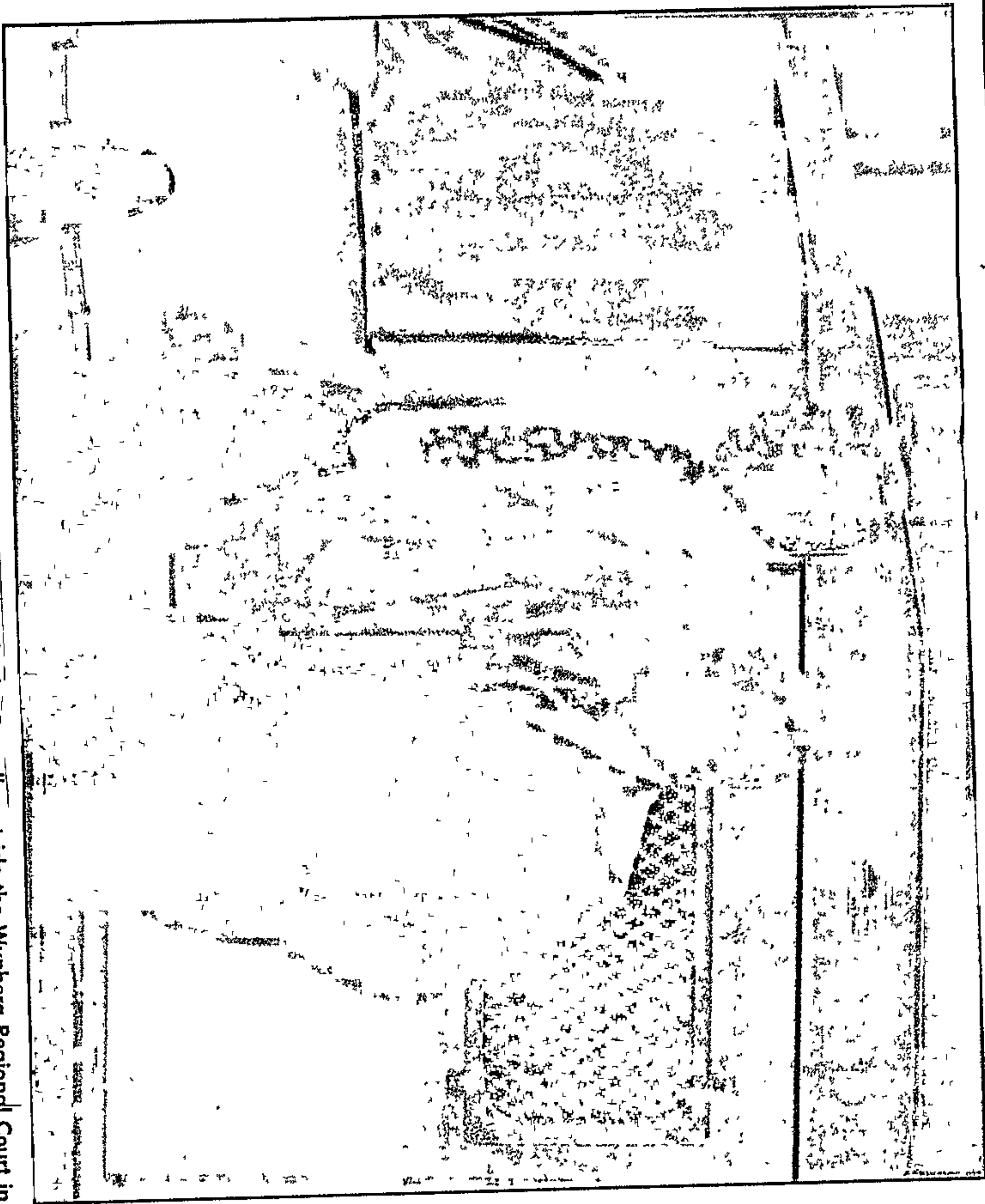
Shortly afterwards, she and six of her colleagues were arrested by riot police and put in the back of a police van. From the window, she saw a young girl and "committed Christian" in a black dress who had earlier been speaking to a riot squad officer about non-violent protest.

"She was remonstrating with the policemen. Two riot policemen and at least one riot policeman ran up to her. The policemen grabbed hold of her and held her."

She was then hit across the breasts. "The policemen and the man pursued her, hitting at her ankles with quirts as she was running."

She ran into a shop but was brought out a few minutes later by police and put in a police van, Ms Terry said.

The prosecutor in the trial, Mr T J Prins, said yesterday he would call his final four witnesses today.



Leaving court . . . Lieutenant David Roos (left) and Major Charles Brazelle outside the Wynberg Regional Court in Cape Town, where they pleaded not guilty to assault.

... FIRST KING SIZE

W.J. 252

Court crowd called to order in Rajbansi trial

Own Correspondent
DURBAN — Regional Court Magistrate Mr J J Augustyn had to reprimand the public gallery twice yesterday during the cross-examination of a witness in the trial of Mr Amchand Rajbansi.

Mr Rajbansi has pleaded not guilty to fraud, defamation and contravening the Commissions Act and Criminal Procedure Act

After several outbursts of laughter from the gallery during a heated cross-examination of Mr Nizam Khan by Mr Douglas Tobias, Mr Augustyn threatened to exclude the public.

"I have here a man I am trying on serious charges.

Please do not make my task more difficult."

In cross-examination, Mr Khan said he had been a member of Mr Rajbansi's party, the National People's Party, since its inception in 1981.

In 1984 he and a few others formed the People's Party of South Africa because they were unhappy with Mr Rajbansi's leadership.

Questioned on an interview headlined: "I plotted the Raj's Fall", Mr Khan denied having

said he orchestrated Mr Rajbansi's downfall.

He said Indian reporters had been making "much mischief" and "one sucked the story out of his thumb".

Talking about a butchery which Mr Rajbansi had organised for him, he said he had not personally wanted a shop, but his late father and Mr Rajbansi must have come to some "deal".

Repeating evidence given earlier, he said Mr Rajbansi

asked his father and himself whether they knew of people who had been affected by the Group Areas Act, because a new shopping centre was being built at Chatsworth and shops would be available.

Mr Khan said the next thing he knew was Mr Rajbansi arriving with an application form for him to sign.

Proceedings became heated when defence counsel Mr Tobias began questioning Mr Khan on evidence he had given at the Thaver Committee.

He claimed that evidence given yesterday contradicted that given previously.

Mr Khan said he had been ill and deaf in both ears at the time he gave evidence.

THEO RAWANA

MINeworkers have won the right to march through Johannesburg — but they will exercise it three weeks later than they had intended to.

The Rand Supreme Court hearing of the National Union of Mineworkers' (NUM) in-terdict against the Johannesburg City Council's refusal to grant permission for the march tomorrow morning ended yesterday with the two parties reaching agreement that the march could go on — on October 28.

The union had applied to the Johannesburg Chief Magistrate and the council to stage the march by 10 000 miners in their work attire to protest against the Chamber of Mines' centenary celebrations

10 000 miners win right to march through Jo'burg

The march was to start at Wits University at 11am, and go via Jorjison and Bentha Streets, over Queen Elizabeth Bridge to the chamber's head office in Hollard Street at 12.30pm.

NUM was unhappy that the chamber had held dinners and other celebrations for representatives of mining houses and NUM staff in management positions. Miners' contributions had not been recognised sufficiently, it said.

The march was to make the chamber's feelings known to the chamber.

Acting chief director of public safety Theo Olivier turned down the application, saying the timing and route taken would lead to disruption of heavy Saturday traffic and of normal business activity. He said the least spark of violence could put the public and municipal employees at risk.

NUM legal representative Ismael Morkhammed (SC), instructed by Naidoo, Nicholls & Cambanis, brought the interdict, which was heard yesterday afternoon.

NUM had applied for the setting aside of the council's decision and applied that an order allowing the march be made, sub-

ject to conditions that not more than 10 000 miners, clad in work clothes, would march in rows of 10 people, and the march would start not earlier than 11am and end at 12.30pm. The union had given assurances the march would be peaceful and discipline would be maintained.

After an adjournment, the parties told the judge an agreement had been reached. The judge made the agreement an order.

The Chamber of Mines last night released a statement saying: "On the basis of court order while the chamber does not agree

with what the NUM says, but defends its right to say it, the chamber welcomes the fact that it appears that the NUM will be allowed to hold a protest march.

□ The Chamber was this week celebrating a centenary of the massive accumulation of wealth for a tiny white minority through the sweat and blood of black miners. The average monthly wage of a black miner was today, at R500, one-sixth of that of his white counterpart and among the lowest in the whole SA economy.

• See Page 12

October 6 1989

STAR

6/10/89



54 reprieved, but hangings continue

252

By Carina le Grange

Fifty-four people sentenced to death have been reprieved this year, but 42 others have been executed

The South African Prison Services, said yesterday that another 289 people were awaiting execution in Pretoria

The execution on Wednesday of Khethokule Stephen Mchunu, Samuel Sam Koko Mogohlo and Alpius Phantsha, all of whom had been convicted of murder, and of two others on September 29 came at a time when many abolitionists believed that a *de facto* moratorium was in force while the State reviewed the issue of the death penalty

Political ploy

The view was formed because of the relatively long lull from mid-July to the end of September

During this period no executions were carried out

Lawyers for Human Rights (LHR) said in a statement that the organisation was "extreme-

ly perturbed" by the recent spate of executions

"It would appear that the short break we had between July 19 and September 29 was simply a political ploy by the Government for elections to be finalised," LHR said.

The execution of a fourth man who was due to hang this week, rapist Leon Faasen, was postponed after an urgent application in the Pretoria Supreme Court

It was submitted that his testimony during his trial was false and that he was now prepared to tell the truth

Faasen was sentenced to death for the rape of a 34-year-old woman in Bloemfontein in January 1987

The woman sustained serious brain damage, and is paralysed and confined to a wheelchair

Due to the consequences of the rape, she is divorced from her husband, and her four-year-old daughter is being cared for by friends. The woman lives in an institution in Kroonstad

(3041) were fears among potential salvors that the 268 466 ton ship could of the ship away from the coast However, if the wind changes it sets are on the scene but the wind and rough sea is preventing them starting anti-dispersant spraying

B/DW. 6/10/89
752
Court told how riot police beat woman deacon

CAPE TOWN — An Anglican deacon was wearing her clerical collar when she was beaten by riot policemen at the Mitchell's Plain town centre on September 5, the Wynberg Regional Court heard yesterday

The Rev Wilma Jakobsen was giving evidence in the trial of two riot squad officers, Maj Charles Brazelle and Lt David Ross, who have pleaded not guilty to a charge of assault

The charges arose from statements made to the Press — against police regulations — by Lt Gregory Rockman after he claimed to have witnessed riot squad members indiscriminately

beat protesters and onlookers on the eve of the general election

The prosecution closed its case yesterday and the defence will continue today

The court was shown a video of riot police action on that day, in which a man who had fallen on the ground was beaten twice with a sjambok, and another who was "standing around" was hit by a passing policeman

The film was admitted as evidence

Jakobsen said she went to the Town Centre on the morning of September 5 to do shopping and arrived there shortly after 10am She said as it was quite a cold day she

was dressed in corduroy pants and an anorak She was wearing her clerical collar

"Suddenly I heard a lot of screaming and shouts coming from the area (in Harmony Square) where there was a crowd I realised people were starting to run"

She saw two policemen running towards her She turned and ran because she was "a bit frightened" She ran for 15 to 20 metres, then felt "something hit me across my chest At that point I ducked and put my hands over my head. I was scared they had batons"

Jakobsen said she was left with a large bruise on her right thigh

which took three weeks to go away and bruises on her breast and arm

When J Els, for the defence, put it to her that her clerical collar would not be visible when she was running away, she replied that the collar was visible "from the front".

A 17-year-old schoolgirl described how she had been hit by two policewomen, and later by two policemen.

One of the policewomen fetched her from a butchery where she had taken refuge and put her in a patrol vehicle She was taken to Khayelitsha police station and later received treatment for her injuries from a doctor. — Sapa.

Five fatalities...

ASSESSORS' ROLE MISMIS-

THE role of assessors in the judicial process has been spotlighted in three major trials recently. South Africa's longest treason trial, the murder trial of the Queenstown Six and the trial of three African National Congress guerrillas

The law requires a judge to appoint two assessors if he thinks that the death sentence may have to be imposed. The requirement is obligatory.

The dismissal of an assessor, Dr W A Joubert, by Mr Justice Kees van Dykhorst in the treason trial known as Delmas I has been a major talking point for more than two years

For appeal

But it is now subject to the scrutiny of the Appeal Court, following a judgment on September 25 in which three Appeal Court judges, including the Chief Justice, agreed to hear an application that the dismissal of Dr Joubert was irregular, separately from the main appeal.

In May, however, the Appeal Court granted judgment in another case involving the discharge of an assessor which is relevant to the pending appeal in Delmas I.

The second case — known formally as Gqeba and Others vs The State — was cited in the judgment granting the Delmas I trialists the right to a separate hearing of their application on the dismissal of Dr Joubert.

In the original trial of Zwandile Gqeba and his co-accused the court sentenced six Queenstown "comrades" to death for the neck-face murder of an alleged collaborator. But during the trial the

8/11/10/49
Conditions

are defined in the Act

PATRICK LAURENCE

judge, Mr Justice Kroon, discharged one of the assessors, Mr De V van Rensburg, he did so to enable Mr van Rensburg to be at the bedside of only daughter, who was desperately ill with cancer.

The trial proceeded before Mr Justice Kroon and the second assessor.

After conviction and sentence, however, the accused took the case on appeal, asking for Appeal Court to declare that the discharge of the assessor had been irregular and thus to free them.

The Appeal Court agreed that the discharge of assessor Van Rensburg was irregular. "After Mr van Rensburg's discharge the court was accordingly not properly composed and its findings cannot stand."

Its reasoning is interesting. The Criminal Procedure Act defines two conditions under which a trial may proceed without one of the assessors: if he dies or if he becomes unable to act at any time during the trial.

"It seems clear that the mere desire of an assessor to be discharged, however pressing his reasons may be, would not amount to inability to act," the Appeal Court said.

The appeal on the discharge of the assessor in the Gqeba case forms a backdrop to the pending appeal on the dismissal of Dr Joubert by Mr Justice van Dykhorst

252
in Delmas I.

In the Delmas I trial the judge ruled that Dr Joubert was unable to act after he, the judge, learnt that Dr Joubert had been a signatory to the United Democratic Front's Million Signature campaign.

Mr Justice van Dykhorst held that Dr Joubert's signature was inimical to "dispassionate and unfettered consideration" of the charges against the UDF leaders and Dr Joubert "has become unable to act as assessor".

Apart from objecting to the judge's apparent willingness to overlook the Broederbond membership of the second assessor, Mr W F Krugel, counsel for the defence, argued that the word "unable" in the Criminal Procedure Act refers to "physical or mental incapacity short of death".

Contention

The Delmas accused, defence counsel contended, were thus entitled to a hearing before the full court, ie the judge and both assessors. The Appeal Court will assess these points when it considers the application, possibly before Christmas.

Delmas II, involving three ANC guerrillas, Jabu Masana, Ting Ting Masango and Neo Potsane, is opposite because it highlights the power of assessors.

In that trial Mr Justice de Klerk found that the three men were guilty of murder, in his assessment, however, there were extenuating circumstances because they considered themselves to be soldiers of the ANC fighting a "just war".

But his assessors overruled him, forcing the court to impose the mandatory death penalty.

ter

... arrested during the incident for alleged possession of 35,5 g of dagga. She would also appear in court today.

Four more to hang

68/10/16

(252)

Four prisoners in Pretoria are due to hang on Thursday, according to Lawyers for Human Rights (LHR). They are Raymond Jordaan, Selwyn Saayman, Johannes Grootboom and David van Wyk. The men were convicted of murdering fellow prison inmate Jackson James at Mossel Bay Prison. LHR said the organisation intended to apply for a stay of execution pending a petition to the State President for clemency for Jordaan and Saayman. — Staff Reporter.

Lawyers criticise killer's 'lenient' prison sentence

STW 9/10/89 By Montshiwa Moroke

(252) ~~252~~

Lawyers for Human Rights have voiced concern over a "lenient" prison sentence which was imposed in the Rand Supreme Court last week on a white Johannesburg man found guilty of fatally shooting a black man.

Lionel Leon Lawrence van der Nest (28) was sentenced to an effective five-year jail term for what Mr Justice G Gordon described as an incident with racial overtones.

Van der Nest was sentenced to eight years' imprisonment, with three years conditionally suspended.

The court found that Van der Nest had fired four shots, one of which hit Mr Valédzani Rupert Tshibhase in the back of the head while he was fleeing down Padoa Street, Boksburg, in the late afternoon of September 24 last year.

A statement released to The Star said: "Lawyers for Human Rights is extremely disturbed by the disproportionately lenient sentence handed by Mr Justice Gordon in the murder trial on October 3.

"Lawyers for Human Rights is unable to state whether the race of the accused and the victim influenced sentencing in the trial of Van der Nest, as this is a subjective element, but what has become more apparent recently is that in cases where the accused is white and the victim black, he is sentenced lightly or acquitted."

252

11/10/89

Death row letter slams NP policy

SUSAN RUSSELL

A LETTER from death row prisoners in Pretoria asking the international community to write to government in support of ending the "judicial murder of political prisoners" in SA was read out at a rally at Wits yesterday.

The rally was organised by the Save Our Patriots Campaign to mark International Political Prisoners Day. Among the approximately 350 people who attended the rally were relatives of people who have been hanged for politically motivated crimes as well as the families of those currently on death row.

The Save Our Patriots Campaign committee was formed to campaign for the abolition of the death sentence and granting of prisoner of war status to those convicted of politically motivated crimes.

Apartheid

The condemned prisoners said in their letter that the large number of people still ending up on death row made a mockery of and nullified F W de Klerk's talk of negotiations and promises of justice for all in SA.

"We are all convinced that the NP is steadfastly committed to the furtherance of apartheid policies," the letter said, "and like us, more and even more, South Africans will be condemned to the death cells of Pretoria".

"The justness of our cause has immensely sustained us, but above all your continued support for us and our families has no less contributed."

The letter will be read out at International Political Prisoners Day rallies worldwide today.

Cape Times 12/10/89
**Stays of
execution
given to 4
city men**

PRETORIA — Four Cape Town men who were due to be executed today received stays of execution yesterday following an application to Mr Justice Kriegler here by Lawyers for Human Rights (LHR)

The application was launched on behalf of Raymond Jordaan and Selwyn Saayman, to enable them to petition the State President for clemency.

The conditions of the stay are that the petition documents must be lodged with the State President's office on or before November 30

Their two co-accused, Johannes Grootboom and David van Wyk, who were also due to be executed today, also received a stay from the Department of Justice

LHR said the prisoners had been dissatisfied with prison conditions and had decided to kill an inmate to highlight their grievances

Meanwhile, the Save the Patriots Campaign held a placard demonstration against the death sentence in central Johannesburg at lunchtime yesterday

A poster carried by one of the protesters, which read "viva ANC", was confiscated by the police — Sapa

Beatings despicable

By Day 13/10/87

252

magistrate

CAPE TOWN — A Wynberg Regional magistrate yesterday found two riot squad officers not guilty of assault in breaking up a demonstration in Cape Town last month, but said the spambok and baton beatings administered by the men under their command were utterly despicable

In the case in which Lt Gregory Rockman gave evidence, magistrate A S McCarthy told a courtroom packed with uniformed riot police and local and foreign Press he was astonished that the riot squad members who had administered the beatings to demonstrators and bystanders could not be identified by police and were not before the court.

Mag Charles Brazelle and Lt David Roos had pleaded not guilty to wrongfully and unlawfully ordering police under their command to hit people at the Mitchell's Plain town centre on September 5.

"The court regards the assault on the witnesses who testified here as not only illegal but utterly reprehensible, especially in the cases where women were hit on the breasts with quirts," said McCarthy

Astonished

"The court cannot believe such conduct can be condoned by anyone." These unlawful assaults had been carried out by a platoon under the direct command of Lt Roos. The court was astonished these members could not be identified by the police.

McCarthy found it could not be said Brazelle and Roos purposely or consciously identified themselves with what their sub-

ordinates were doing

"The probabilities are that the accused, and particularly No 1 (Roos), saw the illegal application of violence, and it is also probable that the perpetrators are known to the accused and can be identified

"If this is the case, such evidence was not brought to the fore, and in that way the perpetrators escaped being brought to justice. But while it can be accepted that the accused saw some of the assaults, it cannot be established that either accused saw any particular assault."

"The end result is that the accused cannot be regarded as accomplices or accomplices after the fact."

McCarthy said the Emergency Regulations offered indemnity from criminal prosecution to a member of the security forces performing his duty in good faith,

and in this case the State had not succeeded in proving beyond reasonable doubt the accused had acted in bad faith.

"There is no evidence that they were directly involved in assaults on members of the public. Despite the fact that members of the public were assaulted by members of the platoon, they (the accused) cannot be held criminally responsible, and so both are found not guilty."

Rockman

Rockman "impressed the court as an intelligent person with a reasonably good power of observation," said McCarthy

The fact that there were contradictions between his evidence and that of others did not necessarily mean he was incorrect — Sapa



Lt G Rockman after yesterday's court case. Picture REUTERS

252
Cape Times, Friday, October 13, 1989

Six judges opposed jailing Mpetha

Staff Reporter

THE Cape Town judge who sentenced Mr Oscar Mpetha, 80, to a mandatory five-year prison term in June 1983 said he would have suspended the entire sentence had it been in his power to do so.

Mr Justice D Williamson said at the time: "I think that justice does not require that he be imprisoned."

"The end of his life is too near for such punishment to be of any benefit either to him or to society."

"Because of his very special circumstances compassion should, in my view, be the overriding consideration. If it were in my power to do so, the sentence of impris-

onment which I would have imposed would have been totally suspended."

The ailing Mr Mpetha was in detention from August 1980 until he was convicted of participating in terroristic activities on June 28, 1983.

His attorney, Mr Himan Bernadt, said that bail applications made during the trial "were refused by the attorney-general, whose statutory authority ousted that of the court in this regard."

When the authority of the attorney-general fell away at the end of the trial another bail application was made, pending an appeal to the Appellate Division of the Supreme Court, and bail of R1 was granted.

The appeal was heard in March 1985 before five judges of appeal. Three of them held that the sentence of five years was mandatory and two dissented.

One of the five, Mr Justice M M Corbett, now Chief Justice, said at the time that though there was a difference of opinion as to whether the compulsory minimum sentence of five years was applicable, it was the opinion of all five judges "that a wholly suspended sentence would have been the proper punishment."

Mr Bernadt said that appeals were made to then-state president Mr P W Botha and Minister of Justice Mr Kobie Coetsee for Mr Mpetha's release on grounds of his serious illness, but these were denied.



Mr Justice Williamson



Mr Oscar Mpetha

Wrong men in police trial lawyer

By HAMISH McINDOE

SERIOUS allegations of official bungling — or a cover-up — have been made against the police and the Attorney-General's office after the acquittal this week of two riot police officers charged with assault in the "Rockman" trial.

According to noted human rights lawyer Professor Denis Davis, the wrong men — Major Charles Brazelle and Lieutenant David Roos — were in the dock.

The trial arose from rebel policeman Lieutenant Gregory Rockman's allegations of excessive violence being used to disperse anti-election demonstrators, including schoolchildren, at Mitchell's Plain town centre on September 5.

Prof Davis contends that certain riot policemen seen on video footage of the incident should have been charged — and not their commanding officers.

Comments

Now, police have turned their investigation to Lt Rockman.

On Friday, a spokesman for Minister of Law and Order Adriaan Vlok said police were investigating possible contraventions by Lt Rockman.

These arise from issues that came up in evidence in the trial and critical comments made by Lt Rockman outside the court.

In acquitting the accused, Wynberg Regional Court magistrate Mr AS McCarthy said the riot police beating of protestors at the Mitchell's Plain demonstration was unlawful and "utterly reprehensible".

But he made clear the accused were protected by the emergency regulations, which gave the police immunity from prosecution for actions performed in the line of duty — unless it could be proved they had not acted in good faith.

Image

A spokesman for the Ministry of Law and Order said the department was "grateful" the accused had been acquitted, but remarks made by the magistrate regarding riot squad conduct were a "cause for concern".

He said an image of unfettered police brutality "cannot be afforded". But, for the time being, no specific action was planned.

● Minister of Law and Order Adriaan Vlok is scheduled to meet all police generals this week, when the Rockman affair will be discussed.

Judgment reserved in toothpaste case

B/Dan 16/10/84

252

SUSAN RUSSELL

JUDGMENT in an application for leave to appeal by Unilever subsidiary, Elida-Gibbs, against a court order — prohibiting it from advertising claims about the tartar prevention properties of Mentadent P toothpaste — was reserved in the Rand Supreme Court on Friday.

Elida was taken to court by competitor Colgate on the grounds that the company had made false advertising claims for Mentadent P.

Colgate instituted legal proceedings against Elida-Gibbs after Mentadent P appeared on the market in June 1984 with the slogan "helps prevent tartar" on the package — a week before Colgate launched its own anti-tartar toothpaste.

Expensive

The subsequent trial, which has become one of the most expensive in SA legal history, began before Mr Justice van Schalkwyk in October 1987.

It has been estimated the trial cost the companies about R5m each in legal fees.

Mr Justice van Schalkwyk granted Colgate an order in June this year interdicting Elida-Gibbs from advertising claims that Mentadent P cured or prevented tartar formation on teeth.

The company was also interdicted against making any claims that scientific or clinical evaluations had proved that

Mentadent P effectively prevented or inhibited tartar formation.

Elida-Gibbs last week applied for leave to appeal against both the judgment and the order of costs granted against them.

They said Colgate should pay the costs incurred for some of the legs of the protracted litigation.

Meanwhile Elida-Gibbs has given Colgate an undertaking that, in the event of their application for leave to appeal succeeding, they will abide by the terms of the interdict granted against them pending the final determination of the case.

In a letter to Colgate's legal representatives, Elida's lawyers said their client undertook not to make any claims prohibited by the court order.

"Our client will continue the current sale and distribution of Mentadent P to the trade only until such time as our client's current stocks and commitments in regard to packaged toothpaste, cartons and tubes permit.

"Thereafter (our client) will not manufacture Mentadent P toothpaste in packaging containing any claims which the court order prohibits and will not sell any such packaging to the trade," the letter said.

Usually, if a party is given leave to appeal, the terms of a court order are suspended until the Appeal Court has reached a decision.

'Kaffir' appeal dismissed

MARITZBURG — A Doonside man's appeal against his conviction on a charge of crimen injuria after he called Mr Milton Nyawose a "kaffir dog" in August last year was dismissed by the Supreme Court in Maritzburg yesterday.

The judge president, Mr Justice Howard, said counsel for Peter Ivan Peterson had submitted that to call a black man a "kaffir" would constitute crimen injuria while calling him a "kaffir dog" would not. (252)

"In my view the point is so utterly devoid of substance as to be frivolous," Mr Justice Howard said.

He said counsel for Peterson had further submitted that the State had failed to establish above reasonable doubt that Peterson had intended to impair Mr Nyawose's dignity, and that it was not a sufficiently serious case to be made a criminal offence. Star 20/9/89

"As to the second argument advanced on behalf of the appellant, in this day and age it cannot possibly be said that to use the epithet in question to a black man's face is so trivial as not to constitute a criminal offence," the judge said — Sapa.

**Last-minute
stay granted
to ex-cop**

Call 711 0.20/989
BY ANDRÉ KOOPMAN

A FORMER security policeman who was to have been hanged today was yesterday granted a last-minute stay of execution by the Minister of Justice, Mr Kobie Coetsee.

According to Johannesburg advocate Mr Jules Browde, SC, the stay of execution was granted after Butana Almond Nofemela said in an affidavit that he had committed atrocities leading to the killing of various activists under the instruction and direction of senior members of the security branch of the police. A Justice Ministry spokesman confirmed the stay last night.

252

Court sees video of Trojan Horse incident

Shooting followed stoning by seconds

Own Correspondent

CAPE TOWN — Shooting by security force members hiding in crates on the back of a truck began 2½ seconds after the first stone hit the windscreen, a video recording of the "Trojan Horse" incident screened in the Cape Town Supreme Court showed yesterday.

The court watched an extended, though edited, version of CBS News footage shown earlier.

Sophisticated video equipment demonstrated that the shooting lasted for 14 seconds and 20 frames.

CBS News cameraman Mr Christopher Everson, who recorded the footage, said it was like "the third world war" when the shooting began.

Private prosecution

He was giving evidence in the private prosecution of 13 security force members who are charged with the murder of Shaun Magmoed (16) who died in the incident on October 15 1985.

Mr Everson said he thought at first that the security force members were trying to scare the crowd by shooting with "coarse salt or light bird-shot".

He said he had 17 years' experience as a television cameraman. He had been in many of trouble spots around the world, including Pakistan, Afghanistan and Beijing.

On October 15 he and his soundman were

"cruising" the Cape Flats, filming sporadic incidents of unrest. A colleague received a message that there was "trouble" in Athlone.

The upper end of Thornton Road, Athlone, looked fairly normal. Further down a crowd had gathered on either side of the road.

They stopped about 50 m away, took out their equipment and began recording. They stopped far away because the foreign press had been criticised and accused of instigating unrest.

"Our brief was not to become involved, to stay well away and observe."

Mr Everson said there was a crowd of about 100 people at the intersection.

About 20 people, at a rough guess, were throwing stones. They appeared highly selective about which vehicles they stoned. Civilian vehicles driven by coloured people were not stoned.

He noticed a yellow truck with SA Railways plates driving down the road. Expecting it to be a target, he filmed it. It was unmolested and continued down the road.

After he crossed the road to film from a different angle, he saw the vehicle returning. As it appeared, he zoomed his camera into the windscreen and filmed it being stoned from both sides.

When he heard firing he zoomed the lens back and noticed men popping out of the boxes on the back of the vehicle. There was general panic and screaming.

The hearing continues.

Spotlight needed on new legal system

252
CATHY STAGG

THE time is right for lawyers to start focusing on a new legal order, Mr P. Langer, the president of the National Association of Democratic Lawyers, said last night.

He was addressing the annual law dinner of the Law Students Council of Wits University.

Mr Langer said the country was moving through a period of transition but a new legal order would not automatically follow the demise of apartheid; it needed a conscious process.

This required the correct vision, not only to adapt to the new world, but to help shape it with the community at large.

There should be no suggestion of laws being imposed on anyone who had no representation in making them, which would remove the high moral ground of those who fall foul of the law and say they did not make them, he said.

Mr Langer said, while law societies and Bar Councils had made bold statements condemning aspects of apartheid legislation, governments do not listen to "once-off statements". Jan 23/1989

He said that many of the banned and restricted people were the "cream of our citizenry".

He paid tribute to those unable to address the students, although eminently qualified to do so, because they had waged a campaign against apartheid.

And he asked if they would continue to have men like Chief Albert Luthuli die in a "world of silence" and be forgotten.

will have to of support cratic pro- the Commonwealth summit, he reiterated the government's firm stand against international interference in South Africa's internal of an internationally interim government " The new South Africa considered and disc

15

Uppington 26: Bail refused for death row woman

Staff Reporter

IN an extraordinary application in the Kimberley Supreme Court yesterday, bail for the only woman on death row in South Africa was yesterday refused. The woman, 55-year-old illiterate domestic servant Evelina de Bruijn, is one of the "Uppington 26" trialists.

The 26 have been sentenced for the death of a municipal policeman in Uppington's Paballelo township in 1985. Four of the 26 were granted bail yesterday pending their appeal.

Besides De Bruijn's application, one other bail application was refused by Mr Justice Jan Basson. The bail application of Elisha Matshoba, 22 — sentenced to eight years' — was turned down.

Mr Henri Viljoen, SC, told the Kimberley Supreme Court yesterday that it was an extraordinary application that anybody sentenced to death should be allowed out on bail, but the defence believed that the circumstances in which De Bruijn found herself were exceptional.

De Bruijn and her husband, Gideon Madlongwane, 63, were sentenced to death by Mr Justice Basson in May this year.

Wits clinical psychologist Mr Lloyd Vogelmann said De Bruijn was the only woman on death row and that she was depressed because of the stress of awaiting execution.

She suffers from habitual crying, insomnia and a poor appetite.

He added that her psychological strain had been increased by her strong commitment to her family and her perception that she had failed in her maternal duty.

Her two youngest children are not allowed to visit her because they are under 16 years of age.

In turning down her bail application, the judge said there were not sufficient factors which would make her circumstances so unusual that it would warrant bail.

Four men, Abel Kutu, 28, Ronnie Masiza, 22, Jeffrey Sekiya, 24, and Sarel Jacobs, 22 — all sentenced to six years' — were released on R500 bail each.

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Star October 1989

(252)

'Two policewomen stormed at me and began hitting me' Girl (17) tells of beating by police

Own Correspondent

CAPE TOWN — A 17-year-old Mondale High School pupil was hit several times with quirts in the Mitchell's Plain town centre minutes after asking a policeman why, if people beating animals could be charged with cruelty, riot police hit people, the Wynberg Magistrate's Court has heard

The Std 9 pupil, who may not be identified because she is under 18, said she had no objection to giving her evidence before a full gallery yesterday

...She was the penultimate State witness in the trial of Major Charles Roger Brazelle and Lieutenant David Johan Roos, who have pleaded not guilty to a charge of assault relating to alleged riot police brutality in breaking up a demonstration in the town centre on September 5.

Shortly afterwards, after handing in medical reports on the condition of two other witnesses, prosecutor Mr Tommy Prins closed the State's case

Mr J Els, SC, for the riot policemen, said he planned to call witnesses and was granted an adjournment until today

The pupil said although there was "no school" on September 5, she and a friend had planned to meet their physical science teacher at school at 10 am for extra lessons.

Harmony Square and the town centre were on the route she walked to school every day. On September 5, she had reached the shopping complex at about 9 55 am to find police hitting and chasing students

The girl said "When the children went back to the podium, I was with them, where we sang

"About five minutes later Lieutenant (Gregory) Rockman told us we had 20 minutes to leave the (town) centre

"I went to join people having a discussion with policemen

"I asked him (a policeman). 'If people who hit animals could get charged with cruelty to animals, what did they call it when they (the police) hit us?'"

The girl said a smallish group followed police who were taking a boy to a police van under the roof of the bus terminus

"I observed the police gathering and then they just burst loose and began hitting (the people) People ran in all directions

"I didn't run. I was under the roof of the terminus. Two policewomen stormed at me and began hitting me

"Later two policemen also (came) I was hit twice on the left breast, and also over the rest of my body, including my right arm and both legs

"At first I stood for a bit, but when I couldn't take it any more, I ran into Adams Butchery

"A policewoman came to fetch me and put me in the back of a police van with others"

In cross-examination, Mr Els, for the defence, asked "What did people sing on the podium?"

Freedom songs

The girl Freedom songs One placard said "Don't vote"

Mr Els Did you boo, provoke or barrack the police?

The girl No, I'm sure of that.

A labourer, Mr Douglas Nicholson (40), said he had been at the town centre on September 5 at about 10 30 am with a friend who wanted to sign unemployment benefit documents.

He said he was standing near the bus terminus. Police were on the other side of the road

Mr Nicholson said he heard someone say "Pasop, hier kom hulle" (Watch out, here they come)

He turned to run, felt a blow on his back and fell

The case continues



SA in world's top 5 for death sentences — claim

AR668 25/10/89 252

From MIKE SILUMA
The Argus Foreign Service

LONDON. — South Africa ranks with China, Nigeria, Iraq and Iran as countries which use capital punishment the most, according to Amnesty International's 1989 annual report on human rights violations.

The report, released here today, reviews the human rights situation in most countries in Africa, Asia, the Americas and Europe in 1988.

It says "thousands of people, including many prisoners of conscience, were detained without trial under state of emergency regulations or other security laws on account of their actual or suspected activities in opposition to apartheid" in SA.

Many others, it adds, were jailed "for alleged political offences after trials which may have been unfair", with a number of detainees dying in custody "in suspicious circumstances".

Saying the death penalty continued to be used "at a high rate" in 58 countries, Amnesty deplored the use of capital punishment especially in Iran (with 142, possibly 1 700, executions), China (126), South Africa (117) and Nigeria (85).

Executions

It said further executions may have been carried out in South Africa's "four nominally independent homelands" of Venda, Transkei, Bophuthatswana and the Ciskei.

The United States and the Soviet Union also used the death penalty, killing 11 and seven offenders respectively. The figure for the Soviet Union, which does not officially give

figures of executions, was probably higher, according to Amnesty.

Reporting the deliberate and unlawful killings of "tens of thousands of people" by government agents during 1988, the human rights organisation said at least six government critics were killed in South Africa in unclear circumstances, including student activist Sicele Dhlomo, 18.

The powers of security police to detain incommunicado suspected government opponents without disclosing the fact of their arrest or their place of detention created a context in which "disappearances" could occur. Such a "disappearance" was that of Mr Stanza Bopape, a community leader from Mamelodi, Pretoria, while in police custody.

Amnesty said that although a number of suspected African National Congress guerrillas were arrested and brought to trial following a continued anti-government sabotage campaign, no-one was apprehended for attacks on the property of anti-apartheid organisations such as the SA Council of Churches and the SA Catholic Bishops' Conference.

● The authors of the report warn that the list includes only countries where violations are known to have occurred.

The legal order in South Africa — in a post-apartheid society

ARLUS 26/1/87
252
Law Commission chairman's view of the future

The Argus Correspondent reports from Pretoria

THE chairman of the Law Commission, Mr Justice P J J Olivier, has outlined his expectations of a legal order for a post-apartheid South Africa

Although it was easy to say how law or the legal order ought to be, Mr Justice Olivier said it was more difficult to predict what the legal order would be in a future South Africa

Speaking at a conference on a new jurisprudence for a future South Africa at the University of Pretoria, Mr Justice Olivier said that not all South Africans wanted a post-apartheid society, they differed in their definitions of apartheid and did not share the same perceptions of how a future South Africa was to be achieved

He said the way in which the post-apartheid society was achieved would profoundly influence the legal order.

According to Mr Justice Olivier, a post-apartheid South Africa would be achieved either by a revolution or by evolution in which negotiations, compromises and pragmatism would play a role

In his view, Mr Justice Olivier said it was highly unlikely a new South Africa would be achieved by a revolution.

"I say that because it is patently clear that the majority of South Africans of all population groups do not subscribe to a revolutionary solution

"Secondly, because a revolution would not succeed as a result of the power realities

"There is a third fact, the realisation of many citizens that revolutions do not succeed in achieving a better order than the ones they replace," he said

Mr Justice Olivier told delegates revolutions always destroyed themselves

According to Mr Justice Olivier, a new South Africa would be achieved through an evolutionary process "within the present order which will change and be moulded until we one day reach a point when we can say Now we have a post-apartheid South Africa, in other words where race or ethnicity as a discriminatory factor are not allowed by law"

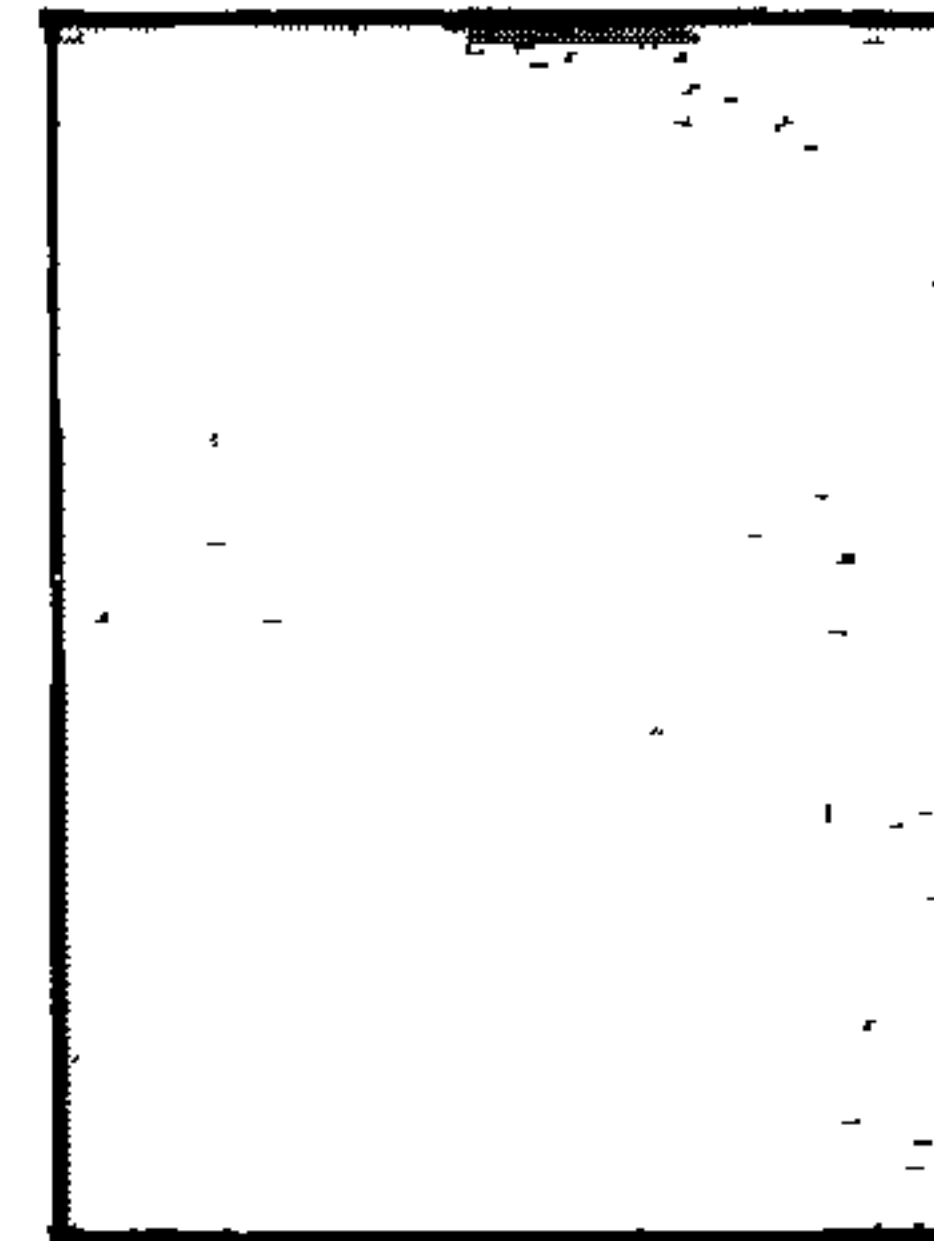
In his view the run-up to a new South Africa would not be easy, smooth or accomplished soon.

He said there would probably be many setbacks, crises and disappointments.

This process would also not be logical or preplanned

Listing statutes which would have to be repealed or drastically amended to abolish apartheid, Mr Justice Olivier included the following

- The Group Areas Act,
- The Reservation of Separate Amenities Act,
- Eight statutes which authorised racially segregated schools,
- Four statutes which authorised racially segregated technikons,
- All reference to race or ethnicity in four statutes dealing with university education,
- The Population Registration Act and consequential proclamations,
- Section five of the Identification Act which authorises a reference to a person's race in the Population Register,
- The Registrations, Exchequer and Audit Act which authorises separate administration of income among racial groups,
- The Black Administration Act,
- The Black Authorities Act,
- The Black Affairs Act,
- Statutes dealing with the



Mr Justice Olivier ... South Africans differ in their definitions of apartheid

establishment of national states and citizenship of such states,

● Statutes dealing with black local authorities,

● Section three of the Parliamentary Internal Security Commission Act which excludes black people from membership,

● Section four of the State President's Committee on National Priorities Act which excludes black people from membership,

● Statutes dealing with housing for coloured, blacks and Indians,

● Fifteen statutes dealing with limitations on blacks acquiring ownership of land,

● Eleven statutes dealing with social security legislation which differentiates between racial groups,

● Four statutes dealing with mines and mineral rights which restrict the right of blacks,

● Racial separation in prisons under section 23 of Act 8 of 1959,

● The reference to restrictions on sale of liquor to blacks in the Aviation Act.

Mr Justice Olivier further suggested that the "whole plethora" of security legislation would have to be re-

viewed and "in the main be altered drastically".

This legislation includes the Internal Security Act as well as the Public Safety Act and the proclamations and regulations in terms of the act dealing with the emergency situation

Mr Justice Olivier stressed that the above-mentioned legislation was consequential of nature and not fundamental to the apartheid system

"The heart of apartheid is enshrined in legislation disenfranchising blacks, Chinese and some Asians and excluding them from participating on an equal and equivalent basis in the decisions of the legislature and compelling coloured and Asians to vote on separate voters' rolls," he said

Turning to a future legal order, Mr Justice Olivier said it would probably be based on South African law — the amalgamation of Roman-Dutch and English law

In his view, the South African legal system was one of the best in the world

He did not think the court system would change materially, adding that the accessibility would probably be addressed by simplifying the

civil and criminal procedure rules

Referring to the bench, Mr Justice Olivier said it would have to be more representative and more coloured, black and Indian officials would have to be appointed

Mr Justice Olivier believed that the criminal procedure law would change drastically

"As the statute book is cleaned of apartheid legislation, several crimes (for example under the Group Areas Act) would fall away

"I also believe that a lesson should be learnt from the past to enforce political ideology and social manipulation through crime creation just leads to a criminalisation and humiliation of society," he said

He said several existing descriptions of existing crimes, such as sabotage and high treason, would have to be "fundamentally reviewed"

Mr Justice Olivier postulated that the constitution would probably contain a human rights clause which the courts would enforce and which would be difficult to amend

He also suggested that the constitution would make provision for the control and authority of the defence force, the police and the civil service

Mr Justice Olivier said a future legal order would probably include an ombudsman institution which would play a role regarding corruption, bribery and violations of human rights

Finally, Mr Justice Olivier said a future legal order would be "more fair and just as a result of the abolition of discriminatory legislation.

"The respect which other countries had in the past for our legal system and its applications before our legislation was contaminated by apartheid would probably be revived and the South African jurist would again be able to hold his head high with pride," he said

Criminal justice system 'in need of reform'

The Argus Correspondent reports from Pretoria

THE director of the Legal Resource Centre, Mr Arthur Chaskalson SC, in an address to a legal conference on his expectations of a future legal order in a post-apartheid South Africa, outlined several aspects of the present legal order which needed urgent attention

He said the most important aspects in desperate need of reform were the criminal justice system, the system of ad-

ministrative law and the lack of access to the legal profession by the majority of the population

Discussing the way in which the criminal justice system functioned in practice, Mr Chaskalson said the overwhelming majority of people passing through criminal courts were blacks and were

invariably tried and prosecuted by whites

He said the proceedings were conducted in a language which blacks either did not understand or understood imperfectly

"No matter how fair and careful the prosecutors and judicial officers are, nor how good the interpreters, the pro-

ceedings cannot really be seen by such persons as fair, nor objectively speaking can they be considered to be fair," Mr Chaskalson told the delegates at the conference on a new jurisprudence for a future South Africa in Pretoria

He said practical problems existed in addressing these issues — the legal profession,

the Supreme Court bench and magistracy were substantially white and few could communicate in an African language

Suggesting a possible solution to alleviate the sense of alienation that black accused must experience in criminal courts, Mr Chaskalson said a jury system, if it was to function on a non-racial basis, could be returned to the Supreme Court

952

1330 SOWETAN Friday, October 27, 1989

Page 13

New law will

Sowetan 27/10/89

reflect the needs of the people

THE chairman of the Law Commission, Mr Justice Olivier, has outlined his expectations of a legal order for a post-apartheid South Africa

Addressing a conference yesterday on a new jurisprudence for a future South Africa, organised by the Centre for Human Rights Studies at the University of Pretoria, Olivier said the way a post-apartheid society was achieved would profoundly influence the legal order.

Own Correspondent

Olivier told delegates a new South Africa would probably be achieved through an evolutionary process "within the present order which will change and be moulded until we one day reach a point when we can say 'Now we have a post apartheid South Africa', where race or ethnicity as a discriminatory factor are not allowed by law".

He listed several laws and statutes which would

have to be repealed or drastically amended to abolish apartheid.

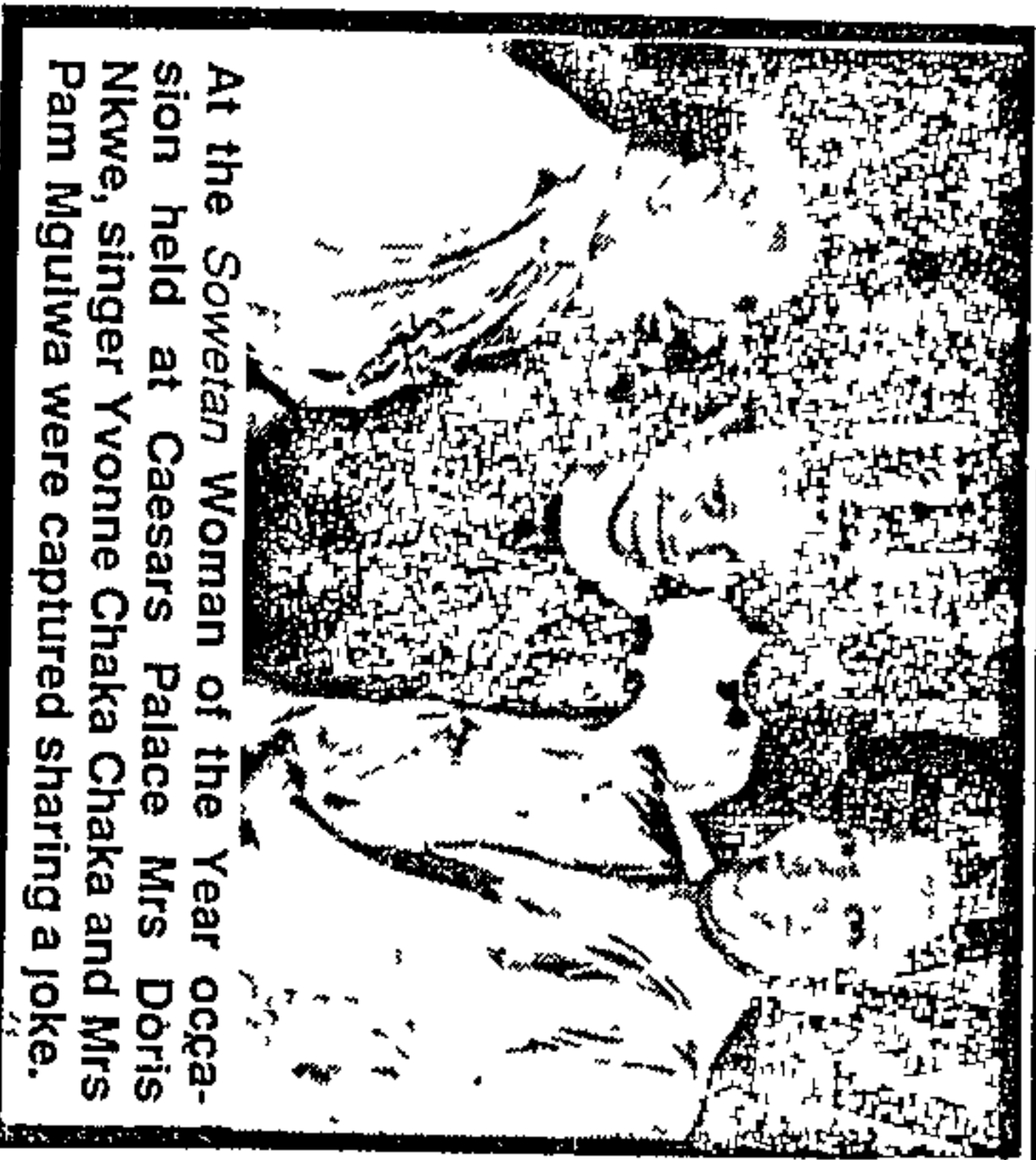
Olivier said a future legal order would be "more fair and just" because of the abolition of discriminatory legislation

Outlining his views on a future legal order, the director of the Legal Resources Centre, Mr Arthur Chaskalson SC, agreed with Olivier that "it was neither desirable nor feasible to throw everything overboard and to start anew".

He said an acceptable legal order should reflect the needs of the people who are to be subjected to it

"The only possible way forward, as I see it, is to address particular aspects of the legal order that call for attention and to retain the rest, moulding it gradually into a coherent system reflecting the aspirations of the majority of the people," Chaskalson said

Chaskalson said "huge" issues, which would lead to fundamental changes in the legal order were the limitation of State power and "the protection of fundamental rights, with the approach to social and economic rights and the abrogation of discrimination on the grounds of race or sex"



At the Sowetan Woman of the Year occasion held at Caesars Palace Mrs Doris Nkwe, singer Yvonne Chaka Chaka and Mrs Pam Mguilwa were captured sharing a joke.

apartheid, also needed attention.

He stressed, however, that other aspects of the present legal system - the criminal justice system, the system of administrative law and the lack of access to the legal profession by the great majority of the population - were also unsatisfactory and demanded attention

Chaskalson said the present legal order "was weighted heavily in favour of the state and those who have wealth and power"

"If the new legal order cannot do better than the old in dealing with these matters it will have little to commend itself to ordinary people, and will fail to gain acceptance as an instrument of justice," he said

'Save my son' appeal

S/T
29/10/84 By SHARON CHETTY 252

DESPERATE efforts are being made to save Death Row prisoner Robert McBride

His mother, Mrs Doris McBride recently returned from a meeting with African leaders in an effort to lobby support to persuade State President F W de Klerk to stop his hanging.

Together with a delegation of relatives of other Death Row prisoners, Mrs McBride met with representatives of President Kenneth Kaunda of Zambia and Robert Mugabe of Zimbabwe

McBride was given the death sentence for his part in the bombing of a Durban beachfront restaurant where three women died

Only presidential clemency can save him from the gallows

Death row *Call times 3/1/89* 'destroying' *(25)* woman, 55

Staff Reporter

A 55-YEAR-OLD grandmother — and the only woman on Pretoria's death row — could be "psychologically destroyed" before her appeal against her conviction and sentence is heard next year, Democratic Party law and order spokesman Mr Tian van der Merwe said yesterday.

The DP is to take up the case of Evelina de Bruin, one of the "Upington 14" sentenced to death for the 1985 murder of a municipal policeman, with Justice Minister Mr Kobie Coetsee, Mr Van der Merwe said.

In an extraordinary bail application last week, it was disclosed that De Bruin — an illiterate domestic worker — was "disintegrating" physically and mentally on death row.

Her 63-year-old husband is also on death row for his common-purpose part in the murder.

'Situation altered'

Mr Van der Merwe said De Bruin's circumstances highlighted the "inadequacies" in the South African legal system and that a letter would be written to Mr Coetsee to encourage him to bring about changes in the judicial system to provide for cases such as De Bruin's.

"Once a person has been allowed to appeal, the situation is dramatically altered."


"With the backlog of cases in the courts, we can't just let people stay there," he said.


In last week's failed bail application, Wits University clinical psychologist Mr Lloyd Vogelmann said De Bruin was "extremely distressed" and that she suffered from insomnia and habitual crying.

She has been on death row since May 27 and had not seen her two youngest children — both under 16 years of age.

"I am so worried about the welfare of my children that I have not been able to eat or sleep for the past week. I cannot sleep properly. I feel afraid and sad when I think of my children," she said in an affidavit handed in during the bail application.

'No progress'

 SIX months after the assassination of academic and political activist David Webster, the total reward for information leading to an arrest stands at R150 000.

 Concerned human rights and legal bodies have reiterated their anger and sadness at the apparent lack of progress by police.

See of au 2/1/89 Suspicion concerning police involvement in the May 1 assassination outside Webster's home has grown with the evidence of Butane Nofomela, a former security policeman who is on Death Row for killing a farmer.

Nofomela has claimed he was responsible for one political killing and partially responsible for

eight others when serving in the security police.

Speaking at a joint Press conference at the University of the Witwatersrand yesterday, Judith Hardin of the Black Sash said Nofomela's claim required urgent and scrupulous investigation at the highest level.

She called for an independent judicial commission to be set up immediately to examine the witness' affidavit.

"Until the police produce evidence to the contrary, the suspicion will continue in the minds of South Africans that death squads with alleged police links are carrying out these assassinations. The onus is on the police to dispel these suspicions," said Hardin. - Sapa

Campaign to halt hangings

252 South 2-8/11/89

JOHANNESBURG. — A huge campaign to save South Africa's 290 death row prisoners from hanging has been launched here.

And in Cape Town, "mock executions" will be held at shopping centres throughout the Peninsula to highlight the week-long campaign.

The Anti-Death Penalty Campaign Awareness Week was launched by the National Association of Democratic Lawyers (Nadel).

At present about 290 people are on death row at Pretoria Central Prison. Five were due to be hanged on Thursday this week.

National meeting

Nadel's national project director Amichand Soman said the campaign wanted to create an awareness for the abolition of the death penalty.

"It's hoped that by starting off with the campaign we will be able to mobilise organisations with the same aims to demand from the authorities that the death penalty be erased from the statute book."

The awareness week kicks off on Sunday and will end with a national protest meeting at Nasrec, near Soweto, on Sunday November 12.

Nadel's Cape Town branch will set up tables at shopping centres throughout the Peninsula on Saturday where they will encourage people to sign a petition calling for the end to the death penalty.

5/11/89
C Press

Organisations call for inquiry into political killings

Anger at lack of progress by police

By SOPHIE TENA

LAWYERS for Human Rights and other organisations have called for an open judicial inquiry into allegations by former security policeman Butane Nofemela, who is on Death Row for killing a farmer.

The organisations also called for an independent commission of inquiry into the assassination of academic and political

activist David Webster. They want an inquiry to test the credibility of Nofemela's allegations that he was responsible for the killing of Durban civic rights attorney and former ANC member Griffiths Mxenge.

Mxenge was found murdered next to the Umlazi Stadium in 1981 with more than 50 stab wounds.

The inquest magistrate found he had been killed by "unknown persons". Nofemela also claimed he was partially responsible for eight other political killings while serving in the security police.

At a Press conference in Johannesburg this week, Judith Hardin of the Black Sash said Nofemela's claim required urgent investigation at the highest level and called for an independent judicial inquiry to examine his affidavit.

The call was backed by the United Democratic Front, Five Freedoms Forum, Congress of South African Trade Unions, Human Rights Commission, Southern African Bishops' Conference, South African Council of Churches and the David Webster Trust.

The move was prompted by what the organisations termed "the apparent lack of progress by police" in bringing those responsible to account.



David Webster

They said there was suspicion in the minds of South Africans that death squads with alleged police links were assassinating political activists.

"The perpetrators have close links to police and other State agencies and are hence protected and are hence protected by law, the attacks are planned so carefully, involve such a level of organisation and expertise and reflect such deep conspiracy, they cannot be investigated as individual crimes."

"The onus is on the police to dispel these suspicions," they said.

The David Webster Trust said the total reward for information leading to Webster's arrest stood at R150 000 - the largest offered in this country.

The organisations said it was clear there was a growing lawlessness in South Africa in which rightwing elements felt free to launch attacks against those promoting an apartheid-free society.

Continued failure on the part of the government to facilitate an independent, public and broadly constituted inquiry would make it even more culpable for the deaths, they said.

Among those assassinated and whose killers have never been brought to trial, were

Dr Rick Turner - political science lecturer shot dead at his Durban home when he answered a knock at his front door.

Brian Mbulule Mzambuko - ex-Robben Island prisoner, stabbed to death on the East Rand in 1985.

Alex Pitane - East Rand member of Cosas, abducted and beaten to death in 1985.

Matthew Goniwe - founder of the Cradock

Residents Association and Sicelo Mhlawuli - Quthiwoorn teacher and UDF member. They disappeared on June 17, 1985. It was later learned they had been abducted and killed.

Toto Dweba - Natal Freedom Charter Committee member, found dead with his head almost severed and stab

wounds on his head and neck. Both hands were cut off at the wrists.

Godfrey Thuso Puso, a Sid Seven pupil from Soweto, killed when a white assassin opened fire on a group of pupils.

Victoria Mxenge - hacked to death outside her Durban home. An analysis released by the David Webster Trust reveals assassination attempts (160), death threats (four), harassment of persons (36), attacks on vehicles (28), burglaries (29), attacks on places of worship (9) and desecration of graves (4) - this includes that of Hector Pieterse the first victim of the 1976 Soweto uprisings.



Victoria Mxenge - stabbed to death outside her Umlazi home in 1985.



Matthew Goniwe - murdered with three others.

Asvat murder: trial starts soon

STAR By Celeste Lduw 6/10/89

The trial of the two alleged murderers of former Azapo health secretary Dr Abu-Baker Asvat will start in the Rand Supreme Court on October 16.

An indictment presented to Mr Zakhele Mbatha (21) and Mr Toelane Dlamini (20) by a Johannesburg Court magistrate alleged they shot Dr Asvat in his Rockville, Soweto, surgery on January 27 this year.

It was also alleged the two men robbed Dr Asvat of R140 and that they had illegally been in possession of a firearm and ammunition.

In previous evidence Mr Mbatha told the court he had shot Dr Asvat in his consulting rooms after he had gone there to rob the doctor.

The court heard that Mr Mbatha had shot Dr Asvat in the chest when he grabbed Mr Mbatha's legs.

Dr Asvat died from a bullet wound in the chest.

Focus on executions

STAR The Star Bureau *(E)*

LONDON — Political hangings in South Africa will come under the spotlight in Britain this month in a series of activities organised by the Anti-Apartheid Movement.

6/10/89
The meetings, put together by the Southern Africa the Imprisoned Society organisation, will mark the climax of a campaign against the hanging of Government opponents in South Africa.

Mrs Leah Tutu, wife of Archbishop Desmond Tutu, and Ms Audrey Coleman of the restrict-

ed Detainees' Parents Support Committee are scheduled to speak at a rally in London on Wednesday *(252)* *(10)*

As part of the campaign, the organisers have planned a publicity drive to prevent the hanging of the "Upington 14".

A petition against political hangings in South Africa, bearing more than 20 000 signatures, will be presented to the House of Commons on October 24.

Organisers claim that more than 70 political activists are at present facing execution in SA.

Human chain to protest unjust laws

By SY MAKARINGE

MORE than 20000 people are expected to form a huge human chain between Johannesburg and Soweto on Saturday to protest against South Africa's unjust and discriminatory laws.

The human chain link-up, organised by the Standing for the Truth Committee in conjunction with the Mass Democratic Movement, is poised to be one of the biggest protest actions held in the country.

Action

A spokesperson for the committee said people of all races including church leaders from most of the mainstream churches, students and workers would hold hands for five minutes at about 11am. The chain would stretch from the Johannesburg City Hall to Orlando Stadium in Soweto, she said.

She said the action was planned to protest against laws such as the Group Areas Act and to pledge solidarity with all organisations fighting apartheid.

Own Correspondent

JOHANNESBURG — The National Association of Democratic Lawyers (Nadel) intends meeting the government in March next year to call for a judicial commission of inquiry into the death sentence

Nadel hopes that the commission will abolish or liberalise laws that lead to the death sentence.

Nadel will present the government with peti-

Death sentence: Call for probe

CAT Times 9/11/89 252

tions they are compiling to prevent a repeat of the 1968 government refusal to appoint such a commission, because the then-minister of justice said there was no abolitionist sentiment among the public

Abolitionist pressure is mounting in legal ranks and even among the judiciary, although the rate of sentencing does not appear to have

fallen along with the decline in executions. So far this year 42 death sentences have been handed down for political offences alone, of whom 26 were sentenced in terms of common purpose law in two trials, 14 at the Uppington trial in May and 12 at Mdantsane, Ciskei, in June

So far this year 51 prisoners have been ex-

ecuted while another 54 have had their sentences commuted, according to Mr Shucks Sefanyetso of Lawyers for Human Rights. Last year 117 people were executed while 49 had their sentences commuted

Three more death row prisoners received notices of execution this week.

Lawyers for Human

Rights and Nadel do not believe the year's overall decline is necessarily a hopeful sign. They point out that while the rate of executions slowed down early this year and ceased for two months before the election, executions have risen since. In the month from 29 September to 2 November there were 10 executions, an average of two a week.

Staff Reporter

"To do this we must..."

Three men hanged yesterday

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Tint
10/11/89
252

PRETORIA — Three men were hanged at Pretoria Central Prison yesterday, bringing the total number of people executed so far in South Africa this year to 52.

Sixty condemned people have been reprieved.

Those hanged yesterday were: David Mbuzawa Shongwe, 40, Tembinkosi Welcome Boo, 31, and Boy-Boy Boo, 22.

Shongwe was found guilty by a judge and assessors at Witbank on April 7 this year of the murder of a 25-year-old man.

The Boo brothers were sentenced to death in the Supreme Court, Port Elizabeth, on September 28, 1988 for murder with no extenuating circumstances following the death of a four-year-old girl in June 1987 at Bluewater Bay, Port Elizabeth.

According to the evidence, they were surprised by the girl and her mother while they were burgling a home where the elder brother had been employed as a gardener — Sapa

Investigation into 'racist' remark in court

Staff Reporter

10/11/89 252

THE Department of Justice is investigating a remark by a Wynberg magistrate who this week referred to Indians as "you people" during a child-abuse hearing.

Addressing an accused in court on Tuesday, magistrate Mr M S Knox allegedly told the man — an Indian — that he had "listened to you people in Natal for 20 years, and you all try to jump around (when you tell a story)".

The magistrate's remark drew gasps from the public gallery during the trial of a Zeekoevlei businessman who was acquitted of charges of sexually abus-

ing his two children

Commenting this week, Law Society of the Cape of Good Hope president Ms Ingrid Hoffmann said that if the magistrate had been quoted correctly, his remark was "an absolute departure from the law of evidence".

"There is no place in our courts, or our country, for such racial matters," she said.

The director-general of the Department of Justice, Mr Jasper Noeth, said he had called for, and would study, a transcript of the proceedings.

He had also drawn the attention of the Cape Town Regional Court president to the allegation

12/16
PAG 43
11/17/82
252

CLAMP ON DETAILS OF DEATH ROW PRISONERS

Weekend Argus
Reporter

THE Department of Justice has informed Lawyers for Human Rights that it will no longer make information about Death Row prisoners available to them

This was revealed by the organisation which was refused information about three people served with execution notices last week.

"In the course of our usual legal service directed at staying executions, we requested certain information from the Department. This information has not been forthcoming."

"All along, the Department has been providing us with information on request. It is not certain at this stage what the reason is for a change of attitude," the organisation said.

"We believe that every person in this country has a right to legal representation. It will be a violation of such rights for Death Row prisoners to be denied access to legal service organisations such as Lawyers for Human Rights by having the Department refusing to disclose the particulars relating to their cases."

Boost legal aid, say attorneys

Supreme Court Reporter

THE time is ripe for the government to increase "dramatically" the amount of money available for legal aid and place effective control of the Legal Aid Board in the hands of attorneys

This is the view of Mr Andries Geysler, president of the Association of Law Societies, writing in the latest edition of De Rebus, the SA attorneys' journal

Mr Geysler said the decision handed down by Mr Justice Howard in the Natal Provincial Division of the Supreme Court in the trial of S vs Mathawane to the effect that lack of legal representation in a criminal trial did not per se mean that the trial was irregular, again emphasised the urgent need for the government to increase the amount of legal aid

CMB TorkS 15/11/87 (252)
While there could be no doubt that the absence of legal representation in a trial did not necessarily mean that a miscarriage of justice would occur, it also could not be denied that adequate legal representation could have a material bearing on the outcome of the trial, Mr Geysler said

The R15 million budgeted for legal aid during the current financial year was "but a drop in the ocean" in providing for the legal well-being of South Africans. This allowed about 50 cents a person and compared poorly with legal aid in countries such as Britain, America and Australia

Apart from medical services, legal services and the need for fair play, peace of mind and stability was a top priority in any civilised country

The ALS believed the time was ripe to increase the amount of money for legal aid and place legal aid in the hands of private enterprise, such as the attorneys' profession

Accused people often had great difficulty in approaching the same agency responsible for their arrest, detention, prosecution, trial and subsequent imprisonment for assistance in putting forward a defence to the charges faced

The existence of an independent and better-funded organisation would not only enhance the status of legal aid in South Africa but would also allow big business and fellow South Africans to contribute towards the legal welfare of those who did not have the means to provide for themselves, Mr Geysler said

CAK Temp 15/11/89

Hangings:

This year's
total 53 ²⁵²

PRETORIA — Another person was hanged at Pretoria Central Prison yesterday, bringing the total number of executions for the year to 53.

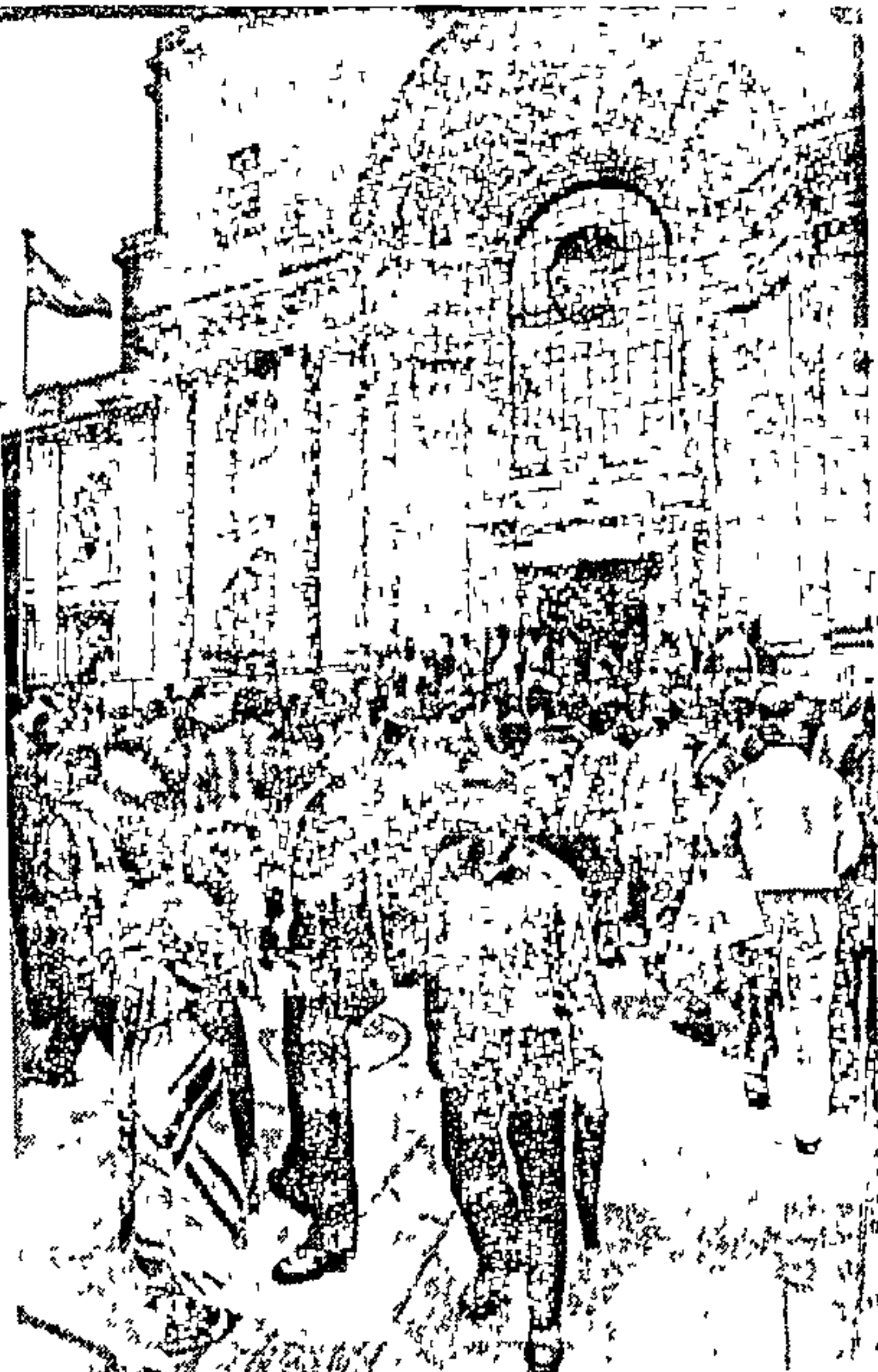
Sixty condemned people have been granted reprieves.

Solomon Ngoben, 26, found guilty of murder without extenuating circumstances at Tzaneen on October 28, 1988, was the latest person executed.

The sentence followed an incident on October 30, 1987, at a T-junction at Ritavi in Gazankulu, when Mr Mackson Kubayi was shot dead in his Peugeot bakkie.

Ngoben was also sentenced on charges of theft, rape and illegal arms possession — Sapa

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Dismissed Haggie Rand workers outside the Rand Supreme Court yesterday before the urgent application against them. Picture REUTERS

NUM fights ejection bid by Haggie Rand

6/Day (15/11/89) SUSAN RUSSELL

HAGGIE Rand Ltd brought an urgent application against the National Union of Metal Workers of SA and 92 dismissed employees in the Rand Supreme Court yesterday in a bid to have the workers removed from a company hostel in Germiston

The urgent application was opposed by the union when the matter went before Mr Justice G Leveson

It was subsequently agreed between the parties that a rule would be issued against the workers and union but the company did not ask for an interim order.

Mr Justice Leveson then issue a rule nisi calling on the union and the dismissed workers to show cause on November 28 why an order should not be made declaring their dismissal on October 23 lawful and ejecting them from the hostel

In an affidavit Haggie Rand's personnel manager David Redelinguys said workers were dismissed after taking part in an illegal strike following a dispute over an overtime ban

A total of 232 employees were dismissed on October 23, Redelinguys said, and the 93 workers named in the application were part of this group.

He said the company had lawfully terminated the employees' employment and they were in unlawful occupation of the hostel

About 200 workers who had come to attend the application gathered outside the Rand Supreme Court yesterday morning

They were allowed into the building in single file. Police confiscated a number of placards.

NATAL UNREST DEATHS

September 1987 to January 1989668
February 1989 — November 13 1989311
Past 24 hours' official toll4
TOTAL983

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16/11/89

NGK plea on death penalty

JOHANNESBURG. — The NG Kerk has added its voice to calls on the State President to consider relieving security prisoners sentenced to death.

In the latest edition of the NG Kerk publication the Kerkbode, the church said it did not want to imply that the death sentence was unbiblical, but that it wished to plead for clemency in the light of the situation in South Africa.

It expressed concern at the number of executions and of capital crimes committed in the country. — Sapa

25

Death Row prisoners — living dead — survey

Accu 16/11/89
252

The Argus Correspondent

DURBAN. — Condemned prisoners are the living dead.

For those who are reprieved, it takes years to recover. With gratitude comes exhaustion, resentment and anger at having had to endure the experience.

For the rest, their death is lonely and impersonal. In the condemned person's last moments he is surrounded mostly by strangers, the executioner, other prison officials and possibly even unfamiliar inmates.

Traumatic

In an article, "The Living Dead: Living on Death Row", in the latest issue of the South African Journal of Human Rights, psychologist Lloyd Vogelmann analyses life on death row. "It is a traumatic experience whether or not it results in execution," he said.

Dr Vogelmann based his article on research he conducted with eight people who were on death row for more than a year.

He says that according to the 1989 Black Sash research report, the average person on death row was black, came from a financially disadvantaged home, was raised by a single parent, did not complete school and was an unskilled or semi-skilled labourer.

"The first and most significant impression of death row for its incumbent inmates is the noise."

He quotes an ex-inmate "The first thing is that I could hear so many noises. It was like birds and animals in a cage. The noise was like the noise of a zoo."

According to the report a typical day on death row is taken up with praying, speaking to other inmates and singing. For those who are literate, spare time is spent reading censored newspapers, books, the Bible and transcripts of their cases, and writing letters to loved ones.

"Much of the activity described is also done in place of sleep which is in short supply because of anxiety, and the cell light which is left on for 24 hours," Dr Vogelmann says.

"Typical days on death row are often interrupted by unpleasant news from the outside."

"There are deaths in the family, illnesses, problems with children, wives and girlfriends have affairs, divorces and desertions. These disappointments are compounded for the inmate by his inability to act on the problem."

Insulting

Dr Vogelmann says some prison warders are said to be insulting and persecuting — others are supportive and more helpful than required of them.

Dr Vogelmann said his paper did not enter the debate about capital punishment.

"Rather it raises a question which may influence and add to the debate: How humane is death row?"

What progress?

252

Final
17/11/89

This will go down as the year of F W de Klerk. History will also record that a month after he became leader of the NP the Law Commission's seminal Working Paper on Group and Human Rights was published. De Klerk has been able to refer to the document as evidence of "the new SA" and the paper has flourished in the more hopeful atmosphere created by his coming to power.

Government reaction will be crucial. Only it has the power to implement a Bill of Rights. There will be no formal reaction, though, until government is presented with final recommendations — unlikely before the middle of 1990. Justice Minister Kobie Coetsee, who instigated the report, gave an interview in July which hints, however, at how government sees the document.

He described it as magnificent and added that it provided the means for government to "trump" foreign critics who said it was incapable of delivering a more just society. He also noted that an entrenched Bill of Rights was an essential starting point for a system of non-dominance.

The official closing date for comment on the Working Paper was August 31 (but further comment is still welcome). Judge Pierre Olivier, project leader at the Law Commission, has been sifting through the many submissions. In a recent interview he highlighted those sections of the Draft Bill which attracted most comment.

Article 2 forbids discrimination on grounds of race, colour and other factors, but with a proviso allowing for affirmative action. Says Olivier "It is said that it is not enough (in a country where certain communities are historically disadvantaged) to bring in a Bill of Rights with equality, you have to more or less give an advantage to the previously disadvantaged groups." People have criticised the proviso as reverse discrimination. Olivier replies "I think the short answer to that could be that this is a form of benign discrimination and, if you want to redress inequalities, you have to have such a clause."

Article 15 — the right to private property. Here criticism has come mainly from the Left. It says this enshrines capitalism and stands in the way of redistribution of wealth. Olivier responds "The point is this: whatever system you have, the right to private property is a basic, fundamental human aspiration. Even disadvantaged people, who may now wish to oppose the right to private property, once they have succeeded in obtaining the redistribution of wealth, the first thing that they would want is the right to private property. So it's not the principle that is wrong here, it is a question of tactics, of political footwork where this clause now stands in the way of a redistribution policy."

Article 20 — universal franchise. Olivier says nobody has attacked this clause outright but adds it is the "unspoken crux of the matter" for the Right. Writing in *Die Patriot* recently, CP leader Andries Treurnicht described the Draft Bill as a "reckless recipe for enslavement (*verslawing*)". It is an evil denial (*miskenning*) of a people's right to self-determination."

Article 17 — the right to dissociate. This holds that if you want to discriminate privately on the grounds of race or colour, you are free to do so, but no State funds will be lent to you in order to practise discrimination. "The difference between differentiation and discrimination is a very fine one but, internationally, discrimination can be defined as a differentiation which results in unequal allocation or recognition of fundamental human rights," says Olivier. It was discriminatory, on this view, to have different schools for different racial groups, even if per capita funding was the same for all races. In this regard there is the famous American decision, *Brown v Board of Education*, which held that separate could never be equal.

An issue that emerges from the criticism of this Article is the importance of mother-tongue education. Olivier notes that "it is very clear that we should give further attention to the question of whether education in your mother tongue is not a fundamental

human right and up to what standard, and if we shouldn't allow different schools for different languages on a voluntary basis." The current draft does not allow for this differentiation — an oversight, he says, due probably to the racial connotation which mother-tongue education has at present. "Take out the racial connotation and then it becomes legitimate."

Article 30 holds broadly that rights granted in the Bill may be limited if this is in the interests of the State security — but only in such measure and manner as would be acceptable in a democratic society. Many people approved of this Article, especially since Article 31 ensures that the Supreme Court should be arbiter in these matters. Others, however, considered it too vague and advised that specific guidelines should be laid down, for example, in what circumstances is detention without trial justifiable?

Another important idea being considered is the idea of a limited Bill of Rights. The Working Paper said the country must have a Bill of Rights as part of an eventual constitution that will come about as a result of negotiations. Some clauses, however, such as the right to privacy and physical integrity don't require negotiation — they are already part of common law — and hence could be implemented immediately. Others could be implemented in tandem with the abolition or amendment of legislation which violated that right.

Olivier says the commission has received submissions from all sectors of opinion. On the reaction of groups in exile, he says "Up to this stage I have not been in contact with the banned ANC, but we know full well what the ANC's points of view are. I respect their views and will take note of them, certainly. Many people are going over to Lusaka, or Dakar or Harare and they tell us what the ANC says."

It is also likely Olivier received feedback from the recent conference in the UK on SA law. It was attended by the ANC, academics and certain Appellate Division judges. ■

254

NEWS

City magistrate 'regrets' alleged racist remark

By ANDREA WEISS
Weekend Argus Reporter

WYNBERG magistrate Mrs MS Knox "deeply regrets" an allegedly racist remark which has sparked a Department of Justice investigation, according to his wife Jo.

Mr Knox was reported to have said to a Zeekoeyen Indian businessman acquitted on charges of sexual abuse "I have listened to you people in Natal for 20 years and you all try to jump around (when you tell a story)".

After the remark was branded "racist" by the Cape Bar Council the director-general of the Department of Justice called for a transcript of the hearing.

Ironically, in the 1970s Mr Knox received death threats and was called a "kafirboetie" by a member of the rightwing Scorpio group after convicting

a white man for insulting a gardener.

Speaking about the "traumatic" incident which caused the family much heartache, Mrs Knox said from her home "Both of us feel we owe the Indian community an apology. We want to stress the fact that the apology is sincere.

"He regrets the remark and has said over and over 'I can be called any names but in my job I am not racist,'" she said.

Mrs Knox said they had been under tremendous strain since the publicity surrounding the remark.

"It is eating us up... it's eating me up... it's eating him up. I feel that some positive could come of this by giving the other side of the story as well.

"You get real racists in this country. I hang my head in shame many a day, but there are also a lot of us who feel things are changing for the better," she added.



Mrs Jo Knox, wife of Wynberg magistrate Mr M S Knox, speaks on racism.

Picture HANNES THIAART, Weekend Argus

CH. Tom H 22/11/89
252

Supreme Court Reporter CONSULTUS — the mouthpiece of the SA Bar Council — has called for an investigation into the death penalty

In an editorial the journal said it was now in the national interest and the "healthy" administration of justice that an in-depth investigation into the death penalty be instituted by the SA Law Commission

An investigation was also recommended at the annual general meeting of the General Council of the Bar (GCB) recently

The journal said few people would be unwilling to support the GCB's recommendation because the time was now ripe for such an investigation for the following reasons

Legal journal calls for death penalty inquiry

- The imposition of the death penalty had become "controversial" in civilised countries

- The imposition of the death penalty in South African law courts was compulsory in specific circumstances and not discretionary

- The number of people sentenced to death increased yearly

- Owing to certain occurrences in the recent past the issue had be-

come politicised

- For more than a quarter of a century there had been no research at an official or authoritative level

Should the death penalty be retained, important reformist measures, including a discretion in imposing the death sentence and an automatic right of appeal to condemned persons, should be considered, the Consultus editorial said

CMC Rec B 22/11/199 25-2

Freed Death Row man pleads for others

PRETORIA — Mr Paulos Maseko will never forget Monday — the day he left Death Row after spending more than 18 months there as a condemned prisoner.

Mr Maseko, 28, from Mamelodi, was sentenced to death by Mr Acting Justice Human in the Pretoria Supreme Court on May 3 last year for the murder of a Mamelodi woman, Mrs Linah Mphela.

The Appeal Court on Monday set aside his conviction and sentence. "I am free, but my heart is not free,"

Mr Maseko said "What about the other people on Death Row?"

He said he was overwhelmed when he was sentenced to death because he knew he was not guilty of the murder.

"I was scared," he said.

Although he attended church regularly before going to prison, the father of two said he became more religious in prison.

Mr Maseko said he never thought he would be executed and believed God would save him.

Soon after the Appeal Court set

aside his conviction and sentence, Mr Maseko's attorney, Mr Harold Berkow, told him he was a free man.

"I could not believe it," he said.

On Monday night Mr Maseko said "I want to urge all the people in South Africa to fight against the death penalty."

Mr Justice Eksteen, with the concurrence of Mr Justice Hoexter and Mr Justice Milne, said, in the Appeal Court in Bloemfontein on Monday that his decision to set aside Mr Maseko's conviction and sentence was not

reached lightly.

The fundamental requirement that the source of impartial and just judgment should be preserved pure and unblemished at all times, forced him to his decision.

The appeal had been based on the apparent partiality of the trial court in favour of the State and the prejudice which the judge revealed towards Mr Maseko in the trial, which created the impression that the court, before judgment, had already decided on his fate — Sapa

252

Guarantee for courts urged

By RONNIE MORRIS
Supreme Court Reporter

A BILL of Rights without the guaranteed independence and impartiality of the courts would not comply with the fundamental nature of such a bill and all steps should be taken to ensure that the courts — at all levels — enjoyed the necessary status and esteem.

This was said in an editorial in the latest edition of *Consultus* — the S A Bar Council journal.

A new constitutional dispensation would have no credibility unless effective and enforceable guarantees were created for the fundamental rights of all citizens.

In the past politicians, in particular, were inclined to regard the judicial branch in lesser light than the legislative and executive authorities. In view

‘Independence vital for Bill of Rights’

of the proposed constitutional reform, the time had come to discard that misconception, the editorial said.

The lower courts, district and regional, should also not be left out of the debate.

Most of the population — specially the underprivileged — largely depended on these courts to determine their rights and their obligations in both criminal and civil matters.

Unless the credibility of the lower courts was sufficiently enhanced, the

proposed constitutional reform would not be acceptable to the public at large.

In international bills of human rights special provision was made for the administration of justice through independent courts, the editorial said.

Unless a provision was included in the proposed Bill of Rights that all persons were equal before the courts and entitled to a fair and public hearing by a competent, independent and

impartial tribunal judges could be subordinated to the executive and the Supreme Court would also no longer be able to serve as an effective bulwark between the executive and legislature on the one hand and the general public on the other.

Furthermore the enforceability of basic rights would be placed in jeopardy.

A clause with this provision ought to be incorporated in South Africa's Bill of Rights. If that was to be done the time had arrived to devote attention to the position of the lower courts, as recommended in the Hoexter Commission's report tabled six years ago. It was known that presiding officers in the lower courts, ie regional and district magistrates, were public servants and were not independent functionaries.

Opinion

Bills of Human Rights came under the spotlight last weekend at a symposium in Windhoek organised by NPP (Namibia Peace Plan) 435, an unofficial watchdog body which will monitor the progress of good government.

THREE eminent jurists were the keynote speakers — the Honourable Justice E Dumbutshena, Chief Justice of Zimbabwe, the Honourable Justice Hans Berker, Judge President of the SWA Supreme Court, and Dr B G Ramcharan, a UN Human Rights authority.

Speaking on the role of the judiciary in relation to human rights, Judge Berker said that, with a few notable exceptions, the South African judiciary had a "rigid adherence" to the narrow approach that judges must only ascertain what the law is, "but not make it". This enabled the judiciary to apply "the hardest of laws with an easy conscience". Sometimes there was a failure to grasp the extent to which "technical rules of interpretation might be invoked to moderate the law's inequities".

The positivist approach, with its rigid tendency to interpret the apparent will of Parliament without regard to values — and especially moral values — left one with "a considerable feeling of uneasiness". Could judges stand aloof from society and its problems and disregard moral values?

Most eminent

Mr Justice Dumbutshena reinforced this view when he said "Above everything else is the supervisory work of an independent judiciary presiding over the Rule of Law. The judiciary is the guardian of the constitution and the citizens' rights."

Mr Justice Berker pointed out that some of the most eminent of American jurists, such as Mr Oliver Wendell Holmes, Mr Justice Cardozo and Mr Jerome Frank accepted that judges had subconscious prejudices and preferences which could never be completely removed from the judicial process.

SA Judiciary

'rigid', says

SWA's Judge

President

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252



KEY SPEAKER ... The Honourable Justice Hans Berker, Judge President of the SWA Supreme Court

Quoting Mr Cardozo, he said "deep below consciousness are forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions which make the man, whether he be litigant or judge. There has been a certain lack of candour in much of the discussion of this theme, or rather in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations."

A particularly relevant fact in the South African scenario was that all judges were white. "Whether they support the government or not, most have one basic premise — a common loyalty to the status quo. This premise, which seldom surfaces in judicial decisions, may manifest itself in a variety of ways, depending on the background and outlook of each judge. It may take the form of opposition to social intercourse between races, of antagonism to radical political change, of sensitivity to foreign criticism of the

Republic. Inevitably, there will sometimes be a subconscious communion of opinion between members of the judiciary and the Executive drawn from the same privileged white elite, in cases involving disputes between individuals bent on radical change and the State.

"This is what is at the root of the accusation that the South African judiciary has become 'establishment-minded'. There is no suggestion of deliberate bias. All that is suggested is that by relying on mechanical, positivistic methods of statutory interpretations, judges have been subconsciously influenced by submerged forces which may sometimes coincide with the will of the executive."

Sole task

Mr Justice Berker drew attention to Professor John Dugard's address in 1971 under the heading "The Judicial Process — Positivism and Civil Liberty" in which he claimed that some jurists took the view that the sole task of the court in interpreting a statute

was to discover the legislature's intention through rules of interpretation.

"Its function is seen as purely mechanical or phonographic. The judge is denied any creative power in his mechanical search for the legislature's intention and desirable policy considerations, based on traditional legal values, are viewed as irrelevant. This approach accords with the Blackstonian theory that judges are authorised to 'find' the law only, not to make it."

Conclusion

"This view is patently incorrect. In drafting a statute the government draftsman cannot possibly foresee all the problems likely to arise in connection with that statute. Frequently the court is called on to 'discover' the intention of the legislature on a subject which the legislature could not possibly have considered. In such a situation, the judge's discovery of Parliament's intention is a fiction. His finding is his own opinion of what Parlia-

ment would have intended had it applied its mind to the subject — which it did not."

"On the route to this conclusion rules of interpretation are invoked in support of the judge's finding, but frequently these rules are used not to guide a judge to a particular interpretation, but to justify an interpretation already arrived at by judicial instruction.

"The principles I have enunciated are designed to promote the prime legal value of our legal tradition — the worth of the individual. They should, therefore, be treated as 'preferred principles' in the same way that some of the rights contained in the American Bill of Rights are regarded as 'preferred freedoms'. They should be invoked not only as common law principles, but as guiding values in the interpretation of statutes invading individual liberty."

Whipping

"In adopting this approach, judges may risk legislative reversal and executive displeasure —

but popularity has never been the goal of judicial achievement. "Our (ie SWA) judges have not hesitated to criticise legislation contrary to justice and the reason in the sphere of private law and those branches of public law which are politically colourless. Legislation providing for compulsory whipping and imprisonment has also received the full force of judicial censure and these strictures have resulted in enlightened reforms."

"To me there seems to be no reason why this salutary practice should not be extended to statutes invading civil liberty."

"Lord Denning has pointed out that judicial observations 'may form an important basis of public opinion and if matters come before judges where injustice is being done, they are entitled to point it out so that the public may know of it and form an opinion upon it.'"

"This is not a plea for off-the-bench criticism of legislation — but for firm censure from the bench of those statutes which conflict with the fundamental legal principles upon which our system is based."

"At the most such statements might serve to influence the legislature, at the least they would constitute judicial dissociation from those policies of the legislature and the executive which pursue purely sectional interests."

Individual

"Perhaps the major point at the colloquia at Bangalore and Harare was that of educating judges and legal administrators to make them fully aware of the principles of human rights as contained in the developing body of international law."

"In conclusion, I should like to state that the court of which I have the honour to preside has always attempted to protect the individual against the State and has protected the human rights of the individual generally. I am proud to have been told that this court is not executive-minded and I am certain that in the future it will pursue this approach to the utmost of its ability."



Retain the rope, say most Argus readers

ARGUS 24/11/89 ZSU

Staff Reporters

MORE Argus readers are in favour of retaining the death penalty and some believe hanging is too mild a deterrent and advocate public hanging and beheading

A total of 274 people from as far as George and Johannesburg responded to The Argus's vox pop survey yesterday to say how they felt about the controversial issue of abolishing or retaining hanging

Of these, 174 callers supported capital punishment and 71 were in favour of its abolition. The remainder were undecided

Five months ago a similar survey was conducted by The Argus and 139 people wanted the death penalty retained and 134 wanted it abolished

Most abolitionists gave moral and humanitarian reasons for their argument and those in favour of hanging said it was the only effective deterrent to crime and a matter of "an eye for an eye"

It was felt the taxpayer had to carry the burden when "undesirable" people were put into jail and they should therefore be hanged. The families of murder victims had to go through trauma and the murderer should suffer an equivalent amount of pain

Abolitionists, however, felt no one had the right to take someone else's life and that South Africa ought to join the rest of the modern world and abolish this inhumane practice

The most vociferous caller in favour of hanging was Mr John Edgar Noble of Paarl who likened killers to "mad-dogs" which had to be destroyed

Three years ago a gang of eight murdered his maid and gardener in "cold blood" after they had asked for and been given water

"People who have lost loved ones know the savagery of these bloodthirsty scum. If you see a mad dog you shoot it! Why should society support murderers? Exterminate them!"

Mr Fuad Netherlands from

Ottery said lawyers don't know the meaning of an eye for an eye. These killers should be beheaded in public

Mr Sayrodien Ajam from Athlone and Mr T Grieve of Scarborough agreed, saying it worked very well in the Middle East

A woman from Green Point who wanted to remain anonymous advocated electrocution because it would be more painful

Mr J Williams of Mitchell's Plain said people travelling on trains lived in terror. He had himself been shot at and robbed

His view was supported by many callers from coloured and black areas who said the abolitionists lived in secure areas where they were not constantly threatened by violence

Mr E Steyl said human rights activists should be more interested in the victims of murders and their families

Mr MT Smith of Rondebosch believes there is no point in keeping killers alive only to let them loose again on society

A number of people insisted that the death penalty should definitely be imposed on someone like Strydom, the Pretoria mass murderer

Not political crimes

But many callers, although supporters of the death penalty, said when it came to political crimes, particularly where "common purpose" was used, there should be no hanging

However, most people believed the principle of an eye for an eye should apply

This argument was biblically based, said many callers, who claimed to be Christians

A retired magistrate from Wynberg and a Somerset West law student, Miss Cindy Clayton, said the death penalty was the only deterrent for premeditated murders

"I have been researching the death penalty and although it appears to be barbaric, there is no other solution," said Miss Clayton

Abolishing the death penalty would put the country in line

with international legal and political thinking, which was human-rights orientated, said many of the callers, including Mr Johan Roos of UCT's law faculty

"Russia and Iran are the only two other countries in the world which still practice this form of barbarism and South Africa will be judged by the company it keeps," said Mr Gray Trumble of Sea Point

Studies had shown judges were more likely to sentence blacks to death than whites and this was unacceptable to the majority of South Africans, said many callers, including Mr William Kerfoot of Lansdowne

"White South Africa is normally appalled by necklance killings, but they are happy with hanging which is just as barbaric," said Mr Graham Abrahams of Athlone

The editor of Kenfac News, Mr Abduraghma Khan, said hangings were not tolerated by "the masses" in a politically charged country like South Africa

Empirical evidence also suggested hanging was not an effective deterrent against violent crimes, other callers said

Another reason given by abolitionists was that judges were not infallible

People on Death Row went through unnecessary trauma and were often treated badly by warders, said many callers, including a nursing sister from Groote Schuur hospital

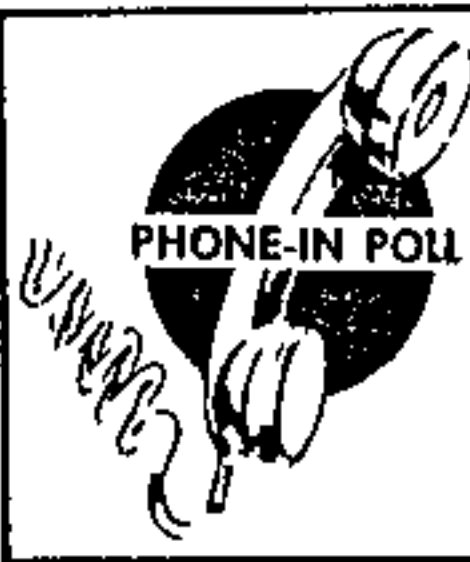
Painful alternatives

Few people said the death penalty should be abolished and criminals should be punished with painful alternatives

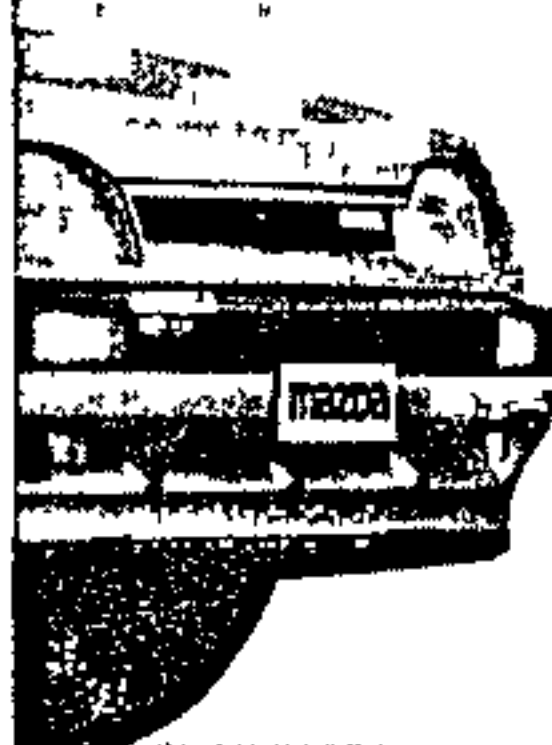
All the abolitionists, besides Mr Dawood Cadir of Kensington, suggested people found guilty of murder serve a life sentence of community service

"They should do the same as they do in Arabia and rather than kill a man, chop off his hands if he is found to have sold Mandrax," said Mr Cadir

Nine-year-old Kennet Waspe of Rondebosch and Mr B M Ndyolo of Khayelitsha said "no-



99



extra

ates

ge for much

Demise of the death penalty

Staff Reporter

MOST of the English speaking Western countries have effectively abolished the death penalty except for certain exceptional crimes, according to a recent Amnesty International publication, entitled *When the State Kills*

In Australia the death sentence was abolished in 1985 in New South Wales, although it had already been abolished in all other states before then. The death penalty was abolished at federal level in 1973. The last execution took place in Victoria in 1967

In Canada the death penalty for capital murder was abolished in 1976 and was replaced by a mandatory 25 year sentence of imprisonment without the prospect of parole

The death penalty was, however, retained for certain military offences under the National Defence Act such as mutiny or any offence committed in the presence of the enemy

In terms of Canadian law the death penalty may be imposed



AGAINST HANGING. Under a model of a gallows, human rights lawyers in Johannesburg call for the end to the death penalty this week

only where there is a unanimous verdict

There have been no executions under the Defence Act and the last execution in Canada took place in 1962

In New Zealand the death sentence was abolished for all but certain exceptional crimes such as treason committed by civilians, for which there have been no convictions since the turn of

the century. It was abolished in respect of murder in 1961.

The last execution of a soldier took place in World War I and the last civilian execution in 1957

In the United States the law with regard to the death penalty differs from state to state

From 1985 to mid-1988 there were 66 executions in the US

252

THE 34 burglary suspects shot dead by East London security guard Louis van Schoor over the past few years shows that the value of human life under South African law can amount to just a few rands, say lawyers

"According to our law one could justifiably shoot at a child who was stealing an apple," said human rights lawyer Nicholas Haysom, who has researched the right of policemen and private citizens to shoot "fleeing felons"

Van Schoor's record of 34 killings — more than four times the toll of mass murderer Barend Hendrik Strydom — has sparked a public outcry

Last week Cape Law Society president Tony Hardy called for an urgent review of the Criminal Procedures Act, which allows a person carrying out an arrest to shoot dead a fleeing suspect. The crimes could range from pilfering to robbery to murder

Inquests were conducted into the deaths of 26 of Van Schoor's victims

Justifiable killings 'merely make a mockery of the law'

and in each case magistrates found that the security guard had acted within the law

A lawyer involved in investigating the shootings said Van Schoor had claimed he was acting in self defence in 18 of the 26 cases

But Van Schoor now faces three charges of attempted murder, all involving people allegedly shot by him. Eastern Cape attorney-general Dr JD Oliveira said this week that the records of the 26 inquests would be examined, but police dockets relating to the allegations of attempted murder have not yet been passed on to his office

When one man alone is 'permitted' to kill 34 people in 'self-defence' then the law must be questioned CASSANDRA MOODLEY reports on a growing call for an inquiry

Hardy welcomed Oliveira's announcement of an investigation and described it as "encouraging"

But Haysom said the Van Schoor case was not the first instance in which a private citizen embarked on a series of "justifiable killings"

"The principle objection to these shootings is that they make a mock-

ery of the legal system," he said

He said the Criminal Procedures Act allowed a suspect to be killed without any test of his innocence or guilt, even in cases in which he would only have received a suspended sentence if arrested, charged, tried and convicted

An well known example was the Johannesburg café owner who shot dead eight people whom he alleged were attempting to break into his property, Haysom said

No criminal charges were ever brought against the man but it was only after the eighth killing that his licence to own a firearm was revoked,

Haysom said

"It appears that the staff of the attorney-general are reluctant to prosecute a property owner who kills in defence of his property. There is no reason to believe that policemen who kill in defence of property would be treated more severely"

The attorney-general was reluctant to prosecute policemen — or security guards — for the use of firearms, he said, adding that the person killed or injured was the only one who could really give evidence

"Many of the cases which come into the public eye are those resulting in a formal inquest, commissions of inquiry or civil suits," he said

Haysom said that South African law allowed policemen to use deadly force on three grounds

● When protecting life or property, which falls under common law

● To arrest a fleeing suspect. In this case the policeman acts in terms of the Criminal Procedures Act.

● To disperse an unlawful gathering under the Internal Security Act

"In South Africa property is regarded as more valuable than life," Haysom said

"In the early 1970s, the Appellate Division ruled that people who acted outside the law should not claim its protection. Thus a person could deliberately kill or wound another to protect his property"

Referring to a call for a review of the law, Haysom said "In the instance of the security guard, the attorney-general's role needs to be stressed

"The courts also have a particular role in preventing the role of deadly force to protect property interests and the attorney-general and the police themselves should be bringing more prosecutions before the courts

"At the heart of it we need a political system in which the police are accountable to the people, both locally and centrally"

Haysom adds "Police use firearms and inflict deadly force too readily"

This was illustrated in "township policing" in recent years, he said, citing the examples of shootings in Mamelodi, Langa, Kabokweni, Athlone and Winterveld

The most notorious township shooting is the "Trojan Horse" case, in which nine policemen are standing trial for shooting dead three youths from the back of a railways truck during the 1985 riots in Athlone. The youngest of the three, an 11-year-old, died of shotgun wounds to the head

The policemen claimed their truck had been bombarded by stones

A Cape Town magistrate ruled in an inquest last year that Lieutenant Douw Vermeulen and his task force had been negligent and responsible for the deaths of the three youths

He found police had exaggerated the extent of the stoning of the truck by the crowd — international television crews found that only one brick and two or three stones had been thrown

It was also found that 39 rounds of shotgun ammunition and buckshot had been fired into the crowd and that there was no evidence to show that the youths who were shot dead had thrown stones

But Cape attorney-general Daniel Rossouw declined to prosecute and did not give reasons for his decision

The family of two of the youths then privately prosecuted the policemen for murder, the first time such a case has been heard under South African law. Judgement in the case is expected soon

Other cases of shooting by policemen include the Langa shooting in March 1985, where 20 were killed and 27 seriously injured when police shot at a group of mourners marching to a funeral in kwaNobuhle

A year later Bophuthatswana police opened fire on the Winterveld squatter camp, killing 13 — almost half of them children

Haysom said surveys carried out on such shootings showed that 50 per cent of the victims were shot in the back or side of the body — suggesting that the shootings were not merely aimed at arresting agitators, since such wounds could result in death or serious injury

APARTHEID BAROMETER

CLOSURE OF WHITE SCHOOLS

A TOTAL of 196 white primary and secondary schools have been closed over the past 10 years, according to the latest edition of the SA Institute of Race Relations publication *Update 8*. The report said that 21 of these schools were presently being let to the Indian and "coloured" education departments, 133 to other government departments or private interests and 42 were not in use

Excluding the Cape schools among the 196, these schools had a combined capacity of 15 238 pupils

BORDER FENCE

AT least 94 people have been killed on South Africa's electrified border fences, according to figures released by the South African Defence Force.

Colonel Hans Stempfle of the army said that nine people were killed between August and December 1986, 36 in 1987, 28 in 1988 and 16 in the first eight months of 1989. In this period five others were shot.

The northern fence was switched on in 1986 and the eastern one in 1987. According to the director of the Catholic Bureau for Refugees, Father Jeanne Pierre le Scour, 52 people were killed on the fence between July and December last year — excluding those shot.

PRISONER OF CONSCIENCE

JOHN VUSUMUZI NENL, 46, a member of the African National Congress, was detained under South Africa's security laws on November 30 1975 and sentenced to life imprisonment under the old Terrorism Act on July 25 1985

He has spent a total of 25 years and three months behind bars, making him the country's second longest serving political prisoner (after Nelson Mandela)

Since March 1963 he has spent only 16 months out of prison — all but 11 days of which were spent living under a banning order

The son of a domestic worker and a policeman, Nene grew up in Pietermaritzburg. After he had completed Std 6 his father died and he left school to find work. He first became politically active in 1958 as a 15-year-old during the ANC's potato boycott campaign

He joined the ANC and later Umkhonto weSizwe, leaving the country for military training in February 1963. The following month, aged 19, he was detained in Northern Rhodesia (now Zambia) and deported to

South Africa where, on April 4, he was sentenced to two years' imprisonment for leaving the country without a passport. While still serving this sentence he was tried for leaving South Africa for military training, and on May 21 1965 was sentenced to eight years' imprisonment.

Nene was released on May 19 1973 but was soon afterwards served with a five year banning order. Ten months later he was sentenced to an effective 12 months' imprisonment for contravening his banning order. He was released on March 23 1975 but eight months later was detained with six others. Twenty months later he was sentenced to life imprisonment on Robben Island, together with Harry Gwala, Anthony Xaba, Msoni Mityiva and Zakhele Mdalose.

BANNED BOOKS, PUBLICATIONS AND OBJECTS

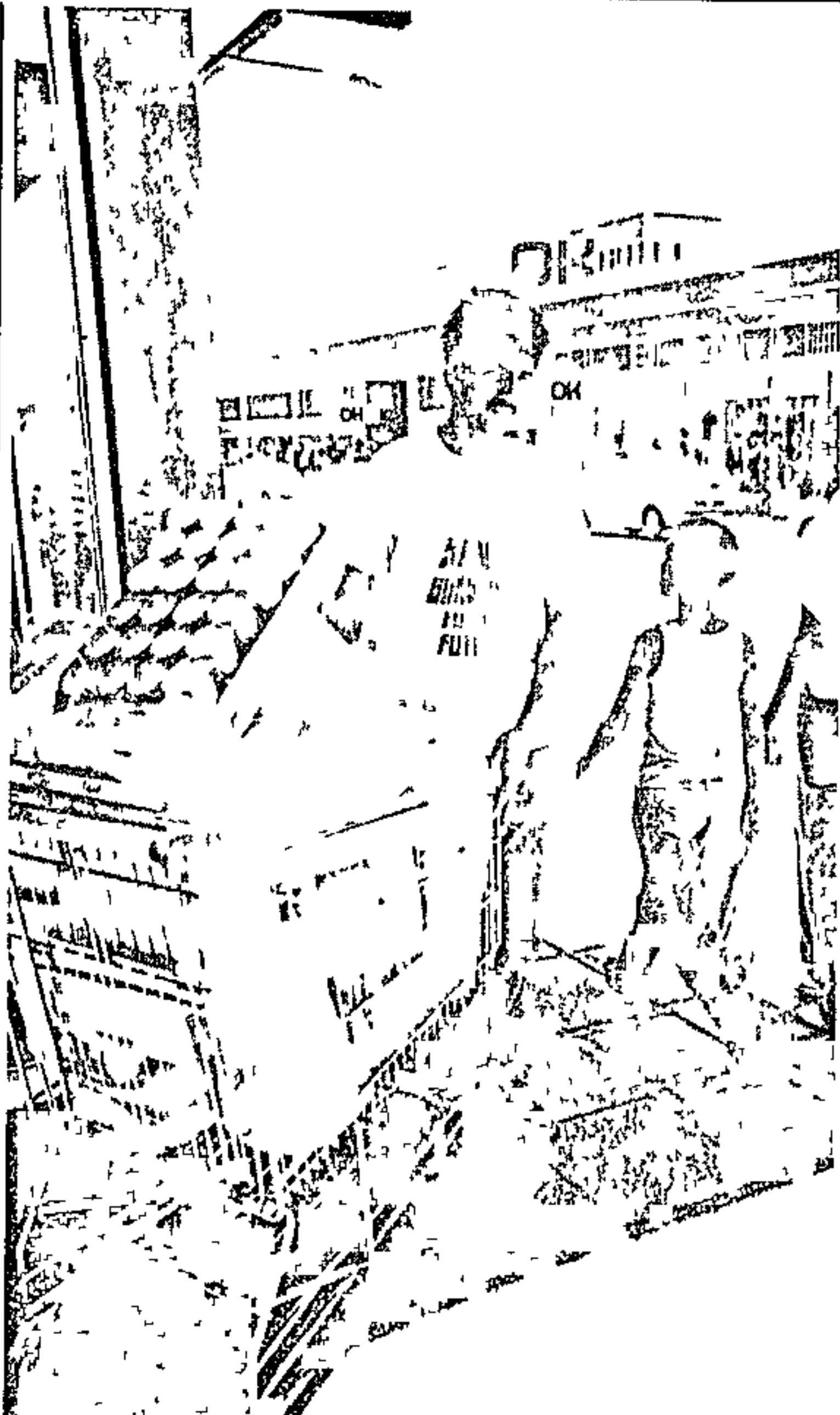
Banned for distribution and importation: No Easy Road — Apartheid: What and Why is it? (Mahmoud El Kail), Apartheid South African Nazism (Sipe E Mzimeta), Che Guevara and the Cuban Revolution (Pathfinder, Australia), The Penis (Brian Richards, MD), The World's Greatest Nudist Videos — video, Pamflit, BVLC, Warm baths), Buckskin Breed — Buckskin Special Edition (Kit Dalton), Illustrator's Reference Manual Nudes (Bloomsbury Publishing Ltd, London), Ninja in Action — film, Blood Tracks — film, Leon Popsicle — film, In Too Deep — film, Exterminator 2 (Review) Restricted

The Loving Touch (Dr Andrew Stanway — not for persons under 18, must be sealed in plastic wrapping and only distributed by bookshops, lending libraries and wholesale book distributors), Make Better Love (Harlyn Publishing Group Ltd, London — not for persons under 18, must be sealed in plastic wrapping)

Banned for possession: Sure Shot 1980 — greeting card (Sure Shot, Chicago), Bestell nos 00102, 00101, 00106, 00108 — greeting cards (Verlag Rosa Winkel, GMBH, Berlin), Playgirl vol 111 no 9 February 1976 (Playgirl Inc, California), Gay Life .. It used to be such fun — PN 409 90 — greeting card (Rockshots Inc, New York)

Unbanned for distribution and importation: Forced Removal — the Division, Segregation and Control of the People of South Africa (Elaine Unterhalter).

Unbanned for possession: Year of Fire, Year of Ash (Baruch Hirsch)



Feast after the famine — a Boksburg resident stocks up after months of boycotting the local shops. With the recent announcement by the State President FW de Klerk that the Separate Amenities Act would be lifted the consumer boycott came to an end

Picture CEDRIC NUNN, Afrapix

The ESP is a non-profit education trust which provides supplementary education to Std 9 and 10 students. In 1990 we will be implementing a study group training and support programme in the East Rand. We need a

STUDENT SUPPORT WORKER

Responsibilities will include

- devising and implementing counselling and advice services for ESP students
- devising and implementing extension strategies for the formation and support of study groups
- taking responsibility for the development, implementation and evaluation of ESP's Life Planning Studies, Study Skills and Organisational Skills courses
- participating in the overall management of the project

Applicants should have

- a university degree
- experience in counselling students
- an interest in educational issues in the South African context and an ability to work well in a team committed to democratic practices

Applications in writing together with CV and two references should be sent to: 108 Dunwell House, 35 Jorissen Street, Braamfontein 2001. Closing date: 7 December 1989. To start: January 1990 or as soon as possible.

Protesters poised to march

TWO protest marches, one in Daveyton and another in Alexander, hang in the balance as organisers wait for magistrates' permission

The decision to hold the Daveyton march was taken at a meeting attended by more than 500 residents

The meeting also elected a delegation to visit the Transvaal Provincial Administration in Pretoria next week

Besides the rent crisis in the township the delegation will discuss the appointment of a commission of inquiry into the council's activities, the suspension of the July rent increase, an end to evictions, the suspension of the council, and the building of low-cost housing in the township

"The aim of the march is to register the anger of the Daveyton community at the increased rentals and the R25 paid monthly to the council by shack-dwellers," organisers said

Meanwhile, the Alexander Action Committee and other Mass Democratic Movement structures in the township have approached the Randburg

By VUSI GUNENE

magistrate and the government to seek permission for a mass meeting at the township's stadium

Last week, a proposed meeting and march was banned

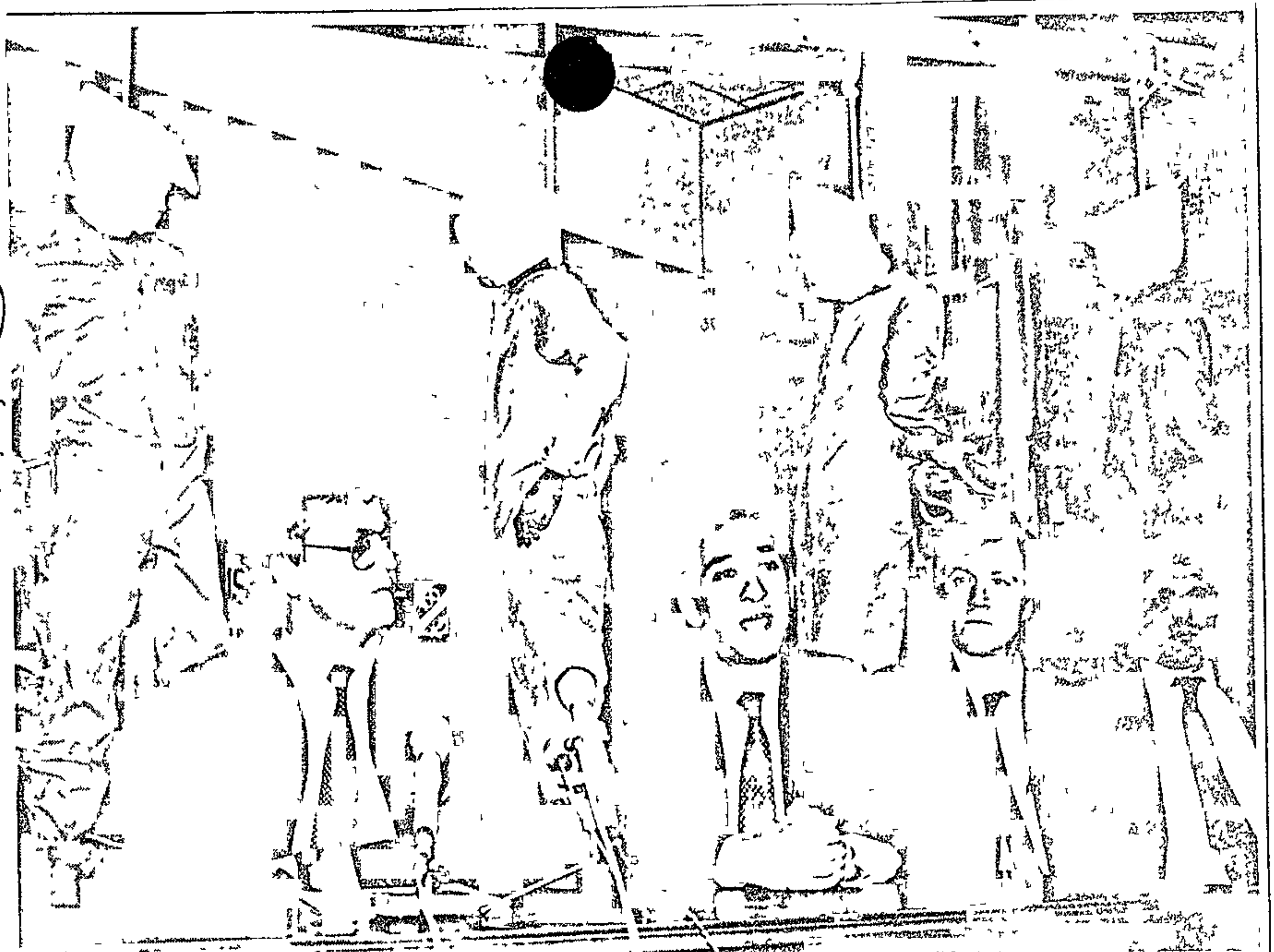
AAC representative Obed Bapela said the Ministry of Justice asked for a letter from the council confirming that the meeting would take place on the Saturday but that the council refused to submit such a letter

The AAC intends to draw the following grievances to the council's attention: the lack of houses and poor living conditions, an expensive housing policy beyond the reach of most Alexandra residents, the threatened destruction of shacks and forced removals to Orange Farm, and the relocation of residents to parts of the township where they are accommodated in old buses and zinc shacks

The AAC has threatened to seek a supreme court interdict if the march is not allowed

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252
24-30/11/89



Beneath a menacing line of dangling plastic 'corpses', human rights lawyers call for an end to the death penalty this week
Picture. ULLI MICHEL, Reuter

SIX death row prisoners had their sentences overturned this week in two judgements that place serious question marks around the functioning of the legal system

In the retrial — called on purely procedural grounds — of the "Queenstown 5", a different court and a different judge reduced five death sentences to terms of less than two years imprisonment.

A sixth accused died of TB while on death row.

In the second case Paulos Maseko was released from death row after the Appeal Court found that the original judge had acted in a seemingly prejudiced and partial manner.

Three Appeal Court judges found that Acting Justice WJ Human had acted in such a way as to make it seem he had rejected Maseko's evidence and closed his thoughts to the possible innocence of Maseko before the trial was concluded.

Justice Human is the same judge who convicted the Sharpeville 6 on a "necklacing" charge. Their death sentences have also been overturned.

In the original trial, Human had told Maseko,

From death row to light sentences for 6 convicts

when the latter was giving evidence, to hurry up so the court could get the trial over and done with.

In the East London trial an important precedent was set — one which is expected to have important implications for next week's appeal in the "Delmas treason trial", which involves senior United Democratic Front leaders, and

for "necklace" cases in general.

This arises from the decision of the judge to admit as extenuation the principle of deindividuation in relation to certain extreme forms of crowd behaviour.

In the deindividuated state, the individual becomes an anonymous — and therefore only partially responsible — part of a group.

Lawyers have pointed to the wide-ranging effects of the judgement — they believe it is likely to have legal implications for scores of people on death row convicted for their part in mob killings.

"The judgement has important implications for human rights law and it could indicate a change in attitude to 'political crime'. It bears directly on the current debate about capital punishment," said a human rights lawyer.

The "Queenstown trial" this week was the second time the men were tried for the murder of Noshipho Zamela in Mlungisi, near Queenstown.

The five were originally sentenced to death in 1987. However, their convictions and sentences were set aside by the appeal court on the ba-

©To PAGE 2

MURDEROUS POL POT'S FAIRY GODMOTHERS IN THE WES

P.T.O.

Six taken off death row

WMAI 24-30/11/89

252 300
● From PAGE 1

sis that the dismissal of one of the assessors by the trial judge had been irregular

The assessor in the trial had requested that he be granted leave because his daughter was ill. The judge had allowed him to go

This, the defence claimed, was irregular, and it was on this ground that the retrial was ordered

Passing sentence in the retrial on Tuesday, Mr Justice C Jansen said factors he considered were the concept of "deindividuation" and how this phenomenon might have influenced the behaviour of the accused in a crowd situation.

Judge Jansen said the subjective minds of the accused at the time was an important consideration as what had consciously or subconsciously driven them to act the way they did.

Legal Resource Centre director, Arthur Chaskalson SC, said "The judgement is striking and demonstrates the danger of the death penalty because the difference between the death sentence and 20 months is so extreme."

He added: "This shows that if appropriate evidence is produced and it has appropriate consideration the difference may be between death and imprisonment

"The decision requires government

law advisers to reassess recommendations as to whether or not death penalties should be implemented"

The remaining five men were re-arrested immediately after the Appeal Court's decision and again charged with the murder of Zamela

At the start of their retrial early this year, the five pleaded guilty to murder and the defence led expert evidence in extenuation.

Justice Jansen sentenced the six to 60 months' imprisonment, of which 40 months were suspended for five years.

Justice Jansen remarked that his judgement, in particular the leniency, may come in for criticism in certain quarters — particularly among some politicians. But he said if he did err he would prefer to err on the side of the accused.

He accepted that the perception of the community, their sense of relative deprivation, their sense of alienation and frustration and their experience of police actions were all relevant in determining the subjective state of mind of the accused when they became part of the crowd which necklaced the deceased.

Officer warned of Nuremburg style charges

By GAYE DAVIS,
Cape Town



A SECURITY policeman was this week told he could face prosecution under international law for recognised "crimes against humanity and torture" *W Mail 24-30/11/89*

Dawid de Villiers, QC, defence counsel in the Yengeni trial in which 14 people are charged with terrorism and other Internal Security Act charges, interrupted his cross-examination of Warrant Officer Jeff Benzien to warn him his answers could incriminate him.

It was not merely a question of complaints laid with police within South Africa, De Villiers said

Steps had been taken "on behalf of two of the accused with a view to the possibility of (Benzien's) prosecution outside the borders of this country on internationally recognised crimes against humanity and torture".

Defined after the Nuremberg war-crimes trials and ratified by the United Nations in 1946, crimes against humanity form part of international customary law. Apartheid is deemed such a crime by the International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified by 86 nations.

Some countries, including the United States, the United Kingdom and South Africa, have rules of incorporation rendering international customary law part of their domestic law.

In the view of legal experts, this gives them the jurisdiction to prosecute official torture, recognised by international customary as a crime.

This means Benzien would not be able to leave South Africa without the threat of prosecution — or that he may face prosecution in South Africa at some much later date.

In his evidence, Benzien has repeatedly denied allegations that he was guilty of torture.

He denied jumping on the shattered leg of Bongani Jonas — who was shot on his arrest and who was recently sentenced to three years' for refusing to testify — or that Jonas pleaded to be taken to hospital.

He said Jonas was co-operative and "seemed anxious" to point out arms caches in Khayelitsha, which was why police took him there first.

Questioned on the techniques employed by the Terrorist Detection Unit to extract information from suspected guerrillas, Benzien conceded that he became "aggressive" on the point of arrest but denied that he invariably played "bad guy" during Mutt and Jeff-type interrogations.

involved in educating their workers
Venter said governments should

an iceberg phenomenon what was
visible was only a small part of the

tancy from the onset of symptoms
to death was 15,6 months.

NUM application on Kinross

THE NUM has applied to the Rand Supreme Court for an order reviewing and setting aside a decision by the presiding officer at the Kinross mine disaster inquiry not to allow the union's lawyers to cross-examine witnesses.

The NUM's application began before Mr Justice Goldstein yesterday.

According to an affidavit by NUM general secretary Cyril Ramaphosa, the union's legal representatives were told they would only be able to examine witnesses at the inquiry in terms of Section 6(2) of the Mines and Works Act.

That section provides for the cross-examination by those implicated by the evidence of a witness at an inquiry held under Section 5(1) of the same Act.

Ramaphosa said 50 of the 177 miners killed in the Kinross disaster on September 16 1986 were NUM members

The mine and six employees

Bipay 28/11/89 (252)
SUSAN RUSSELL
were charged with culpable homicide and alternative charges of contravening the Mines and Works Act Kinross Mines Ltd and five of the employees were acquitted The sixth pleaded guilty to two contraventions of the Act and was fined R50 on each count.

Discretion

At the inquiry into the accident held at Evander on June 28 1988, presiding officer Hendrik Liebenberg ruled that the NUM's lawyers would be precluded from cross-examining witnesses except in terms of 6(2).

The NUM has brought the application for a review on the basis that the presiding officer is vested in law with a discretion to allow cross-examination outside the provisions of 6(2).

Ramaphosa said the criminal prosecution did not adequately explore all the causes of the accident or its background.

Since the accident, he said, the practice of readily allowing the union an active role in inquiries had changed. This was explicable only on the basis of the Government Mining Engineer deciding to exclude the NUM's participation from inquiries as much as possible.

Government Mining Engineer Jan Raath denied in an answering affidavit there was any fixed policy adopted to restrict the union's rights at the inquiry or generally.

He admitted the NUM had been represented at inquiries and joint inquests into accidents but denied the NUM ought to be permitted to examine all witnesses as a matter of right. Raath also denied there had been any improper policy on his part or that of presiding officer Hendrik Liebenberg.

Christmas fruit grounded

LESLEY LAMBERT

CAPE TOWN — The Western Cape deciduous fruit industry has announced that it still needs air transport for about 15% of its Christmas season exports, following reports that fruit exports are in danger of being grounded by a shortage of air cargo space.

"A spokesman for the industry's international marketing arm, Unifruco, which earned over R900m from deciduous fruit exports last year, said that except for 12% to 15% of members' Christmas exports, it had managed to secure air space for most of the anticipated Christmas exports.

Fruit exporters tend to transport their produce by ship during most of the year because of the high cost of air freight. Unifruco transports less than 1% of its annual crop by air, according to the spokesman. But, higher demand and higher prices in international markets over the Christmas season, justify the cost of getting the fruit to markets as quickly as possible.

There is often a scramble for air space negotiated by the Perishable Products Export Control Board near the end of the year, as many smaller exporters prefer to see the outcome of their crop before committing themselves to transport arrangements.

Judgment reserved in Delmas appeal case

BLOEMFONTEIN — Judgment has been reserved by the Appeal Court in Bloemfontein on the preliminary appeal by Gcina-muzi Petrus Malindi and 10 other men convicted in the Delmas terrorism trial in November last year by Mr Justice K van Dijkhorst.

The preliminary appeal was on four special entries in the trial record which, it was contended, would vitiate the entire trial if upheld.

It was heard by Chief Justice Corbett, Mr Justice Botha, Mr Justice Smalberger, Mr Justice Kumleben and Mr Justice Nicholas (acting judge of appeal).

The special entries dealt with whether or not the trial court was properly constituted after Mr Justice van Dijkhorst ruled that one assessor, Dr W A Joubert, had to recuse himself.

Fairness demanded that the *audi alteram partem* (hear the other party) rule be scrupulously observed, Arthur Chaskalson SC told the court yesterday.

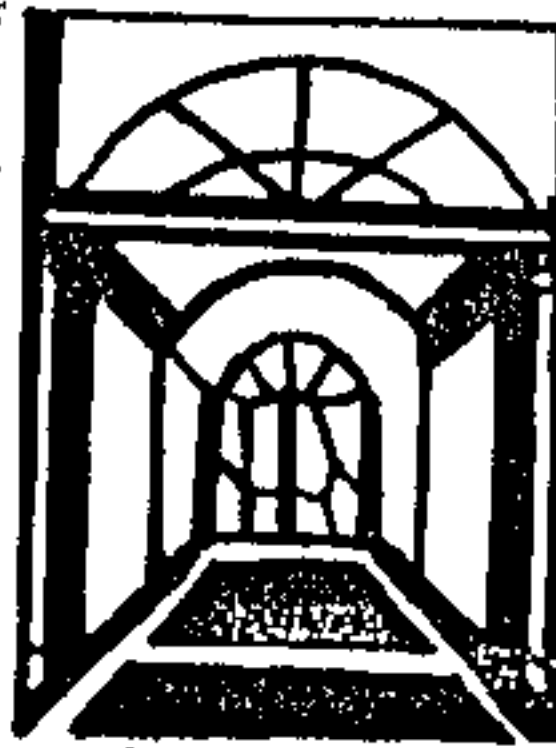
Chaskalson, who appeared with George Bizos SC, K S Tip and G J Marcus for the 11 men, said an accused was entitled to be heard in relation to such a decision.

He submitted that Section 147 (1) of the Criminal Procedures Act required the judge to exercise judicial discretion on whether the circumstances were such that Joubert was indeed unable to act as an assessor and, if so, what action should be taken.

The judge had chosen to invoke Section 147 without calling on the State or the defence to be heard "after due deliberation".

The judge had made his ruling after he had learned that Joubert had signed a document referred to as the "million signature campaign".

Chaskalson said it appeared from the record that the judge did not make proper inquiries as to the circumstances in which the document was signed and the reason why it was signed before he formed the opinion that Joubert was unable to act as an assessor. — Sapa.



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MA7895

ANNOUNCEMENT

It is with deep regret that the death on Saturday, 25 November 1989 of Mr Maurice Berzack, founder and chairman of the

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B/001 25/11/89 ..

UBS guard blindfolded when shot 252 Nofomela

KRUGERSDORP UBS security guard Japie Maponye, brother of a suspected ANC guerrilla, was blindfolded but conscious when he was allegedly shot by a senior security police officer at the Vlakplaas police base in 1985

This new information on the killing is reflected in a transcript of death row prisoner Butana Nofomela's account of the incident as related to Advocate S Katzew, who was instructed by Lawyers for Human Rights to consult Nofomela.

Nofomela told Katzew the security branch at Compol, Pretoria, had investigated the shooting of a black policeman at De Wildt and had concluded Maponye's brother had been responsible

"This information was given to us — security branch section C1. From there (the senior officer) told me (and two others N and M) to go to the Krugersdorp UBS.

"We were given the name of the fellow who was working there and his photograph. We were instructed that we should kidnap him.

"N stood by the post office, I stood by the UBS and M stood by the car, a Jetta. The security guard came off duty, it was late afternoon and he went

CHARLENE SMITH
and ALAN FINE

straight towards where N stood

"When I arrived I said 'You are under arrest, I am investigating a case of fraud against you'

"Then we drove to a security farm in Erasmus, Vlakplaas. There we met (the senior officer) We took him about 120m from the farm into the veld near a river and trees where we interrogated him. He was assaulted and interrogated by all four of us," Nofomela said.

Problems

At about 7pm, he added, the senior officer ordered N and M to leave

"I remained with the officer who then asked me if the guy would recognise me in future and if I would have any problems with him later. I said 'yes' because I am known by many people in Krugersdorp.

"Then (the officer) said he had to get rid of him, shot him there and then with a pistol with a silencer. At the time he was blindfolded and conscious

"During the course of the interrogation this man who we shot had said that his brother had left a long time ago and he had not heard of him and he did not

know his whereabouts," Nofomela said. Nofomela said he helped the officer wrap the body in plastic and put it in the officer's car

Nofomela told Katzew that while at the police college in 1980 a Col Baker had approached him, saying his exam results suggested he was security branch material. After the passing out parade in December he and two others were taken to Vlakplaas.

"I remained there for a long time, for about six months. There were other people who lived on the farm — black immigrants from Zimbabwe.

"I was trained to shoot by Capt (Dirk) Coetzee. We were given theory on how we work by Coetzee. He told me that whenever I go on a mission I must make it a point that I leave no tracks

"There were many other things I was told during this period that I might have to shoot and kill people, assassinate. I accepted it as part of the job

"He even said that people who simply support the ANC without being actively involved might have to be eliminated

"I had no hatred against the ANC, but as part of my job I had to act according to the instructions of my seniors. I didn't even feel proud of what I was doing," Nofomela said

Court interdict against ^{B/Dun, 28/11/84} 'toyi-toyi' dancing at work

CAPE TOWN — Bellville workers engaged in an overtime ban were yesterday interdicted and restrained in the Supreme Court from "toyi-toyi" dancing, demonstrating, or singing on the factory premises, except in certain areas.

The interim order was granted yesterday afternoon by Mr Acting-Judge Hoberman in an application by Table Bay Spinners Limited against SA Clothing and the Textile Workers' Union, five of its shop stewards and 451 workers.

The workers were further interdicted and restrained from in any way unlawfully interfering with or obstructing the normal operation of the factory.

They were also interdicted and restrained from intimidating, assaulting, harassing or unlawfully interfering with any employee.

In an affidavit, Table Bay Spinners personnel manager Edward George Arnott said two 12-hour shifts operated and employees did

Own Correspondent

two hours compulsory overtime per day. Overtime by these two shifts had been compulsory for the past 30 years.

Since November '13 the employees on the two 12-hour shifts had embarked on an overtime ban in support of the union's demands regarding the change of rules of the Industrial Council Sick Fund, Arnott said.

The overtime ban had been accompanied by singing and toyi-toying, and in March this year the company concluded a verbal agreement with the shop stewards that the workers could toyi-toyi in a designated area.

In spite of the agreement the workers had demonstrated and toyi-toyed inside the factory and caused disruption of the production process. Defamatory remarks had also been made about the MD on placards, Arnott said.



Crowd hysteria judgment legal precedent

The Argus

Correspondent

JOHANNESBURG — A precedent-setting judgment last week, which saved five men from the gallows after they were retried, may heavily influence the fate of the Uppington 14 appealing against their death sentences

In a widely praised ruling, five men were sentenced to less than two years in jail for a murder for which they were once sentenced to death

The men were sentenced by Eastern Cape judge Mr Justice C Jansen to 20 months each for their part in the August, 1985, killing of Ms Nosipho Zanela, who was burnt to death with a petrol-filled car tyre

"DE-INDIVIDUATION"

In the retrial, which took place because of a technical error in the first trial, Mr Justice Jansen accepted evidence by a social anthropologist about the effects of crowd hysteria on personal behaviour, known as "de-individuation"

Lawyers fighting against capital punishment said Judge Jansen was only the second judge in South Africa to accept the principle of de-individuation. But because of the dramatic contrast in sentences in this case, lawyers believe the ruling will set a binding precedent for judges in the Eastern Cape Supreme Court district and will be "persuasive" elsewhere in the country

UPINGTON CASE

Chairman of the General Council of the Bar, Mr Milton Seligson SC, said the ruling would "obviously be cited as a precedent" and given attention by the Appellate Division in connection with the Uppington case

Twenty-five of the

original 26 men convicted for the murder of Constable Lucas Sethwala at Paballelo township in Uppington are appealing against their sentences. Fourteen were sentenced to death in May this year after no extenuation was found for their part in the killing

The remaining 12 received sentences ranging from imprisonment — suspended on condition they do community service — to imprisonment of eight years

The principle of "de-individuation" featured strongly in the Uppington case and was explained in detail to the court by Professor Graham Tyson, professor of psychology at the University of the Witwatersrand

"MOB PSYCHE"

Had the court, presided over by Mr Justice Basson, been persuaded such a "mob psyche" existed, some of the accused in the trial may have received far lighter sentences

"It is now up to the highest court division to decide, taking last week's case into consideration, how much weight to give the principle of common purpose regarding the Uppington case appeals," said Mr Seligson.

Mr Seligson said the Council of the Bar had recently called for a far-reaching inquiry into the death penalty to be conducted by the South African Law Commission.

RESERVATIONS

Mr Raymond Tucker, a representative of Lawyers for Human Rights, expressed some reservation over hopes that last week's judgment would affect courts elsewhere.

"The position adopted in this case will not affect the overall attitude by courts in South Africa," he said.

Nevertheless, last week's ruling had illustrated the "horrendous capacity for miscarriages of justice through the death penalty"

At present there are 289 people on death row. Eighty of these are political convicts. The National Association of Democratic Lawyers (Nadel) recently criticised the state for using the death penalty as a political weapon

ANC activists 'were unarmed'

TWO ANC members have alleged in affidavits before a Piet Retief inquest magistrate that four ANC activists killed in an SA Police ambush near the Swaziland border in 1988, were unarmed

Leonard Gwebu and Zwelakhe Mhlungu's affidavits contradict evidence given by Maj Eugene de Kock and Warrant-Officer Frederik Pienaar, who have testified before the court about their involvement in the shooting of the ANC activists

De Kock, the alleged successor of self-confessed death squad field commander Dirk Coetzee, said in evidence earlier this year that he gave an order to fire at the four when one of them shot at police from a car. He fired 11 shots with an Uzi sub-machinegun

The four ANC members were Surrendra "Lenny" Naidu, 23, Nontsike-

ADELE BALETA

BT Day 29/11/89

lelo Cotoza, 25, Makhosi Nyoka, 25, and Lindiwe Mthemba, 21. Three of the dead were women.

De Kock said after the firing stopped, Naidu, who was dead, fell out of the back door with a Makarov pistol next to him. A spent cartridge was found near the vehicle

Pienaar said a hand-grenade was found in the pockets of two of the dead women.

Mhlungu stated he had briefed the four in Swaziland on "certain missions" and that it had been agreed that the four would enter SA unarmed. They had R3 500 in cash

"The reason for my scepticism (that they were carrying arms) is that I was the only person who could have supplied them with arms during the

briefing session," he said in the affidavit.

Gwebu, who accompanied the four to a place near the border on June 8, denied the four carried arms

The inquest began in February and was adjourned in April when counsel Zak Yacoob, for the Naidu family, applied for the inquest to be set aside on the basis that Pienaar had been involved in the shooting

Magistrate H Wilkens appointed a new investigating officer. (252)

When the case resumed yesterday, State counsel Gideon Lotz, SC, objected to Pienaar being questioned in English. He said it was imperative that Pienaar — who could face a murder charge — understood what was being said and asked.

The hearing was adjourned until today so that interpreters can be appointed for all parties.

Nofomela alleges ANC suspect went missing after refusing to co-operate

DEATH row prisoner Butana Nofomela has made allegations about yet another possible assassination carried out by the Vlakplaas-based police "death squad".

According to a transcript of a consultation between Nofomela and a Pretoria advocate, an ANC suspect disappeared soon after two Vlakplaas officers — one of whom was ex-Capt Dirk Coetzee — said the man had to die as he was not co-operating with efforts to "turn" him.

Nofomela said three ANC suspects — broth-

ers Johannes and Victor Monise and "Uys", whose surname he could not recall, were captured in Nelspruit in early 1982.

They were interrogated, and "once established they would change sides, were sent to Vlakplaas to work with us".

"Coetzee told me that according to his suspi-

cion Uys was not co-operative and he had to get rid of him.

"Approximately one to two weeks after these remarks Uys disappeared from the farm . . ."

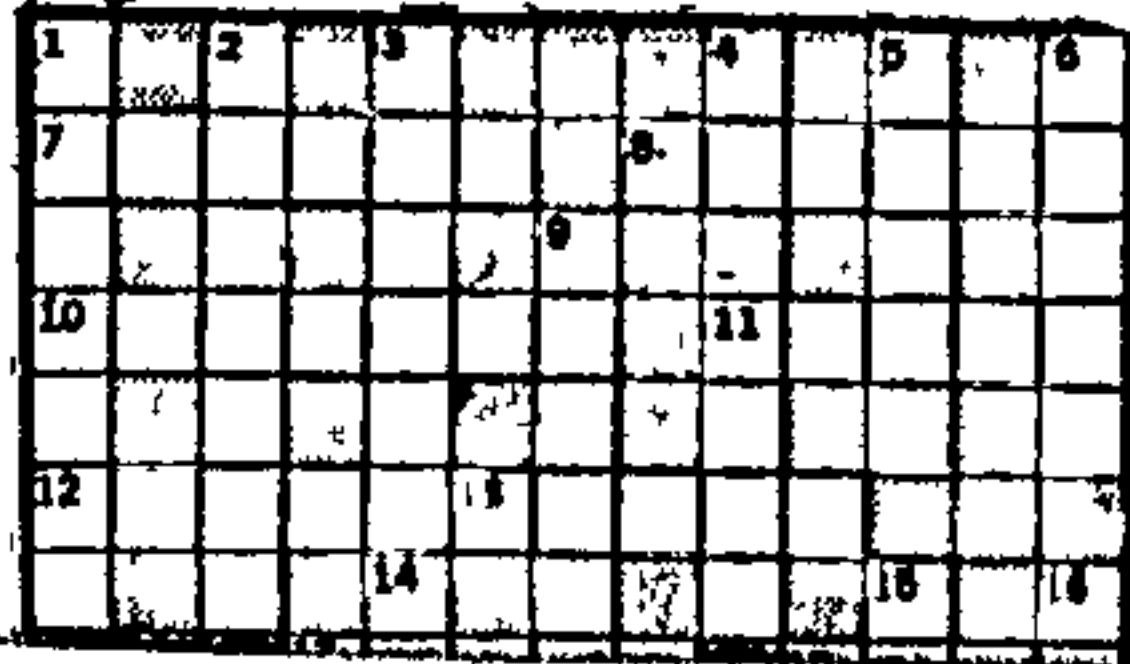
SAP spokesman Col Vic Haynes yesterday declined to comment, saying a member of the government-appointed inquiry, Lt-Gen Alwyn Conradie, had told police not to discuss with the media matters that may be investigated the official probe, headed by Free State Attorney-General T McNally.

blom 29/11/89 252

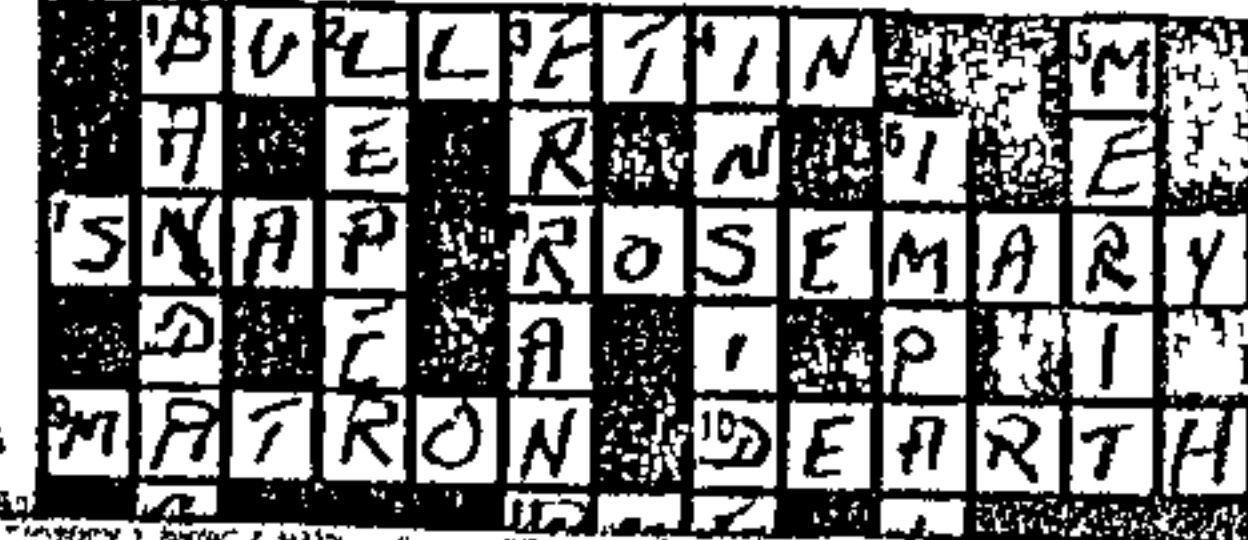
ALAN FINE and CHARLENE SMITH

10 MINUTE X-WORD 7479

- | ACROSS | DOWN |
|-----------------|------------------------|
| 7 Fear (6) | 1 Scholar (7) |
| 8 Stiffer (6) | 2 Split (7) |
| 10 Refuse (7) | 3 French sculptor (5) |
| 11 Weary (6) | 4 Far-off (7) |
| 12 Require (4) | 5 Chic (5) |
| 13 Circular (5) | 6 Commerce (5) |
| 17 Rascal (5) | 9 Endorse (9) |
| 18 Talk (4) | 14 Plans (7) |
| 22 Over (5) | 15 Economical (7) |
| 23 Nil (7) | 16 Walk unsteadily (7) |



There are two sets of clues, but the answers are the same



N THE year 1706 Gerard Noodt, professor of law, delivered a dissertation at his university, Leyden. His subject was the freedom of religion, which then comprehended much of what we today call freedom of thought and expression.

The professors of divinity, also, were present. They didn't like it at all. The prince, said Noodt, had no rights over his citizens in matters of religion. Violence, he said, had no effect on the mind.

This seemingly astonishing statement he explained in this way: "What if a tyrant wanted to force me to believe that three and two are eight? He might threaten me with all his bloody arts, but when I count my fingers nobody can convince me that three and two are more than five. Threats are useless. I can cheat, I can lie, I can say what pain forces out of me, but I cannot believe what my intellect denies."

Noodt's dissertation soon attracted attention across Europe, but although he remained a respected professor, his church never made him an elder or deacon again.

Noodt was safe enough, living in a republic which was remarkably liberal for its time (and in which our Roman-Dutch law came to its fruition). But Noodt wrote bearing part of the national memory of the war of awesome ferocity the Dutch had had to fight to attain that state.

And in Noodt's case there was also a family memory. A great-uncle had been captured by the Spanish in the Philippines. Refusing conversion, he was garrotted. He was, in the view of the Franciscan monk who witnessed and recorded his execution, "the most insolent heretic I saw in my life."

I write of Noodt and his works, as I shall also of some others, as it may be of interest to those who do not have ready access to the common law and its authors, and who have rightly and frequently had contrasted for them the stance of our common law regarding the dignity of the person before the law with our fallen modern statutory jurisprudence.

The rebellion of 1914 produced a crop of cases. The case of one Krohn went to the Appellate Division in 1915. His claim for release failed because martial law prevailed. But the Chief Justice Sir James Rose-Innes commenced against the back-

SA's common law still represents wisdom of the past

W P SCHUTZ, SC

ground of the common law by saying that a feature of it "is the absolute supremacy of the law. Every subject, high or low, is amenable to the law, but none can be punished save by a properly constituted legal tribunal. If any man's rights or personal liberty or property are threatened, whether by the government or by a private individual, the courts are open for his protection."

One of the more cheerful things about our law is the fact that nobody has actually ever said anything new. Thus in 1679 in delivering his managerial address, Noodt said: "But there is no servitude of men, but of the law. . . And this is true and complete freedom. There is no other. That citizen is free who, safe under the rule of the law, has nothing to fear. He can do anything he wishes, beyond washing to do what the laws forbid."

Not that I am suggesting the Union of SA earlier this century, or its prior constituent parts, were legal Utopias. There have been discriminatory statutes in our country for a long time. Yet the courts had considerable powers in restricting the operation of such statutes by virtue of interpretation in favour of the subject, and they frequently used them. But where there was a difference between the common law as enforced years ago, and the conditions of today, was in areas such as freedom of speech and publication, and immunity from imprisonment without conviction.

There were times of war or serious labour unrest when the ordinary laws were suspended, but for a time

only it is only some decades ago that the lights really started being put out.

One of the prescriptions for our times proposed by the SA Law Commission is the progressive repeal of certain statutes. There is great merit in this proposal. I firmly dispute the suggestion advanced recently that our common law has somehow been "contaminated" by the events of recent years or that we need brand new laws for brand new times.

Our common law needs no apology. It is very old, and it is very wise. Like kikyuu grass that has long lain under a brick, when once again exposed it will flourish. Am I opposed to a Bill of Rights, as proposed by the commission? No, but what I fear is just another beastly modern statute.

The one weakness of the common law has been that it assumes governments will protect their citizens to live lives of their own choosing, and refrain from breathing down their necks. Any new lot may be quite as bad as the old lot. Thus we all do need a bill of rights which contains a generally agreed entrenchment of common law rights.

Our remedy for the protection of personal liberty (the equivalent of the English *habeas corpus*) dates back to Roman times. It is the *interdictum de homine libero exhibendo* (the interdict as to the production of a free man).

Ulpian, the Roman jurist who died in 223 AD, is quoted in Emperor Justinian's Digest as saying: "The praetor says: 'You are to produce.' To produce is to bring before the public and to provide means for seeing and touching the man. Properly speaking, producing means having away from a secret place." (Watson's translation.)

An interesting application of the old remedy occurred nearly a century ago, in the case of *Sigcau v The Queen*. The petitioner, the late Paramount Chief of Pondoland East, complained that he was kept in illegal custody by the resident magistrate of Kokstad.

The Chief Justice Sir Henry de Villiers put the complaint thus: "The (the governor) has, I must repeat it, arrested, condemned and sentenced an individual, without the intervention of any tribunal, without alleging any necessity for such a proceeding, without first altering the general law to meet the case of that individual, and without giving him any opportunity of being heard in self-defence." (Here in this brief passage is listed several of the deadly sins at common law.)

The governor's main response was the familiar one, that the peace of the country might be endangered by the release of the chief. In the course of rejecting the governor's contentions, the chief justice remarked that it was no proof of disloyalty to appeal to the courts of law against arbitrary punishment.

Having congratulated Sigcau on not having resorted to violence, he added the gratuitous advice, "that if ever he should be found guilty of transgressing any of the laws of his country, this court will be as ready to punish him with the heavy hand of the law as it now is to protect him against illegal interference with his rights of personal liberty."

Of more enduring significance is another remark that the chief justice made. It contains the nub of the problem for those who would approach such questions from the point of fact or race.

He said (and you may make what you like of the language of 1895): "Sigcau, it is true, is a native, but he is a British subject, and there are many Englishmen and others resident in their territories who are not natives, and who, if the respondent's contention be correct, would be liable to be deprived of their life and property, as well as their liberty, otherwise than by the law of the land."

Thomases Voet, a contemporary of Noodt's, in 1704 wrote of the interdict: "In the favour shown to freedom it (the interdict) is granted to anyone from among the people, but especially to him or her who is concerned in the matter, though he or she is a ward or a woman. Now the interdict aims at the free person being produced, that is to say brought forward into the public eye, and an opportunity afforded for seeing and touching the person. . . (Ulpian had not been forgotten.)"

The chief translator of Voet, Mr. Justice Percival Gane, who laboured long years on his often difficult Latin and in so doing learned to know Voet well, wrote this of him in his introduction: "Could the shade of Voet awake for a space to the reality of such a position (his continued citation after some 250 years), it would surely murmur before turning again to sleep a quotation from Horace, and would say: 'I have wrought me a monument more lasting than one of bronze. Not all of me will die.'"

Three centuries hence, will some shade be murmuring the same of our Government Gazettes?

□ The translations from the Latin of Noodt, and other material on him, are taken from Prof G van den Berg's *The Life and Work of Gerard Noodt* (1647-1725).

LETTERS

Head of police CI unit is named

R2/10/87

30/11/87

30/11/89

ADELE BALETA

NEW information about the Pretoria police CI unit, alleged to be a "death squad", was disclosed yesterday with the naming of its leader as a Brig van Rensburg during the Piet Retief inquest into the death of four ANC members last year.

During cross-examination, Warrant Officer Frederick Pienaar, second in command of the operation in which the four were killed, said Van Rensburg succeeded Brig Willem Schoon as head of CI unit. He said the unit rehabilitated ANC members who were then used to identify ANC activists in SA.

The dead ANC members, one man and three women, were killed in a police ambush shortly after they entered SA from Swaziland on June 8 1988.

Their names were Surendra "Lenny" Naidu, 23, Nontsikelelo Cotoza, 25,

Makhosi Nyoka, 25, and Lindiwe Mthemba, 21

The court has heard that Maj Eugene de Kock, was the commander of the police ambush.

Pienaar, head of Piet Retief security branch, said yesterday two more CI unit members, Lt Silihlami Mose and W/O Marthinus Ras, took part in the shooting.

Affidavits

In an affidavit, Mose, a former ANC member, said that on De Kock's instructions he drove the deceased across the border on June 8. They were intercepted by De Kock, Pienaar and other policemen outside Piet Retief. Mose leapt out. Police say shots were fired from the car. They returned

the fire and the four diseased were killed.

Two affidavits by Swazi ANC members have been handed to the court stating they were unarmed.

Pienaar said yesterday that the police had planned only to arrest the ANC members. Asked if he thought that anyone could survive such an ambush, he said "I had hoped so".

Earlier inquest magistrate H Wilkens turned down an application by lawyers for the families who have death-row prisoner Butana Nofomela's affidavit admitted as part of the record. Advocates Zak Yacoob and M Moerane argued that the document was relevant to the case.

Yacoob said the families were worried that alleged squad head De Kock was the same man who led the operation that led to the death of their children. He said it was crucial to establish

that De Kock was head of the alleged squad and if such a squad existed. He said a full investigation was necessary to resolve the matter.

Moerane said Nofomela, who had mentioned De Kock in his affidavit, was willing to give evidence in the Piet Retief inquest. He suggested that the magistrate subpoena Nofomela. There was nothing preventing her from doing so.

Allegations

State Counsel Gideon Lotz said if the document, which she felt was irrelevant, was to be admitted, Nofomela's evidence should be tested in court.

The magistrate ruled that the allegations in the affidavit that De Kock was leader of an alleged assassination squad were based on speculation. The hearing continues.

Justice — the township way

252
APR 10 11/12/89

Informal "People's Courts" are often used in Guguletu's Section Two to solve domestic problems. The complainant and defendant each give their side of the story. Afterwards, both parties are questioned and the issue is debated. Proceedings are controlled by a chairman and three assistants, with a clerk taking notes. Serious matters are referred to the police.

Argus reporter VUYO BAVUMA sat in on one of the hearings recently. This is his account of the proceedings...

AT FIRST, it did not seem anything out of the ordinary. Just a gathering of about 200 serious-looking people in a community hall in Guguletu

Then a man stood and, in emphatic tones, announced: "Okay, residents. We are about to begin"

In front, a panel consisting of a chairman and four aides sat at a table. Alongside, a young woman busily scribbled notes.

The session kicked off with hymns followed by a short prayer.

Then, the chairman, reading from a torn piece of paper handed to him by one of his aides, said "Mama from NY 97 No 28, please come forward with your problem and bring your son as well"

Overwhelmed

A middle-aged, bespectacled woman nudged her way through the crowded, narrow rows of chairs. Also shuffling his way to the front was her son, who seemed overwhelmed by the occasion.

In a shaky voice, the woman greeted the "chairman and the house at large". Most responded.

"Residents, this child (she pointed at him) likes to cause problems at home when he is drunk. In 1982, he stabbed one of his sisters. As a result, my husband and I asked him to move to single quarters because he was tormenting the family

"For a while, there was peace in the house. However, this child returned home after his father died in 1986

"Then," she said, "on Sunday night I was at work when I was told to phone home. I was told that this child, now in front of you, parents, had stabbed his elder brother in the arm

"My neighbours saved my child, who was bleeding profusely. I now appeal to you residents to help me before this troublesome child of mine kills a person," the woman added

Looking somewhat relieved, the woman began fielding ques-

tions from the floor. A flurry of hands, mostly from elderly people, went up.

One tall, clean-shaven old man asked: "What would you like the meeting to do?"

The woman said "I want this problem child to be expelled from my house. He must go and stay on his own so that my other children can stay in peace."

Then, it was the turn of the defendant. The tall, young man, in his late 20s moved to the front reluctantly.

The man cleared his throat and assured the meeting that he did not dispute his mother's evidence. "I just want to explain something," he said

On that day he had had a couple of drinks at a shebeen before going home, he said

"I continued to drink with my brother's girlfriend at home. Later, my brother arrived and became jealous. He started arguing with me.

"We began fighting. I picked up a knife from the cupboard and, in a rage, stabbed him."

Danger to family

A woman said he had not even shown remorse about his actions and was a danger to his family.

After lengthy deliberations, the meeting resolved that the man should "immediately pack up his bags and leave his mother's house"

According to a committee member, officials from the Provincial Administration's Community Services branch and even social workers refer cases to the general meetings.

Thus do the wheels of justice grind in the townships where matters of this kind come up for consideration by the community as a whole.

A matter of trust

252 ~~252~~ Furey 1/12/89



Pierre du Toit is a partner at Arthur Andersen.

In the turbulence of our first timid steps towards a new SA it is fitting that the possibility of a Bill of Rights is receiving serious attention. At the same time, it is vital to remember that, in his capacity as a taxpayer, the citizen, including the corporate "citizen," stands in a relationship towards the State which is both a fundamental constituent of stability and a classic potential source of revolution.

The notion of some declaration of intent, some public charter, some formal commitment on the part of the authorities on tax, therefore, goes to the heart of the viability of any new SA. While no government is likely to commit itself too far in advance on matters of tax policy or substantive tax law, there are both scope and need for a commitment on the sensitive issue of attitudes towards enforcement and on procedures. The key is to rebuild trust between State and taxpayer.

The need

The plea for public definition of taxpayers' rights can be justified in the light of philosophical, political and economic considerations.

We profess to adhere to a liberal political philosophy which dictates a minimum role for the State, the notion that the State should be restrained and scrupulously fair in the collection of its taxes, an area where it stands in financially self-interested conflict with its citizens, is, therefore, not foreign to our political philosophy.

Politically, the majority of our taxpayers regard themselves as disenfranchised, we cannot afford to exacerbate the dangers of the cry of "no taxation without representation" with a tax regime which does not strive consistently and publicly towards fairness

Economically we can never hope to meet the awesome task of feeding, clothing, housing and educating our millions if the relationship between State and taxpayer is bedevilled by perceptions of oppression, mutual mistrust and hostility.

By these criteria, how do we shape at the moment? Speaking at this year's FM Investment Conference, Professor Edwin Broomburg suggested that the State's reaction to perceived tax avoidance is assuming "oppressive" proportions. At last year's conference, I voiced my own concern that the "tax body-politic" — the combination of legislator, taxpayer, administration and the courts — was in danger of disintegrating.

Other commentators before and since have expressed similar fears, notably in the published proceedings of the FM's first tax round table earlier this year. This stage of affairs is not surprising in a society under as much political, social and economic pressure as our own, yet, if it is not broken it will become a vicious circle with massive potential for destruction. The breaking of this vicious circle turns around the word trust. And the word trust is the primary purpose of a taxpayer Bill of Rights.

Content and nature

It is not reasonable to expect from the State any detailed advance commitment on substantive or tax policy issues, nor to expect at this stage a constitutionally binding Bill of Rights. But much is possible short of that.

Revenue in the UK, for example, has issued a "Taxpayer's Charter," which undertakes that taxpayers "will have (their) tax liability decided impartially and be required to pay only the amount of tax properly due according to the law." Taxpayers "will be treated in the same way as other taxpayers in similar circumstances" and "will be presumed to have dealt with (their) tax affairs honestly, unless there is reason to believe otherwise."

In Canada, a formal "Declaration of Taxpayer Rights" states that "you have a right to arrange your affairs in order to pay the minimum tax required by law." And "You can also expect your government to administer tax law consistently, and to apply it

firmly to those who try to avoid paying their lawful share."

Both tax charters also record the taxpayer's right to review or appeal. This finds an echo in the Margo Report where the commission argued powerfully against unappealable discretions. The commission dealt with the counter-argument that such a commitment implied the probability of a great increase in tax litigation very simply. The obvious remedy is to have additional or longer sessions of the Special Income Tax Court rather than to *withhold fundamental rights from taxpayers*.

Much can be done by a public commitment to principles of equity in the areas of enforcement and procedure. It is true a declaration creating a commitment to permit, potentially, review by the courts even of legislation seems unfeasible. Yet, even if this "justiciability" — as the SA Law Commission refers to it in their working paper on a Bill of Rights — is impossible, a public commitment to certain rights and attitudes in declaration form can still have real value.

First, if respected by all parties, it engenders the trust which is a prerequisite for an effective tax system. Second, as has been experienced overseas, in the UK especially, it does in time assume a public standing which the authorities are loath to be seen to be transgressing.

Why now?

First, because the need is immediate and is growing. Second, because the climate is right. We have a new administration which is committed to a new SA with greater respect for fundamental rights. We have a Minister of Finance who, in answer to a question in a television discussion following this year's Budget, confirmed the taxpayer's right lawfully to reduce his tax burden. And we have a Commissioner of Inland Revenue whose innate sense of fairness is widely respected in the business community. We have, I believe, a taxpaying and business community which still wants to operate lawfully within a generally accepted system.

Though time is short, I believe we still have enough goodwill and trust to achieve this goal.

LAWYERS, awaiting the Law Society's guidelines governing their advertising in the various media, are testing the water of professional de-regulation.

Many firms, including some of the very large and even the not-so-large ones, have started to send newsletters to their clients, informing them about the services they offer and the people providing these services.

Woe and betide

Some of these "newsletters" are glossy publications, professionally produced. Others are simple, duplicated letters consisting of a few pages. Some are couched

Lawyers test the not-so-public water

By Harold Fridjhon

In formal language—as befits the profession—others are chatty, informal and confused—the legalese which obfuscates and confuses.

These news letters are strictly for clients and woe and betide the partners, directors of legal entities if by chance they should fall into the hands of Press persons who might quote the contents and name the authors.

Disbarment, de-frocking, or striking off could be the penalty until the lawyers have codified—in proper legalese—the do's and don'ts governing adverts.

ing and public relations.

This harks back to the JSE regulations of many years ago when stockbrokers issued for-your-eyes-only circulars to clients advising them what and what-not shares to buy and sell.

In the early days financial journalists who managed to get these "Top Secret" documents "leaked" to them published the information without acknowledgment. Then authors names crept into the copy by arrangement of course.

This practice was frowned upon by the JSE committee who tried to stamp it out,

warning brokers to desist. It died down for a while, only to be revived again. And gradually "What the Brokers Say" became standard newspaper copy.

And today lawyers are unlikely to emulate stockbrokers; they are selling different services. But shrewd practitioners have often been able to induce court reporters to add footnotes to their copy "Mr So-and-so, instructed by Deltet & Damages, appeared for the defendant/plaintive", having warned reporters of dates of trial.

The next step, when lawyers are per-

mitted to enjoy the Freedom of the Press, will be to advertise their successes (even doctors bury their failures) and to issue fancy brochures containing the court record.



Meanwhile, one modest-sized firm has circled its clients, advising them which partner specialises in a particular pathway through the legal jungle, including its maiden essay into the field of not-so-public relations by publishing some recent interest-tickling judgments which might be of value to readers whose litigious inclinations might even be aroused.

New claims *Stev 1/12/89* on 'hit squad' investigated

By Esmaré van der Merve,
Political Reporter

New allegations about the existence of "hit squads" in the police force are being investigated by the Independent Board of Inquiry into Informal Repression, according to Lawyers for Human Rights (LHR) (252)

Mr Brian Currin, national director of LHR and a member of the board, said on Wednesday that further hit squad claims were being investigated to find corroborating evidence of the allegations first made by death row prisoner Butana Nofomela

"The basic allegations are still coming from Nofomela. We see him regularly, and every time he talks"

He said further allegations had also been made by "other sources"

Mr Currin said the investigations to find corroborating evidence were mainly being conducted by the board

Delmas 1 treason trialists free by Christmas?

SOUTH Africa's longest treason trial has reached another nail-biting climax with the decision by the Appeal Court to reserve judgment on an appeal to have the conviction quashed and the sentences set aside.

The appeal in Delmas 1, as the trial has come to be known, was heard before five judges of the Appeal Court almost exactly a year after three top United Democratic Front leaders and a senior South African Council of Churches field worker were found guilty of treason.

The trial judge, Mr Justice K Van Dijkhorst, jailed them for between six and 12 years at the end of the trial shortly before Christmas last year.

Hopes have now been rekindled that they may be freed and reunited with their families by Christmas Day, following the hearing on November 27 of their appeal by the Chief Justice, Mr Justice M M Corbett, and four judges of the Appeal Court.

The thrust of their appeal is that the trial judge

wrongly and unfairly dismissed one of the assessors, Mr W A Joubert, in the original trial; wrongly, they contend, because he contravened the Criminal Procedure Act and unfairly because he refused to hear any argument on his decision.

The appeal relates only to the occurrence of these alleged irregularities, Mr Justice H C Nicholas, having granted them permission in September to lodge a separate appeal on these matters, without prejudicing their right to appeal on the trial court's actual findings and sentences.

There is speculation in legal circles that judgment on the appeal may be given within days. It is fuelled in part by Mr Justice Nicholas's ruling in September. Mr Justice Nicholas, who was one of the five judges

PATRICK LAURENCE

before whom the appeal was made, said then "some of the appellants are serving sentences of imprisonment. If their convictions are to be set aside that should be done at the earliest stage possible."

The Appeal Court goes into recess next week. The relatives and friends of the jailed men — Patrick Lekota, Popo Molefe, Moses Chikane and Tor Manthata — are all hoping that a favourable judgment may be given by then.

If their appeal on the alleged irregularities succeeds, the men could be theoretically re-charged. But experienced legal observers are fairly confident that will not happen.

As an academic lawyer noted: "They will have spend 4½ years in abortive proceedings. Thus if would be manifestly unfair to re-charge them, even if the present climate of reconciliation was not present."

Inquest told of proposed plea to Supreme Court

A PIET Retief inquest magistrate was told yesterday an application would be sent to a higher court for review of two findings she made relating to Pretoria Police C1 Unit and the existence of an alleged assassination squad.

The inquest was on four ANC members — one man and three women — who were killed in a police ambush near Piet Retief on June 8 1988.

Magistrate Helen Wilkens yesterday refused to allow cross-examination of W/O Frederik Pienaar — head of Piet Retief security police and second-in-command of the ambush — about the C1 Unit alleged to have operated as an assassination squad.

In charge

Earlier Wilkens refused to admit as part of the record the affidavit of death row prisoner Butana Nofomela, in which he claimed an assassination squad existed and named as head of the alleged squad Maj Eugene de Kock.

Pienaar said De Kock, a C1 Unit member, was in charge of the police shooting which occurred shortly after the four activists entered SA from Swaziland last year.

He said three other C1 Unit members — Lt Silulmi Mose, W/O Martinus Ras and Sgt Leon Floris — took

ADELE BALETA

part in the Piet Retief operation.

Advocates for the families have argued that the issue of the C1 Unit was highly relevant to the case.

They said they would apply to the Supreme Court to review Wilken's decision that the matter was not pertinent to the inquest at this stage.

Marumo Moerane, advocate for the three women's families, said it was necessary to establish whether the C1 members who took part in the ambush were carrying out the duties of a "hit squad" under De Kock's command.

"From our instruction, the people, the deceased, who came into SA were unarmed, and were killed unnecessarily," he said.

He contended that if the operation was the work of a "hit squad", then the ANC four had been assassinated.

Police had said they intended to only arrest the four.

De Kock told the inquest court he shot and killed Surendra "Lenny" Naidu, 23, after Naidu fired at police. The three women were also killed.

Moerane said, "If we are not allowed to cross-examine on whether the police were members of a hit squad, we will suffer irreparable damage".

State Prosecutor H Prinsloo said that if the four had been assassinated, those responsible would not have tes-

tified in open court.

Earlier, in applying for the admission of the Nofomela affidavit, advocate for the Naidu family Zac Yacoob said the families were concerned that alleged squad leader De Kock was the same man who headed the operation that killed their children.

He called for a thorough investigation, saying that if such a squad existed and De Kock was its leader, then the likelihood arose that the inquest deaths were assassinations.

Burned

The magistrate postponed the hearing until May 8, 1990, after Yacoob and Moerane refused to continue cross-examination of Pienaar, saying they reserved the right to question at a later stage.

Under cross-examination Pienaar said he had burned the deceaseds' clothing for fear of being infected by AIDS or other viruses.

Yacoob said the correct procedure would have been to dry the blood-soaked clothes in order to keep them for evidence.

Pienaar said "I found it was necessary to destroy the clothes... I was worried about AIDS and any other viruses that occurred in Nelspruit."

He added he believed the clothes were not important to the case, but their "contents" were.

51 Thembile 7/12/89
**Lawyer
is first
black
Senior
Counsel**

By MEGAN POWER

A DURBAN human rights lawyer has become the first black in the country to become a Senior Counsel.

Mr Thembile Lewis Skweyiya, who has run his own practice in Durban since 1971, was working on an ANC trial in Cape Town when he heard the news

"My secretary phoned me in Cape Town, where I'm doing two political cases, and told me to contact the secretary of the Bar Council," said Mr Skweyiya on his return to Durban this week.

"It's the highest one can go in the legal profession besides judge."

Mr Skweyiya was born and educated in the Cape before completing his LLB at the University of Natal in 1968.

He served his articles with two Durban firms and in 1970 was admitted to the Bar as an advocate.

A year later, he successfully opened his own practice in Durban.

"There's not a single province in the country where I've not appeared. I've also done work in the Transkei and Ciskei," he said

Mr Skweyiya was detained in the Transkei in 1983 under the Internal Security Act while working on a political case. He later successfully sued the Transkei Government.



THEMBILE SKWEIYA

He said his two biggest trials were the Bethal PAC trial of 1978 and the Oscar Mpetsha trial of 1981-1983.

His instructing attorney in the Bethal trial was Mr Griffiths Mxenge, whose violent death in 1981 has been blamed on an alleged police hit squad

"We met at university and were close friends. He was like my elder brother. He had the utmost confidence in me, and I owe much of my success to him," said Mr Skweyiya

Although he now deals mainly with civil liberty and human rights cases, Mr Skweyiya used to do a lot of commercial work.

He was actively involved in the formation of the Release Mandela Committee and is still involved with this organisation and various other professional and community organisations.

He is married with three children

● Mr Skweyiya was part of the Natal delegation which met Mr Nelson Mandela in Cape Town this week

Star 4/12/81

Houses burnt after colleague killed (252)

15 Soweto students cleared of violence

By Montshiwa Moroke

Fifteen of the 24 students from the Soweto College of Education, who were charged with public violence and related charges, were acquitted in the Protea Regional Court on Friday.

The court found that although they had been part of a group responsible for certain incidents of violence, the State had not proved beyond reasonable doubt they had actively taken part.

Those freed were Mr Tebogo Mogomane (25), Mr Godfrey Mavimbela (26), Mr Paulus Tladi (22), Mr Tsietsi Mukoma (22), Mr Marcelino Matshinye (20), Mr Victor Maseko (20), Mr Ehngton Makua (23), Mr Takalani Mawelewele (22), Mr Jackie Lethoko (25), Mr Raymond Khamandisa (21), Mr Raymond Chabedi (26), Thomas Mafate (22), Mr Zama Hadebe (23), Mr Theophilus Kunene (21) and Mr Nehemia Radebe (22).

All granted bail

Charges against 84 of the original 108 arrested students were withdrawn by the State on Monday.

Other charges are kidnapping, assault, assault with intent to do grievous bodily harm, malicious damage to property, theft and intimidation.

All pleaded not guilty and were granted bail of R300 each.

Their appearance is a sequel to an incident on August 30 when a crowd of students allegedly set a house in Rockville on fire and attacked another in Mofolo after the killing of a fellow student, Mr Stanley Jabulani Tshabalala.

Mr TF Veldman had ruled as inadmissible a statement made by Mr Mavimbela. The magistrate said the State had not proved beyond reasonable doubt that Mr Mavimbela had not been coerced into making the statement.

Mr Veldman said he did not know whom to believe — Mr Mavimbela or a Lieutenant van Deventer, who had taken down the statement Mr Mavimbela said he had been afraid and had given the statement of his own free will.

He said he had told Lieutenant van Deventer that he did not wish to make a statement. However, the police officer had been threatening in his tone. He thought he was obliged to give a statement.

Defence counsel, Mr G Rautenbach, said there were two tests. The first was whether there was sufficient evidence on which a court could convict.

The second was whether the defence's case could possibly take the matter further for the State.

Mr Rautenbach said for certain of the accused the State had not provided any evidence and they should therefore be discharged. The fact that they were on the scene did not take the State's case any further.

The remaining accused are Mr Lucky Khumalo (22), Mr Bernard Sekete (23), Mr Marcelino Matshinye (20), Mr Dumisani Makhubu (20), Mr Billy Majafa (22), Mr Mdunduzi Buthelezi (25), Mr Hendrik Tshabalala (23), Mr Patrick Nkasa (25) and Mr Meshack Pharoe (35).

The case was postponed to December 6

Call for release of McNally's findings

THE family of assassinated attorneys Griffiths and Victoria Mxenge has asked government for access to the McNally report into death squads.

The family's attorney Bheka Shezi, who was the slain couple's partner, said he had faxed letters to the Justice and Law and Order Ministers requesting a copy of the report. *B1 Day 5/12/89*

Shezi said the family also intended applying for the re-opening of the inquest into Victoria Mxenge's death

CHARLENE SMITH

The McNally report has apparently been referred to the Natal attorney-general for possible prosecution in the death of Griffiths Mxenge. Three former policemen have claimed Mxenge was killed by a police assassination unit.

Shezi said the family would wait for the attorney-general's decision, before proceeding with a possible civil action for R2,5m damages from the Law and Order Minister. *(252) (252)*

Lawyers pressing for Calla Botha's release

LAWYERS acting for Calla Botha said yesterday a court application to secure his release would be lodged this week.

Botha was detained by police last Thursday in connection with the investigation into the murders of Wits academic David Webster and Windhoek attorney Anton Lubowski.

His attorney Piet du Plessis said the SAP would be given "ample time" to respond to the application.

"Even if the trial is eventually heard in camera we will ask that it comes to evidence because we want to hear what the police have to say," he said.

Sapa reports Law and Order Minister Adriaan Vlok said in Pretoria yesterday further arrests were expected soon in connection with the police's "hit squad" investigation.

One other man has been detained. He is former policeman Ferdinand Barnard who was detained on October 31 for questioning under Section 29 of the Internal Security Act.

Vlok said a team of detectives, led by CID chief Lt-Gen Alwyn Conradie and assisted by Maj-Gen Jaap Joubert and Maj-Gen Ronnie van der Westhuizen, was investigating all aspects flowing from the allegations. The matter would be taken to court as soon as possible.

Lawyers for Human Rights (LHR) yesterday commended the breakthrough made by police in their investigation of the assassinations of Webster and Lubowski.

MANDY JEAN WOODS

LHR national director Brian Currin said police should use the opportunity to purge their ranks of thugs and political murderers. The suspects should be charged immediately and brought before the courts.

□ The SACC yesterday demanded it be allowed to inspect police training camps in which former ANC cadres were being held.

In response to Police Commissioner Gen Hennie de Witt's claim that the SACC was about to launch a smear campaign against the SAP, SACC communications director Saki Macozoma said police should give the SACC a list of all the captured cadres.

Captured

Macozoma said the training camps should be dismantled and the captured cadres brought to court.

"The SACC is in the process of consulting human rights and political organisations on what should be done to deal with the issue of cadres of the liberation movement that are captured by the security forces and then used in assassination squads as recent evidence suggests.

"If these people are being held voluntarily, the police have nothing to fear in this regard," he said.

...the military wing of the ANC, and also defence, and the case continues

Two to hang after three die in house blaze

DURBAN — A Supreme Court judge yesterday imposed the death sentence on two men who killed three people after burning down their Umlazi home in 1987

He also imposed a 14-year jail term on a third man. The three were also convicted of attempting to murder 12 other people in the home

(252)
The two who received the death sentence were Solomon Khanyile (51) of Umlazi and his stepson Floyd Xaba (24). The man jailed was Siphon Nkwanyana (18)

The court heard that on the night of January 17 1987 a mob of about 20 people

went to the home of Qondi Allen Mkhize and set fire to the house in which there were men, women and children.

The mob surrounded the house, poured paraffin on it and set it alight.

The attackers apparently believed that members of the Chonco family, who were living in the home, were involved in various atrocities, including murders, rape and theft. B10m 5/12/87

The court heard that when the occupants tried to escape from the burning house the gang attacked them and forced them back into the flames. — Sapa.

Magistrate unhappy about lab reporting

252

Star 5/12/89

CAPE TOWN — Medical authorities should immediately investigate the way laboratory reports were conveyed to doctors, a Cape Town inquest magistrate said on Monday.

Mr W J Marais said this after ordering the findings of an inquest into the death of a 76-year-old pensioner be sent to the Director of Hospital Services

Mrs Jenny White of Pinelands died as a result of having too much lithium, a drug used to control depression, in her blood, an autopsy revealed

The results of her final blood level test taken three months earlier were only made available after her death

Specialists had failed to recognise that symptoms she started showing after 20 years of successful treatment with the drug were those of lithium toxicity

Mrs White, whose symptoms of shaking, muscular weakness

and confusion were mistaken for Parkinson's Disease, died shortly after being admitted to Groote Schuur Hospital in May last year

Mr Marais found that no doctor was responsible for her death, saying he was satisfied that medical personnel treating her had acted within acceptable norms

He said this after noting the absence of freely available literature on this particular side effect of lithium

"However, the court has reservations regarding the procedure whereby laboratory reports are conveyed to medical practitioners and the relevant authorities should pay immediate attention to any change which would improve the position to the benefit of patients," he said

Mrs White had been on no other medicine — Sapa

Township kids wait in despair

By MARIUS BOSCH

A SMALL house in Paballelo township outside Upington is filled with children but there is no happy laughter — only a sense of despair.

While other children their age play in Paballelo's hot and dusty streets Mobolelo, 14, and Adelaide, 11 sit in the lounge of their absent parents house waiting.

They are the youngest children of Evelina de Bruin 53, and Gideon Madlongwane 63, both on death row in Pretoria for their part in the 1985 common purpose murder of municipal policeman Constable Jetta Sethwa.

Along with 12 other Paballelo residents they were sentenced to death earlier this year, sparking an international outcry over the judgment.

In September the Appeal Court granted leave to appeal to 13 of the "Upington 14".

Adelaide and Mobolelo have not seen their parents since they were sentenced in May this year.

"They have avoided talking about it. They only want to see mom and dad," says Mr Shadrack Madlongwane, 30, their eldest brother who had been taking care of the children.

His brother, Nambian teacher Mr Welcome Madlongwane, 28, says Adelaide had adapted "much better than Mobolelo".

"Having our parents on death row has a big impact on Mobolelo. When he sees a gun like the kitesonstables carry he wants it to go and free my parents," Mr Madlongwane says.

"I am worried about the society of cruel people created in this country. Hated is built in the child."

Mr Shadrack Madlongwane says when he comes back from visiting his parents in Pretoria the two children want to know every detail of the conversations he had with them.

"And the first thing my parents want to know is how the children are doing."

The two children will be spending Christmas Day — De Bruin's birthday — in Cape Town.

Brother and sister in vigil for parents on death row

The mother of two other men convicted of the murder Mrs Susan Bekebeke says she feels much better now that her two sons have been granted leave to appeal.

Barry Bekebeke 23 received a suspended six year sentence on condition he did community service in Upington. His older brother Justice "Basie" Bekebeke received the death sentence.

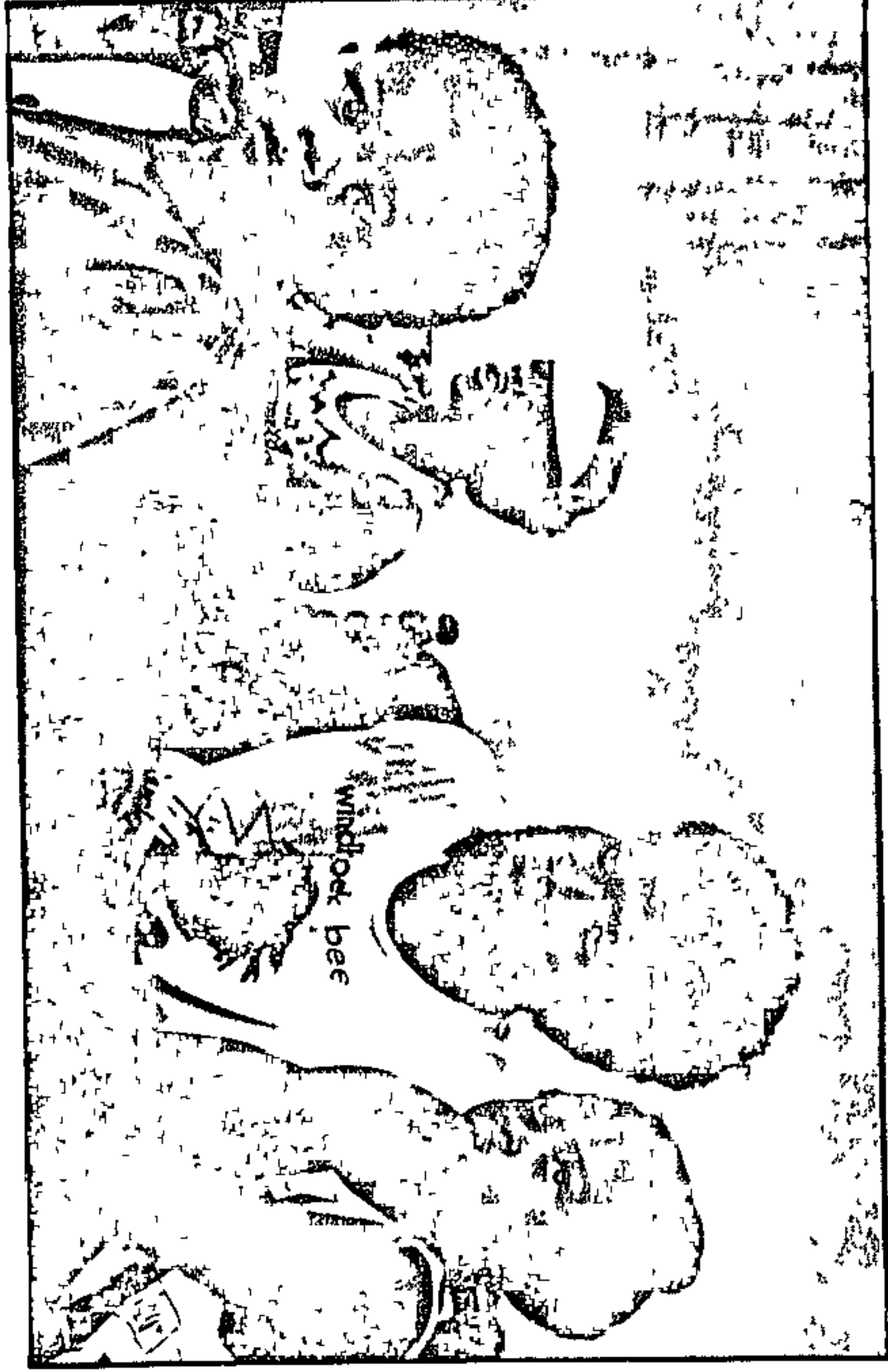
The Appeal Court ruled that Justice Bekebeke could only appeal against his sentence and not against his conviction for murder.

"In letters Justice writes to me that he is hopeful that he will come home," Mrs Bekebeke says.

Both the Bekebekes were exceptional students with above-average intelligence.

Barry Bekebeke wants to study social work at UCT when he completes matric through correspondence, while his brother a former male nurse, wants to be a doctor.

Barry Bekebeke and three other trialists are doing community work at the N D Swart old age home in the Blikkiesdorp coloured township while two other trialists are doing their com-



ABSENT PARENTS
Some of the Madlongwane children at their parents' home in Paballelo. They are, left to right, grandson Mhlangani, Mobolelo, 14, Welcome, 28, and Adelaide, 11. Their parents are Evelina de Bruin, 53, and Gideon Madlongwane, 63, who are both on death row in Pretoria.

munity service at the Roman Catholic church in Upington.

The group, along with four others — who are out on bail pending their appeal have formed the 'Congress of the Upington 26' to raise funds for the families of the trialists.

With financial help from the Black Sash they are painstakingly crafting model boats from thousands of matches.

During the trial, they made several models which they gave to their fam-

ilies and legal team.

Elizabeth Bostander one of the three women convicted of murder said she did not know how to make the models but added 'Barry will teach me'.

Today these model boats are the most prized possessions of the families of the 14 on Death Row.

Black Sash spokeswoman Ms Cindy Tyrrell says the organisation had already received orders for more than R3 000-worth of models.

GPA social worker Mrs Nelnie Barnard says the four doing community service at the old-age home 'are doing very well — they are becoming aware of the plight of the elderly'.

The six doing community service must do 1 200 hours of service over a three-year period, Mrs Barnard said.

The mother of the dead policeman, Mrs Beatrice Setwala refused to speak about the case saying "it is like an old wound being scratched open again".

Paballelo mourns Lubowski

Staff Reporter

THE murder of Swapo activist Mr Anton Lubowski was a tremendous shock to the "Upington 26" to whom he had been friend as well as advocate.

Mr Lubowski was one of two junior counsel assisting Mr Ian Farlam SC in the marathon murder trial which ended in June this year.

"I was at home and friends in Windhoek phoned to tell me that our advocate had been shot dead," said Barry Bekebeke, who received a suspended sentence for his part in the common purpose murder of a municipal policeman in 1985.

Bekebeke said he could not believe

that Mr Lubowski had been killed and had prayed that it was not true.

His mother, Mrs Susan Bekebeke, said all the families of the "Upington 26" were "very, very sad about the murder he meant so much to us".

Before the judge sentenced her son and 11 others, Mr Lubowski had told the families that six trialists might be "let out", she said.

"This was a tremendous help after the previous week," she said — when Mr Justice Jan Basson sentenced 14 of the trialists to death.

In the house of Paballelo community leader Mr Alired Gubula, a photograph of Mr Lubowski stands on top of a matchstick model boat made by his adopted son, Zonga Mokhatle — one of those now on Death Row.

"It was a terrible thing, almost as if a dark cloud hovered over Paballelo," Mr Gubula said at the weekend.

"We felt bitter, almost more than about our own people in Pretoria (Death Row)".

Mr Gubula said Mr Lubowski had meant "a lot for the trialists and families".

This was very evident during the trial, when the 26 accused treated Mr Lubowski with reverence.

"There are few like Advocate Lubowski believing in mankind," Mr Gubula said.

TRIALISTS
Three of the "Upington 26" from left, Jeffrey Sikya, Barry Bekebeke and Neville Witbooi. Sikya is out on bail pending his appeal, while Witbooi and Bekebeke received suspended sentences.



Three of the "Upington 26" from left, Jeffrey Sikya, Barry Bekebeke and Neville Witbooi. Sikya is out on bail pending his appeal, while Witbooi and Bekebeke received suspended sentences.

Judge dismisses appeal for march

CAPE TOWN — The Supreme Court last night dismissed with costs an application to set aside a decision of the Crossroads Town Committee in refusing permission for a planned march by women this morning.

Mr Acting-Justice I Farlam said he would give reasons later.

The Old Crossroads Women's Peaceful March Planning Committee — Ms Nofumene Mqweba, Ms Nobandla Kula and Ms Buklewa Mfenyana — brought the application against the Town Committee, the Secretary, Crossroads Town Committee and the Chief Magistrate, Wynberg.

About 800 women had planned to march through the streets of Old Crossroads to the Nyanga Administration offices. *Star 6/12/89*

Police had said they were unable to give a guarantee that law and order would be maintained if the march went ahead. — Sapa.

Rajbansi trial delayed over defence query

Own Correspondent

252

DURBAN — The Rajbansi trial has been adjourned in the Durban Regional court until tomorrow after the defence raised objections to questions in connection with an allegedly defamatory letter received by Mr Pat Poovalingam and which referred to Mr Baldeo Dookie.

After hearing a little more than 20 minutes of evidence from Mr Poovalingam, the hearing adjourned briefly so the State and the defence could come to an agreement on whether a certain line of questioning could be continued.

When they failed to reach a compromise, the trial was adjourned until tomorrow, when proper argument will be presented.

Mr Bennie Schoum1.Nfeldt had just begun to lead evidence on the letter received by Mr Poovalingam in 1986 and which alleged that Mr Dookie had prevented his daughter from marrying a Tamil teacher.

DEFAMATION

Mr Schoum1.Nfeldt had asked Mr Poovalingam what his interpretation of a portion of the letter would be when Mr Douglas Tobias objected, saying evidence of this sort was inadmissible.

Mr Schoum1.Nfeldt replied that it involved a charge of criminal defamation which included lowering a man's esteem in the community.

In agreeing to the adjournment, magistrate said he believed everyone was anxious to get the trial over, but "much depends on the outcome of the court's ruling."

Mr Poovalingam said he had known Mr Dookie for more than 25 years. He had done a lot of good work for the community.

He said they might be in opposing political parties, but this did not cloud his judgment of the man.

Law Society: Watchdog to protect public, and attorneys

MRB 8/12/89 (252)

MR TONY HARDY, senior partner at one of South Africa's oldest law firms, has been elected president of the Law Society of the Cape of Good Hope.

He spoke to Staff Reporter DAVID YUTAR about issues of concern to attorneys and clients alike and about the direction in which he hoped to take the society in the future.

EVERYONE needs a good attorney, you might say, but few people know what to do when the attorney they consulted turns out to be "less than good."

For such people the good news is — they have a remedy. It lies in the institution called the Law Society

The Law Society is a watchdog organisation designed to protect the interests of both attorney and client alike

There are four law societies — one in each province — and they all fall under the aegis of the national Association of Law Societies

The Law Society of the Cape of Good Hope is the oldest incorporated law society in the country. It was incorporated with the merging of the Eastern Districts Law Society and the Cape Law Society in 1883.

Its executive is staffed by 12 councillors — a president, vice-president and 10 other councillors

The current president, recently elected by the society, is Mr Tony Hardy, senior partner in one of Cape Town's oldest law firms

Voluntary

Councillors are all practising attorneys and their contribution to the society is voluntary and unpaid

The Law Society's primary function is to ensure that the public is adequately and efficiently served by the profession

But it is also charged with the duty of promoting the interests of practising attorneys — upon whom it depends for its professional staff and much of its resources

The Society's Council meets every month to discuss its affairs. In this it is assisted by several sub-committees, such as the disciplinary and taxation committees, each of which deals specifically with its own area of professional conduct.

A client who is dissatisfied with the services of a particular attorney can approach the society directly and lodge a complaint.

The complaint will be investigated by the director and forwarded to the relevant



Mr Tony Hardy ... concerned about problems facing black attorneys

that the Law Society is essentially part of the establishment and of course the Law Society is eager to see this imbalance redressed.

Turning to the vexed subject of the death penalty, Mr Hardy emphasises that he tries to separate his personal feelings from his official stance as President of the Law Society

"On a personal basis I must say that I am in favour of the death penalty in appropriate circumstances

"But as president of the Law Society, I put my personal feelings aside and look at it in a much broader context

Death penalty

He reminds me that the Association of Law Societies has recommended to the government that a commission of inquiry be appointed to investigate the issue of the death penalty

"I think the answer is to have the death penalty for appropriate crimes, eg murder ... but I think, as Bob Stanford said, it should remain a last resort ... the last drawer you have to open"

He wants to see a full discretion restored to the judge and feels that the onus should always rest on the state, particularly when it comes to proving the absence of extenuating circumstances

252
8/12/89

8/12/89

Argus

252

The image

"Complaints get urgent consideration because we are most concerned with the image of the profession. It is crucially important to us"

One of the society's most important projects is its continuing education programme which is designed for candidate as well as practising attorneys

Practical law schools in all the country's major centres are staffed by practising attorneys, each experts in their particular field. Always, however, the emphasis is on practical as opposed to theoretical law.

Mr Hardy points out that under an amendment in the new Attorneys Act it may become compulsory for candidate-attorneys to undergo a five-week course at one of these schools.

He adds that the Association of Law Societies is embarking on an ambitious new project — a practical training school in Pretoria, which is due to open during 1990.

For six months, candidate-attorneys will have to work in a simulated attorney's office, as part of their articles.

Over-subscribed

The course's popularity is shown by the fact that after only two or three months it is already over-subscribed.

The council of the Law Society of the Cape of Good Hope has undertaken to sponsor two pupils who are less able to afford the costs of this course.

"What about the issue of Legal Aid and growing dissatisfaction with the present system?"

Mr Hardy says he is in favour of Legal Aid being transferred to the control of the provincial societies

"If Legal Aid could be administered by the profession, I think that would go a long way towards giving it greater acceptance by the public at large.

"I also think we could evolve a system of reaching out to the people who need Legal Aid more easily because we could do that through practitioners."

Like his predecessor, Mr Bob Stanford, Tony Hardy is particularly concerned about the problems facing black attorneys

"The concern in certain sectors of the black attorneys' profession is that they do not enjoy the same rights and privileges as their white colleagues.

"There is the additional concern

Asked what his priorities as incoming president are, Mr Hardy says he is eager to "demystify" the profession

"I'm particularly interested in breaking down what could be regarded as a barrier between the man-in-the-street and the lawyer

Issue of cost

"One cause of this is ignorance of what the law and lawyers are all about and then there is the issue of cost. And I imagine the latter is more important to the man-in-the-street than the former"

He says there are several ways in which cost can be lowered, citing "fixed fee interviews" and the public defender as two.

The institution of "fixed fee interviews" allows a client to consult an attorney who is asked to give an off-the-cuff opinion on the client's rights for a fixed fee of R20.

The concept of Public Defender, which was suggested by former Cape Law Society President Mervyn Smith, grants to a legally-trained national serviceman who has conscientious objections to doing military service the alternative of doing service as a Public Defender.

Hardy says that it would enable people who could otherwise ill afford it, to procure legal representation at no cost.

He says that discussions with the military in this regard are underway and he feels confident of the results

On one issue in particular, the Law Society's new president expresses himself with almost a passion.

Qualifications

He is determined to see the Supreme Court right of audience, presently restricted to advocates, granted to attorneys, who at present can appear only in the lower courts.

"One cannot get away from the fact that there are men sitting in the attorneys' profession with the same academic qualifications and sometimes even better than chaps at the Bar but as a result of an anachronism in our system they cannot appear in the Supreme Court," he complains.

In view of the likelihood that the Bar will oppose any attempt to extend the right of audience, a hard and protracted battle can be expected.

Anthony Hardy seems confident that time and tide are on the side of the attorneys

Death row man pleads guilty

DEATH row prisoner Butana Nofomela yesterday and pleaded guilty to murdering Durban attorney Griffiths Mxenge.

Nofomela, a former security policeman, was the first person to allege the existence of police death squads.

On October 19, the night before he was due to hang, he signed a statement saying he knew about the assassination squads and that he had been part of them, assisting in a number of killings.

He appeared briefly in the Pietermaritzburg Magistrate's Court where he pleaded guilty to the murder of Mxenge — just one of the killings in which he claims he participated.

The magistrate, GLS Holland, prosecutor Bruce Morrison, and Denis Kuny, SC, for Nofomela, discussed who else was to be charged for Mxenge's killing.

Kuny said the offence was allegedly committed by Nofomela in the company of three others who were involved, and he asked whether Nofomela was to be charged alone or with other accused.

Morrison said he could not reply to this question as it would depend on investigations which are under way.

Nofomela's lawyers handed in a statement outlining the circumstances of the killing. Nofomela said he was a member of the security police seconded to a police assassination squad under the command of Captain Dirk Coetzee.

He said that in late 1981 he was instructed by Brigadier Willem Schoon to "eliminate, that is to kill", Mxenge.

The magistrate postponed the case to February 28 next year.

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STAR 19/12/89

R5 000 bail for alleged PAC guerilla

Own Correspondent

CAPE TOWN — An alleged Pan Africanist Congress guerilla was granted R5 000 bail in the Wynberg Regional Court and released on condition that he report to Guguletu police station three times a week. Mr Vuyo Fetsha (32), of King William's Town, who has not been asked to plead, has been in prison since January.

YUGOSLAVIA

He appeared in court in connection with charges of committing acts of terrorism since 1978, joining the PAC, receiving training in Yugoslavia and Tanzania, and returning to South Africa to recruit members for the PAC.

The State also alleges that he resisted arrest on January 14 this year.

Court frees hit squad suspect 'Calla' Botha

STR / 19/12/89

252

By Cathy Stagg

A Rand Supreme Court judge said yesterday he could not dispute the existence of an organisation involved in political assassinations, but there was not enough evidence that former policeman Mr CC "Calla" Botha was connected to it.

Mr Justice JC Kriegler was handing down a decision in an urgent application by Mr CC Botha sen, a retired police colonel, for the release of his son. He was freed.

Mr "Calla" Botha had been detained without charge while police investigated the hit squad murders of Johannesburg activist Dr David Webster and prominent Swapo lawyer Mr Anton Lubowski.

SHOT DEAD

Both were shot dead outside their homes: Dr Webster on May 1 and Mr Lubowski on September 12.

Counsel for the Minister of Law and Order had asked for an *in camera* hearing for the application for Mr "Calla" Botha's release.

Yesterday the judge explained why he had refused to have the hearing behind closed doors.

A public debate, which the police wanted to avoid, showed the public's intense interest, he said. And the

courts were in the service of the public.

There was no proof that an open society was undesirable. Events in Eastern Europe had shown the opposite.

Brigadier Floris Mostert, head of the Brixton Murder and Robbery Squad, said in papers that publicity could damage the investigation. He asked for prohibition of publication.

In his affidavit, Brigadier Mostert said he had been involved in investigations into Dr Webster's death since May. His job was of such a sensitive nature that it was important at this stage that he kept information to himself.

He added that his investigations had revealed there was a connection between Mr "Calla" Botha and the deaths of Dr Webster and Mr Lubowski.

Investigations had also revealed the existence of organisations referred to as hit squads, but he still did not have enough information on the organisations, and Mr Botha could have information important to the investigation.

However, Mr Justice Kriegler found that this was not sufficient evidence for Mr Botha's continued detention.

Moo-oo-ving experience

Education Board

Ex-deputy judge

president dies (252)

5712 27/12/89
Mr Justice Gert Coetzee, former deputy judge president of the Transvaal, died aged 69 on Saturday afternoon in Johannesburg

He retired in mid-1987 and immediately accepted an offer from the Minister of Justice to serve as acting judge on the Court Rules Board

At that stage he looked back on 47 years in the legal profession, struggling to obtain funds to study and eventually obtaining his LLB *cum laude* from Unisa in 1946 when he started practising at the Johannesburg Bar.

Previously he was the first Afrikaans-speaker to win the Buckle Prize for the student scoring the highest marks in the Attorneys' Admission Examinations

REPUTATION

He was appointed a judge in 1972 and gained a reputation as a man who was intolerant of slapdash work

He said in 1987 that he believed the defamation case in which he acted for Professor Beyers Naude and Professor Albert Geysers against ultra-rightist Professor Adriaan Pont was a watershed from the point-of-view of social attitudes in the country

In 1987 he set aside the sentence on a black couple arrested for trespassing in a white Germiston park. He was also the presiding judge in the Eskom fraud case, in which former Eskom employee Gert Rademeyer was jailed. He said he was a close friend of Mr Joe Slovo at the Bar although they differed radically on politics and philosophy

Mr Justice Coetzee leaves his widow Gideon, whom he married in Ermelo in 1944, three daughters and 10 grandchildren.

Briefing

Enthusiastic response for judge Goldstone

252

By CATHY STAGE

People who know Mr Justice Richard Goldstone reacted enthusiastically to his appointment as an acting judge of appeal for six months.

Mr L I Goldblatt, chairman of the Johannesburg Bar Council, said he was sure Mr Justice Goldstone would fill his new office, as he has filled all previous offices, with distinction.

Mr Edwin Letty, president of the Transvaal Law Society, said Mr Justice Goldstone was interested in human rights and made a point of using his privilege to visit detainees. He felt this was an indication

of the quality of the man.

"He is a solid lawyer," Mr Letty said.

Mr Edwin Cameron of the Centre for Applied Legal Studies at the University of the Witwatersrand said Mr Justice Goldstone was "an outstanding commercial lawyer who has shrewdly and inventively applied the law to secure justice in politically controversial and human rights cases".

"His appointment will be welcomed in both commercial and civil rights circles as an indication of the influence of the new Chief Justice, Mr Justice Corbett," he said.

Mr Andre du Plooy of Nicro's national office in Cape Town said Mr Justice Goldstone was admired for his leadership qualities.

Mr Justice Goldstone has handed down many precedent-setting judgments.

● 1981 The Govennder case put an end to Group Areas prosecutions. The judge ruled that a person convicted of contravening the Act could not be evicted unless there was somewhere else for that person to go.

● 1984 State vs Khumalo, the first community-service sentence. A person was killed by a ricochetting bullet when an off-duty police-

man fired a shot in a shebeen. The policeman was convicted of culpable homicide and sentenced to work under Nicro's supervision.

● 1986 The first important Supreme Court judgment dealing with Industrial Court authority came about when Marlevale mine took an Industrial Court decision on review. Mr Justice Goldstone ruled there was a difference between what was law and what was fair or equitable. The Industrial Court is concerned with fairness.

● 1986 In the Radebe case, he ruled that possession of a poster of Winnie Mandela, 37 music cassettes and one cassette of a record-

ing at a funeral was not enough reason to detain a sound-engineer under the emergency regulations.

● 1987 South African Breweries (SAB) vs the Food and Allied Workers Union (Faawu) resulted in a ruling that refusing to work overtime did not amount to a strike. Earlier this year the Appeal Court upheld Mr Justice Goldstone's order.

The Appeal Court referred to the doctrine of legitimate expectation with approval in the Traub case this year. A doctor's appointment was confirmed after she had signed a letter critical of conditions at Baragwanath hospital.

PUBLIC SECTOR GOVT. — JUSTICE
1990

JANUARY — FEB,

COURT decisions have continued to draw attention to the rapid adjustment of SA law to the exploding industry of industrial espionage and unfair competition in the form of theft of intellectual property

These cases all concern forms of unlawful competition and follow the important judgment in the matter of Dun & Bradstreet vs SA Merchants Combined Credit Bureau (Cape) (Pty) Ltd 1968(1) SA209 at 218

In this case a trader was held liable in damages for knowingly using confidential, specialised information compiled by the exercise of skill and labour by its rival trader and competitor. Reaching this decision, the court affirmed the time-worn principles of fairness and honesty, as well as questions of public policy, as the future guidelines in the law relating to competitions of trade

While fairness and honesty are relevant criteria in deciding whether competition is unfair, they are not the only criteria. Questions of public policy may be important in a particular case, eg the importance of a free market and of competition in our economic system' (at 679)

Despite the establishment of these principles and guidelines the courts have been hesitant to define exactly the circumstances in which relief will be granted to an injured party

They have preferred to rely in each instance, on what they consider to be fair and honest, having high regard to the general sense of justice in the community

However, by considering the nature and circumstances of the following 1988 decisions, it is possible to glean some information about how the courts deal practically with the increasing problems of unfair competition in trade and commerce

The principal cases where the courts intervened in the cause of fairness and honesty in 1988 were

Sibex Construction (SA)(Pty) Ltd v Injectaseal CC 1988 (2) SA 54

Pepsico Inc & Others v United Tobacco Company Ltd 1988 (2) SA 334

Ehda Gibbs (Pty) Ltd v Colgate Palmolive (Pty) Ltd 1988 (2) SA 360

Capecan (Pty) Ltd v Van Nimwegen & Another 1988 (2) SA 454

Sibex was a wholly-owned subsidiary of Turner & Newall which specialised in on line maintenance leak sealing, and was a regular contractor to companies such as Sasol and Natref. After Sibex decided on its prices to tender for work to Sasol and Natref, certain directors and senior employees of Sibex resigned and set up a competing company,

SA law is moving fast to head off the flow of stolen ideas

Star 3/1/1990

252



WILLIAM LANE

Injectaseal, which also submitted tenders to Sasol and Natref

The court found that the departing directors and senior employees, in competing with Sibex, had not only breached their fiduciary duty owed to Sibex arising out of their particular confidential relationship, but had also acted unfairly and dishonestly in using their knowledge of prices quoted by their employers

Mr Justice Goldstone concluded 'No argument in favour of a free market or of free competition could justify such dishonest use of confidential information. It follows, in my judgment that if such information was used it would have constituted unlawful competition'

The judge quoted with approval a decision of a Canadian court which placed particularly onerous responsibilities upon members of top management of companies, whether or not directors

The Canadian judge urged that the courts should enforce a strict ethic in respect of such persons. In my opinion, this ethic disqualifies a director or senior officer from usurping for himself or diverting to another person or company with whom or which he is associated a maturing business opportunity which his company is actively pursuing

He is also precluded from so acting even after his resignation where the resignation may fairly be said to have been prompted or influenced by a wish to acquire for himself the opportunity, sought by the company, or where it was his position with the company rather than a fresh initia-

tive that led him to the opportunity which he later acquired

Consequently, the court granted an order requiring the offenders to withdraw any quotations or tenders submitted to Sasol and Natref and prohibited them from submitting any further tenders or quotations to Natref

Although the Pepsico case falls partly under the law of trademarks, the same principles of decency and honesty arose

Pepsico had acquired the right to use the trademark Ruffles in the Republic in connection with a new potato chip. Preparing the launch of the chip, they introduced it to certain large retail suppliers

Before their marketing campaign had been completed however, United Tobacco Company launched a similar chip which was also referred to as Ruffles, which the respondent marketed through hundreds of cafes

The question before the court was whether Pepsico had before its chip effectively reached the market, acquired in the chip and the name Ruffles a right which the law would protect. The court was also asked to intervene on the grounds that the respondent had been guilty of unlawful competition

In concluding that this did constitute unlawful competition, the judge said Pepsico's demonstration of the trademark had given it a reputation. Accordingly, "it was sharp practice constituting unlawful competition" for United Tobacco to try and preempt Pepsico's launch

The court granted an interdict restraining the respondents from using the brand name Ruffles in relation to potato chips or any snack food or food products

The fullest and most lucid discussion by the Appellate Division of principles involved in unfair competition by former employees is in Schultz v Butt 1986 (3) SA 667

Over a long period, and with considerable expenditure of labour and money, Butt had developed a ski-boat hull. Schultz then made a mould of this and sold the hulls in competition with Butt

The Appellate Division upheld an order preventing Schultz from manufacturing or selling the Butt hull, and remarked that it did not assist him that by adding impudence to dishonesty, he had registered the hull's design

"In SA the legislature has not limited the protection of the law in cases of copying to those who enjoy rights of intellectual property under statutes

The fact that in a particular case there is no protection by way of patent, copyright or registered design, does not license a trader to carry on his business in unfair competition with his rivals," the court said

Often it is difficult to decide, in the absence of an agreement, which of the employer's information has to be treated as confidential and which is available for dissemination by the employee. The difficulty is one of balancing two conflicting social and economic interests

The law on the one hand, encourages competition but, on the other hand tries to afford established business reasonable protection against unfair trade practices

Examples of the courts approach to the problem are

An employee of an auctioneering firm was held to have erred in taking a copy of a list of customers and of a telegraphic code belonging to his employer for use in a business set up for himself (Pelunsky & Company v Theron 1913 WLD 34)

The plaintiff had acquired the right to exploit a patent roof tile. Although there was no secrecy about the process details were confidential. The factory was the first of its kind, it produced a suitable product with reasonable efficiency, and it was a great commercial success

A former employee communicated to the defendant a considerable quantity of information. As a result, the defendant was able to produce a competing product without going through designing its own plant with all the attendant expense, effort and delay in getting into production. The court granted the defendant an order against the competitor and the former employee (Harvey Tiling Co (Pty) Ltd v Rodomac (Pty) Ltd & Another 1977 (1) SA 317)

Despite the fact that the law does offer some protection for the employer his best remedy is to enter into an express agreement with his employee

Employers are increasingly seeking to protect confidential information by restraint undertakings

This express contractual form aims to ensure that the employee cannot lawfully use the employer's information in competition with the employer

The extent to which the courts are now prepared to go in enforcing restraint provisions was illustrated in the Capecan case

The court found no reason to prevent an employer from enforcing an agreement under which a former employee had undertaken not to compete with the company for three years after the termination of his employment (no matter how such termination shall arise)

The employee challenged the validity of the termination, contending that an employer, who had not kept his side of the bargain, could not keep the employee to the restraint

Miss Justice van den Heever held that the restraint clause in cases like this was "intended to have an existence independent of the contract of employment and to continue to be operative after the latter has ceased"

"The restraint obligation is a duty undertaken as one among many others in return for the pay packet received as a quid pro quo"

William Lane is a partner in the legal firm Bell, Dower & Hall

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Bl Day 31/1/90

Reform pro deo system, govt urged

GERALD REILLY

PRETORIA — The Association of Law Societies (ALS) and the General Council of the Bar (GCB) have asked government to urgently reform the pro deo system, according to a statement issued jointly

This was especially needed in cases where the death penalty could be imposed, it said.

In all such matters, it added, advocates should be assisted by attorneys and proper instruction given to the advocate and the attorney by the Legal Aid Board. (252)

The ALS and the GCB stressed it was a top priority to bring the pro deo system under legal aid without delay.

Both organisations also restated the need for the creation of an ombudsman "in the classical sense".

In the current debate on a new constitutional dispensation "it is imperative that fresh attention be focused on the administrative side of government".

A classified ombudsman, it was stated, should be an independent commissioner with the authority to investigate any complaint concerning the administrative actions of public officials and to report the result to Parliament.

The advocate-general did not have sufficient powers to fulfil the role.

□ Sapa reports from Pretoria that the Association of Bar Societies (ABS) differed from Justice Minister Kobie Coetsee on the issue of Latin as a required subject for admission as an advocate.

Coetsee indicated last week he would table a Bill stipulating that higher grade matric Latin — or a special one-year course at university — remain a requirement for an LLB degree.

ABS president Nico Coetser said yesterday that the body supported the majority of bar councils in SA in considering that Latin should not be a requirement for any branch of the legal profession.

The Latin requirement is of advantage to anyone wanting admission as an advocate.

Handled AK-47.

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SA judge calls for abolition of death penalty

The Argus Correspondent

JOHANNESBURG — A South African judge has come out publicly in favour of abolishing the death penalty during an interview on a British television programme

The ITV programme *First Tuesday* last night featured Mr Justice John Didcott expressing his wish for the abolition of the death penalty. According to the Sapa report of the programme, the judge was said to have tried 500 murder cases but never to have imposed the death sentence

Disagreed

The Argus London Bureau, reporting from a television Press release of the programme, said Mr Justice Didcott told British television viewers why he disagreed with the death sentence and refused to send anyone to the gallows

But the judge said from his Durban home today that he was not prepared to make any comment to the Press on the subject or on his views regarding the death penalty

He said he had not refused to send anyone to the gallows,



Mr Justice Didcott

adding that those were "journalists' words" and not words that he would have used himself

He said he had not yet seen the video shown on ITV, but stressed that the comments attributed to him came in the context of a lengthy discussion

The judge is quoted as having said on the programme "The death penalty is a form of punishment that should have had its time altogether by now

"The overwhelming argument appears to me to be that we come down to the level of the criminal by retaliating for his act of violence in a far

more cold-blooded and pre-meditated way"

The video during which Mr Justice Didcott was quoted was *South Africa's Death Factory*, the award-winning *First Tuesday* team's probe into the death penalty in South Africa

It claimed that South Africa's rate of execution — one every three days — was the highest in the "civilised" world

And it said that 97 percent of the victims of the hangman's noose were black.

Professor Denis Davis, Professor of Law at the University of Cape Town, was also interviewed. "If you are poor — and black — you do stand more chance of being hanged than if you are in any other category

"That is the reality of the death penalty in South Africa"

Yorkshire Television, which produces the programme, said its crew had gone under cover to obtain exclusive shots of Pretoria Central Prison

It featured an interview with retired chief executioner Mr Chris Barnard, followed one man's family during the 48 hours before his hanging.

"Terrible"

Ms Sheena Duncan, of the Black Sash, said "Between 1980 and 1988 South Africa executed 1 070 people

"In 1987 it reached a high of 164 persons .. that year was absolutely terrible." In December 21 people were executed in one week. That is the kind of pattern that has established itself before the prison gets short-handed with people on Christmas leave," she said

Professor Davis added: "We have got almost 300 people on Death Row, and over 200 sentenced to death every year."

Probe into 'death factory'

Judge speaks out against hangings in SA



Supreme Court Judge Mr John Didcott.

The Star Bureau, London, and Staff Reporter

A South African judge has come out publicly in favour of abolishing the death penalty when interviewed in a controversial British television programme last night.

The ITV programme "First Tuesday" featured Mr J John Didcott expressing his wish for the abolition of the death penalty. According to the Sapa report of the programme, the judge was said to have tried 500 murder cases but never to have imposed the death sentence.

The judge said from his Durban home today he was not prepared to make any comment to the press on the subject or on his views regarding the death penalty.

He said he had not refused to send anyone to the gallows, adding those were "journalist's words" and not words that would have been used by himself.

He said he had not yet seen the video shown on ITV, but stressed the comments attributed to him came in the context of a lengthy discussion.

The judge is quoted as having said on the programme "The death penalty is a form of punishment that should have had its time altogether by now."

Cold-blooded

"The overwhelming argument appears to me to be that we come down to the level of the criminal by retaliating for his act of violence in a far more cold-blooded and premeditated way."

Mr Justice Didcott was speaking last night on "South Africa's Death Factory", a probe by the award-winning "First Tuesday" team into the death penalty in South Africa.

The programme claimed that South Africa's rate of execution — one every three days — was the highest in the "civilised" world.

And it pointed out that 97 percent of the victims of the hangman's noose were black.

Professor Dennis Davis, Professor of Law at the University of Cape Town, was also interviewed.

Under cover

He said: "If you are poor and black, you do stand more chance of being hanged than if you are in any other category."

"That is the reality of the death penalty in South Africa," the professor said.

Yorkshire Television, which produces the programme, claimed that its crew had gone under cover to obtain exclusive shots of Pretoria Central Prison.

The programme featured an interview with retired chief executioner Mr Chris Barnard, followed one man's family during the 48 hours before his hanging and examined the law of common purpose, referring specifically to the case of the Uppington 26.

Mrs Sheena Duncan of the Black Sash said: "Between 1950 and 1988, South Africa executed 1 070 people."

"In 1987 it reached a high of 164 persons ... that year was absolutely terrible."

"In December 21 people were executed in one week. That is the kind of pattern that has established itself before the prison gets short-handed with people on Christmas leave," Mrs Duncan said.

Professor Davis added "We have got almost 300 people in Death Row and over 200 sentenced to death every year, and I think we now almost have this damming-up effect which can eventually result in the dam wall breaking and a rush of executions taking place."



Repairmen work on the spectacular new Shuttle Loop at Gold Reef City, which has crashed into safety bars during a practice run.

Roller-coaster crashes on practice run

By Julienne du Toit
The ride, which takes two loops high above the ground, crashed into safety bars 45 m above the ground on a practice run on Saturday. The ride, which has been open on Dec 1, was closed to work due to computer problems.

Computer experts were unable to repair the Shuttle Loop in a few months because of a local company, which was destroyed, but no one was injured, GRC general manager Mr Andre Frauentzen said yesterday.

The Shuttle Loop is a kind in the world. It is a station to a speed of 8 km/h. Fun seekers at the tourist attraction would probably have to wait another 14 weeks to enjoy the ride, while experts repaired the safety computer, he said.

Hangman tells of death row horrors

CAPE TOWN 4/1/1990

252

LONDON. — A retired hangman described in gruesome detail on a British television programme on Tuesday night how condemned prisoners on Pretoria's death row are executed and secretly buried.

"It didn't worry me," was how former prison warden Mr Chris Barnard summed it up in an interview by the "First Tuesday" programme, which introduced him as the "chief executioner from 1962 to 1986, credited with over 1 500 hangings during his career".

The documentary, including secret and illegal footage of Pretoria Central Prison, was entitled "South Africa's death factory".

It informed viewers that 1 200 prisoners had been hanged in the '80s, equivalent to one every three days, and that there are 300 — including the "Upington 14" — at present on death row.

Mr Justice John Didcott, said to have tried more than 500 murder cases but never to have imposed the death sentence, was quoted expressing his wish for the abolition of the death penalty.

The First Tuesday programme dealt at length with the case of the Upington 14, convicted and condemned on the common-purpose doctrine, and then traced the plight in September of the family of Mangena Boesman, who was finally hanged in September after last-minute attempts for a stay of execution failed.

Their story was interspersed with scenes from the interview with the retired hangman recounting how he did his job.

He recalled how he and other prison warders would "talk, play darts or read the paper" while

Executed prisoners 'secretly buried'

waiting for the final signal to pull the lever.

"It didn't worry me."

He described up to seven prisoners being executed simultaneously in separate, numbered chambers.

"If there was one or all of them, they all went at the same time."

White caps were placed over the prisoners' heads, with a flap over the face, followed by the noose, which was pulled tight.

Most of the people he had executed did not resist, but he remembered one occasion when nine Xhosa men from the Cape had had to be overpowered first.

Sometimes prisoners had to be pulled up and dropped again, and they were left hanging for about 15 minutes to ensure they were dead.

The former hangman also described how he used a fan to blow away the "bad smell" of trapped air and gases escaping from the bodies when the ropes were loosened.

The bodies were stripped naked, examined by a doctor and certified dead, before being placed in coffins which were

nailed shut and taken away for burial.

In another interview, Mrs Sheena Duncan of the Black Sash told of how an opposition Member of Parliament had been asked to table a question in the House of Assembly on the manner in which executions took place.

He had done so, but the minister then responsible for prisons had asked him to withdraw the question as the answer would be "too gruesome" for public knowledge.

The television documentary also described the process whereby family members of those executed can only apply in writing a month later for details of where the prisoner's body has been buried.

It said the bodies were usually buried in the Mamelodi cemetery outside Pretoria, where it was estimated there were 2 000 such graves dug over the past 20 years.

Meanwhile, it was reported from Pretoria that the SA Prisons Service regarded the question of executions as a sensitive matter and did not wish to become part of any "sensationalisation" of the procedures concerned.

In a statement issued in response to the television programme, the Prisons Service said yesterday that it had an important responsibility to the families of prisoners.

The statement said the Minister of Justice, Mr Kobie Coetsee, who is responsible for the Prisons Service, had obtained the cooperation of all political parties to deal with the issue in a sensitive and responsible manner.

The Prisons Service also said that Mr Barnard had been a sheriff and had not been employed by the service — Sapa.

Full text of Didcott TV interview

Staff Reporter **252**

The Star reported in some editions yesterday that a South African judge, Mr Justice Didcott, had said on a Yorkshire Television programme that he was in favour of abolishing the death penalty.

The report was received from our London Bureau, which was quoting from advance publicity material provided by Yorkshire Television **Sw 41190**.

The television company, and The Star, reported Mr John Didcott as saying "The death penalty is a form of punishment that should have had its time altogether by now. The overwhelming argument appears to me that we come down to the level of the criminal by retaliating for his act of violence in a far more cold-blooded and premeditated way."

The advance material also said the programme "discovers why Supreme Court Judge John Didcott has separated himself from

the rest of his colleagues by refusing to send anyone to the gallows in 500 murder cases"

The full transcript of those portions of the TV documentary relating to Mr Didcott are

Reporter's voice: "Supreme Court judge John Didcott has heard 500 murder cases but has never imposed the death penalty"

Didcott: "One is just going to have to approach the matter incrementally, gradually reduce the number of death sentences by a variety of forms of the kinds that are being mooted, and eventually perhaps people will realise that if the death penalty is being imposed in a truly tiny proportion of murders that it becomes extraordinarily difficult to have any faith in the deterrent argument. That one is just therefore performing a ceremony, to what end, in a very small proportion of cases"

"So I would hope to see the ultimate abolition — which of course

I would like to see — brought about. (That it will) come about in my professional life might be doubtful"

"To come down to the level of the criminal and to retaliate for this act of violence, and one may add, to do so in a far more cold-blooded and pre-meditated way than he may well have acted, is something that seems to me to be an overwhelming argument"

And later on during a discussion on the right of appeal

Didcott: "The point is made not infrequently that courts are only human and fallible and they can be wrong and they can make mistakes and when you hang someone it is too late to remedy the mistake. This of course is unquestionably so"

Yorkshire Television has admitted that Mr Didcott did not use the words ascribed to him in their publicity material, but claim the quotation "was a fair summary of what the judge said"

Jurists voice death penalty concerns

Staff Reporter

Star 4/1/90

A key issue which advocates feel strongly about regarding capital punishment is that in the absence of extenuating circumstances in a murder, South African judges have no discretion and are bound to impose the death penalty.

There is also no automatic right of appeal to the Appellate Division.

These concerns were voiced yesterday in response to a British TV programme, "South Africa's Death Factory", dealing with hangings in South Africa.

Responding to remarks made on the programme by Mr Justice Didcott about the death penalty, Mr A L J van Vuuren, executive director of the Association of Law Societies, a body representing attorneys, said the official ALS position was to call neither for the retention nor the abolition of the death penalty.

However, it had asked the Government to look at the entire question afresh.

"We are particularly concerned that when there are no extenuating circumstances, the judge has no discretion. That is the main problem."

Mr van Vuuren felt that in all court cases the presiding officer should have discretion because the accused and all the facts were before him.

He said he had heard that some senior advocates

refused to accept an appointment to the Bench because they opposed the death penalty.

Mr Milton Seligson SC, chairman of the General Council of the Bar in South Africa, said that whether one was an abolitionist or in favour of retaining the death penalty, he did not think any concerned jurist in South Africa was satisfied with the death penalty in its present form.

He said the general council had called for an exhaustive inquiry into all aspects of the death penalty. Because it was believed that the subject should be considered at the highest level by an impartial body endeavouring to improve justice, the SA Law Commission had been approached but so far no response had been received.

Two key issues which advocates feel strongly about are the fact that if a judge does not find extenuating circumstances in a murder, he has no discretion and is bound to impose the death penalty, and the fact that there is no automatic right of appeal to the Appellate Division.

Mr Seligson confirmed that there were some advocates who might otherwise have graced the Bench but who declined to become judges because of their views on the death penalty.

"I don't believe the numbers are great but it is true there are some advocates who feel that way," he said.

Argus 4/11/90/252

Death penalty: What SA judge said on UK TV

SOUTH African judge Mr Justice Didcott was reported yesterday to have said on a Yorkshire Television programme that he was in favour of abolishing the death penalty.

The report was received from our London Bureau, which was quoting from advance publicity material, provided by Yorkshire Television.

The television company, and The Argus, reported Mr John Didcott as saying "The death penalty is a form of punishment that should have had its time altogether by now. The overwhelming argument appears to me that we come down to the level of the criminal by retaliating for his act of violence in a far more cold-blooded and premeditated way."

The advance material also said the programme "discovers why Supreme Court Judge John Didcott has separated himself from the rest of his colleagues by refusing to send anyone to the gallows in 500 murder cases".

The full transcript of those portions of the TV documentary relating to Mr Didcott are:

Reporter's voice "Supreme Court judge John Didcott has heard 500 murder cases but has never imposed the death penalty."

Mr Justice Didcott "One is just going to have to approach the matter incrementally, gradually reduce the number of death sentences by a variety of forms of the

kinds that are being mooted, and eventually perhaps people will realise that if the death penalty is being imposed in a truly tiny proportion of murders that it becomes extraordinarily difficult to have any faith in the deterrent argument. That one is just therefore performing a ceremony, to what end, in a very small proportion of cases.

"So I would hope to see the ultimate abolition — which of course I would like to see — brought about. (That it will) come about in my professional life might be doubtful.

"To come down to the level of the criminal and to retaliate for this act of violence, and one may add, to do so in a far more cold-blooded and premeditated way than he may well have acted, is something that seems to me to be the overwhelming argument."

And later on during a discussion on the right of appeal.

Mr Justice Didcott "The point is made not infrequently that courts are only human and fallible and they can be wrong and they can make mistakes and when you hang someone it is too late to remedy the mistake. This of course is unquestionably so."

Yorkshire Television has admitted that Mr Didcott did not use the words ascribed to him in their publicity material, but claim the quotation "was a fair summary of what the judge said".

'Significant decrease in SA executions'

The Argus Correspondent in Pretoria

THE Department of Justice says last year was marked with a significant decrease in executions of death row prisoners in spite of outcries by Human Rights organisations.

Reacting to Mr Justice John Didcott's remarks against the death sentence on the British ITV's First Tuesday programme, the department said the number of hangings in South Africa during 1989 had been reduced "drastically".

"It should be noted generally, and it is not without significance, that the number of executions has been reduced in 1989 by more than 50 percent to only 53," a department spokesman said.

In 1988, 117 prisoners were executed and in 1987, 164. A total of 63 reprieves were granted last year.

"This reflects the fact that the government is most sensitive about the issue of the death penalty, and it has already been said by the Minister of Justice that reform of the law in this regard could best be left with those who command the necessary expertise in the practical implementation of the law."

The spokesman said "the decrease in executions, coupled with the larger number of reprieves, resulted in the number of death row prisoners fast approaching proportional parity with the situation in the United States, where on December 31 1987, 1 982 persons were awaiting execution."

He said the department was aware of Mr Justice Didcott's views in respect of the death penalty and said this has not been the first time he had expressed them.

● A key issue which advocates feel strongly about regarding capital punishment is that in the absence of extenuating circumstances in a murder, South African judges have no discretion and are bound to impose the death penalty.

There is also no automatic right of appeal to the Appellate Division.

These concerns were voiced yesterday in response to the British TV programme.

Responding to remarks made on the programme by Mr Justice Didcott, Mr A L J van Vuuren, executive director of the Association of Law Societies, a body representing attorneys, said the society's official position was to call neither for the retention nor the abolition of the death penalty.

However, it had asked the government to look at the entire question afresh.

"We are particularly concerned that when there are no extenuating circumstances, the judge has no discretion. That is the main problem."

Mr van Vuuren felt that in all court cases the presiding officer should have discretion because the accused and all the facts were before him.

Unlike previous electric vehicles, the Impact was designed as an alternate car — Financial Times

Court bid for release of Barnard postponed

PRETORIA — The second application by P J Barnard for the release of his son, former police detective Ferdinand Barnard — held in terms of the Internal Security Act — was not heard by the Pretoria Supreme Court yesterday

The urgent application, against the Minister of Law and Order, the Commissioner of Police and the Divisional Commander of the Witwatersrand division, would have asked for the release of Barnard who was detained for questioning about the murders of Swapo official Anton Lubowski and

slam activist David Webster (252)

On November 24 last year, Barnard senior withdrew an application for his son's release by agreement between the parties

The second application was handed to the Supreme Court last Friday. However, on Wednesday the action was again postponed by agreement between the parties

The matter has not been removed from the roll and it is expected that it could be called at a later date

Piet Kemp, for the State, would not say what agreement had been reached due to the sensitive nature of the matter — Sapa

5/11/90
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What the judge told TV news

252

Sowetan
5/11/90

THE *Sowetan* reported yesterday that a South African judge, Mr Justice Didcott, had said on a Yorkshire Television programme that he was in favour of abolishing the death penalty.

The report was received from our London Bureau, which was quoting from advance publicity material provided by Yorkshire Television.

The television company, and the *Sowetan*, reported Didcott as saying: "The death penalty is a form of punishment that should have had its time altogether by now. The overwhelming argument appears to me that we come down to the level of the criminal by retaliating for his act of violence in a far more

cold-blooded and premeditated way."

The advance material also said the programme "discovers why Supreme Court Judge John Didcott has separated himself from the rest of his colleagues by refusing to send anyone to the gallows in 500 murder cases"

The full transcript of those portions of the TV documentary relating to Didcott are

Reporter's voice: "Supreme Court judge John Didcott has heard 500 murder cases but has never imposed the death penalty"

Didcott: "One is just going to have to approach the matter incrementally, gradually reduce the number of death sentences by

a variety of forms of the kinds that are being mooted, and eventually perhaps people will realise that if the death penalty is being imposed in a truly tiny proportion of murders that it becomes extraordinarily difficult to have any faith in the deterrent argument. That one is just therefore performing a ceremony, to what end, in a very small proportion of cases

"So I would hope to see the ultimate abolition - which of course I would like to see - brought about (That it will) come about in my professional life might be doubtful

"To come down to the level of the criminal and to retaliate for this act of violence, and one may add, to do so in a far more

cold-blooded and premeditated way than he may well have acted, is something that seems to me to be the overwhelming argument"

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Didcott: "The point is made not infrequently that courts are only human and fallible and they can be wrong and they can make mistakes and when you hang someone it is too late to remedy the mistake. This of course is unquestionably so"

Yorkshire Television has admitted that Didcott did not use the words ascribed to him in their publicity material, but claim the quotation "was a fair summary of what the judge said"

Star 5/1/90 (252)

Barnard application postponed

Pretoria Correspondent

The second application which would have been brought by Mr P J Barnard for the release of his son, former police detective Mr Ferdinand "Ferdi" Barnard — held in terms of the Internal Security Act — was not heard in the Pretoria Supreme Court yesterday

The urgent application, against the Minister of Law and Order, the Commissioner of Police and the Divisional Commander of the Witwatersrand division, would have asked for the release of Mr Barnard who was detained for questioning about the murders of Swapo official Mr Anton Lubowski and slain activist Dr David Webster

POSTPONED

On November 24 last year, Mr Barnard senior of Nylstroom — a retired police colonel — withdrew an application for his son's release by agreement between the parties after it was postponed.

The second application was handed to the Supreme Court on Friday. The action was postponed on Wednesday by agreement between the parties.

Another former policeman held under the same legislation, Mr Calla Botha, was released on December 18.

closed

Correct and courageous judge speaks his mind.

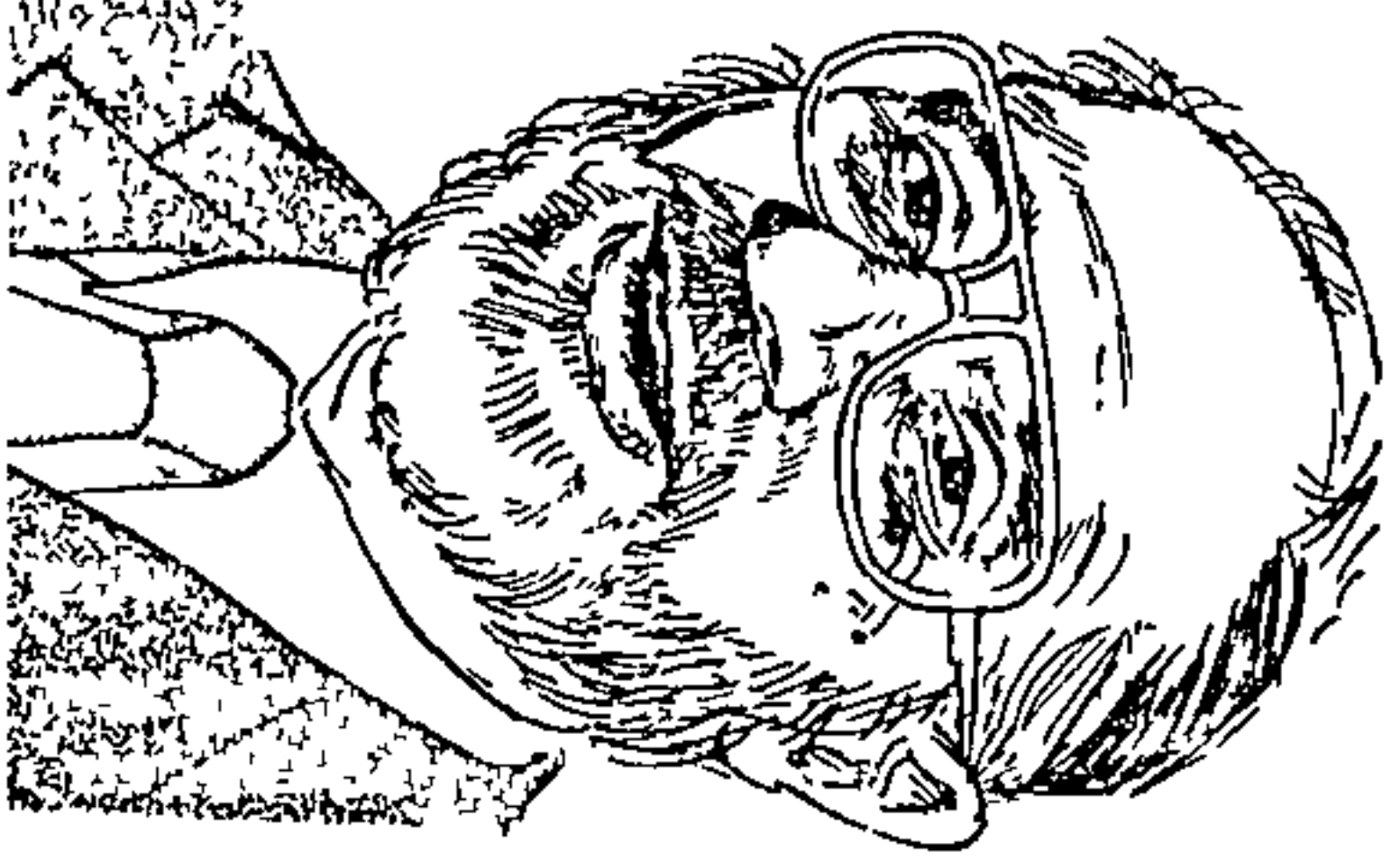
THE man, who this week publicly called for the scrapping of South Africa's capital punishment system, is fast cementing his reputation in legal circles as the country's most outspoken judge.

Mr Justice Didcott made his views known on the controversial British television programme, "First Tuesday". The death penalty was, he said, "a form of punishment that should have had its time altogether by now".

It is by no means the first time he has spoken out. In 1988 he was in the news after a sharp broadside at politicians who "usurp the judiciary's powers" and for making a passionate plea for a constitutionally entrenched Bill of Rights.

Before that he made a series of pronouncements and judgments over the years that some felt would make him highly unpopular with the Government.

One of the country's foremost legal experts, Professor Johan van der Vyfer of Wits University, even went as far as to say Mr



Justice Didcott had "zero chance" of being promoted to the Appellate Division. He was, Professor van der Vyfer said, "the most outspoken judge in the entire judiciary at the moment". In his latest swipe, at capital

punishment, Mr Justice Didcott told British TV viewers the overwhelming argument against the death penalty appeared to be that "we have come down to the level of the criminal by retaliating in a far more cold-blooded and premeditated way".

The award winning "First Tuesday" team also interviewed someone said to be South Africa's most experienced hangman (but whom the Prisons Department later denied was ever employed by them), Mr Chris Barnard, who claimed to have dropped the trapdoor on no less than 1 250 convicts between 1962 and 1986.

Viewers were told South Africa's execution rate, one every three days, was the highest in the civilised world. Ninety-seven per cent of those hanged were black.

This week Professor Etienne Murenk of the Society for the Abolition of the Death Penalty said Mr Justice Didcott's views on capital punishment were "quite correct and courageous".

He said the judge's public statement was also significant in the light of the fact that sitting judges

Personality

MR JUSTICE DIDCOTT

Written by
DAVID CAPEL

did not usually make statements on controversial subjects. The fact that Mr Justice Didcott chose to do so showed how deep his feelings were on the matter.

Professor Murenk believed Mr Justice Didcott's views on capital punishment were shared by other South African judges who were not prepared to come out publicly on the subject.

"Mr Justice Didcott is one of the most respected judges in the country. He is known and respected for his commitment to justice as well as for his intellect," Professor Murenk said. As far back as 1980, Mr Justice

Didcott made a slashing attack on the Department of Justice for its "deliberate and determined strategy to subvert, harness and control the Supreme Court".

In a memorandum to the Hoexter Commission on Interim-date Courts, he said the States' "domination over everyone and everything is what truly matters to some bureaucrats and politicians, who pay ritual tribute to the independence of the Supreme Court but see it as an obstacle".

In another broadside, in 1979, Mr Justice Didcott said, in a decision on review, that "Parliament has the power to pass the statutes it likes and there is nothing the courts can do about that. The result is law".

"It is not always the same as justice. The only way Parliament can make legislation just is by making just legislation".

More recently, in 1986, he together with Mr Justice Kumbleben and Mr Justice Thirron ruled that six clauses, or parts of clauses, in the emergency regulations were invalid because they were too vague or because the

then State-President, Mr P W Botha, had acted beyond his power.

In June 1988, Mr Justice Didcott quashed the convictions of two men who has been found guilty of housebreaking and theft because they did not have legal representation. This had put them "at a disadvantage that rendered the trial as a whole palpably and grossly unfair".

He said at the time "The public conscience of this country, the conscience of its people as a whole, can scarcely rest with any comfort at the thought of thousands standing trial in courts daily who have no legal assistance because they are too poor to bear the costs".

In his call the same year for a Bill of Rights, Mr Justice Didcott attacked politicians for failing to have learnt the lesson of history, that just as liberty was indivisible, so was the protection of law.

"Weaken it today when it protects others against you, and it will be weak tomorrow when you may require, and want it, to protect you against them."

252

UK TV film 'downplays SA change'

LONDON — The South African Embassy in London has slammed a British TV programme on South Africa's death row and judicial executions as "part of a pattern which attempts to downplay the changes taking place" in the country.

The programme was shown this week on ITV's "First Tuesday" series. 3/20 6/11/90

A senior embassy spokesman said yesterday he deplored the fact that the embassy was not granted a request to preview it.

No attempt had been made by the producers to verify the facts.

The spokesman said the whole issue of the death penalty was in contention — even in the United Kingdom there had been some calls for its reimposition.

The South African Government was, however, receptive to all views and had requested that the whole matter of the death penalty be re-examined.

He pointed out that there had been a decrease in executions from 117 in 1988 to 53 in 1989.

Since the commencement of State President F W de Klerk's new administration, 27 stays of execution had been granted.

from his historic visit to
ph: STEPHEN DAVIMES.

Try Barnard, (257) police urged (257)

Star 6/11/90

THE David Webster Trust has called on the police to bring former policeman Ferdie Barnard to trial and to arrest all other people suspected of being involved in the murder of Mr David Webster.

In a statement, the trust said it noted with concern the continued detention without trial of Mr Barnard, who is being held in terms of the Internal Security Act in connection with the murder of the University of Witwatersrand lecturer and anti-apartheid activist.

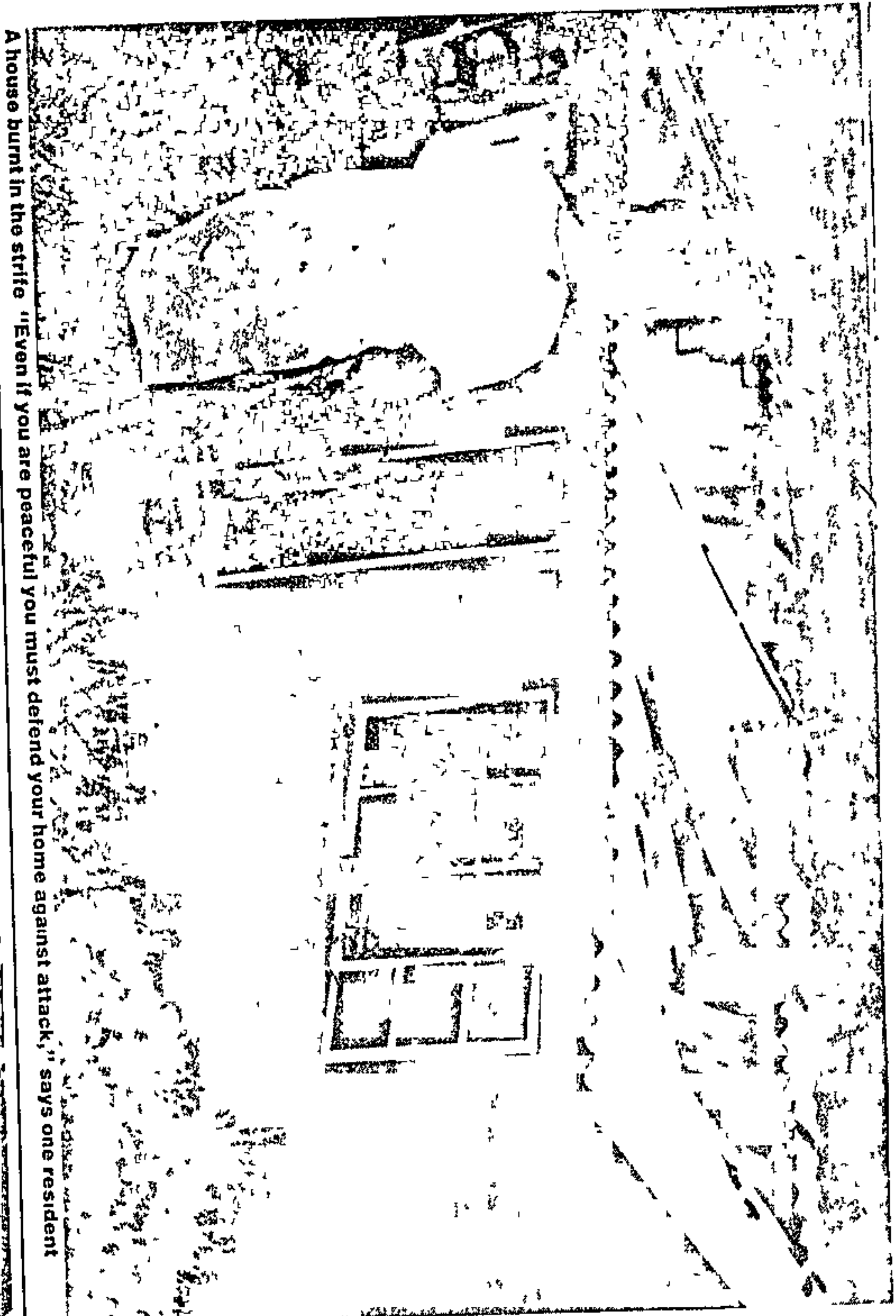
"The David Webster Trust, in accordance with David's own principles, abhors detention without trial. Of course, we would want all suspects to be brought to trial, and this is why we call on the police to charge Ferdinand Barnard without delay."

A police officer had stated under oath that he believed Mr Barnard had "valuable information at his disposal to events such as the Webster murder" and that he was withholding such information.

"We say that Barnard should be brought to court before a judicial officer so that such information, and his involvement in the murder, is tested in the course of a fair and public trial, presided over by a judge."

The trust said the continued detention of Mr Barnard under Section 29 created the perception that the investigation was being contained so that information which might implicate security officials could be suppressed. — Sapa.

italian song
The Journey



A house burnt in the strife "Even if you are peaceful you must defend your home against attack," says one resident

Webster Trust calls for trial of policeman

CLIPPER 11/190

THE David Webster Trust has called on police to bring former policeman Ferdie Barnard to trial and to arrest all others suspected of being involved in the murder of David Webster.

In a statement the trust said it noted with concern the continued detention without trial of Barnard, who is being held in terms of the Internal Security Act in connection with the murder of the Wits University lecturer and anti-apartheid activist.

"In accordance with David's own principles the David Webster Trust abhors detention without trial.

"Of course we would want all suspects to be brought to trial, and this is why we call on the police to charge Ferdinand Barnard without delay."

The trust said a police officer earlier started under oath that he believed Barnard had "valuable information at his

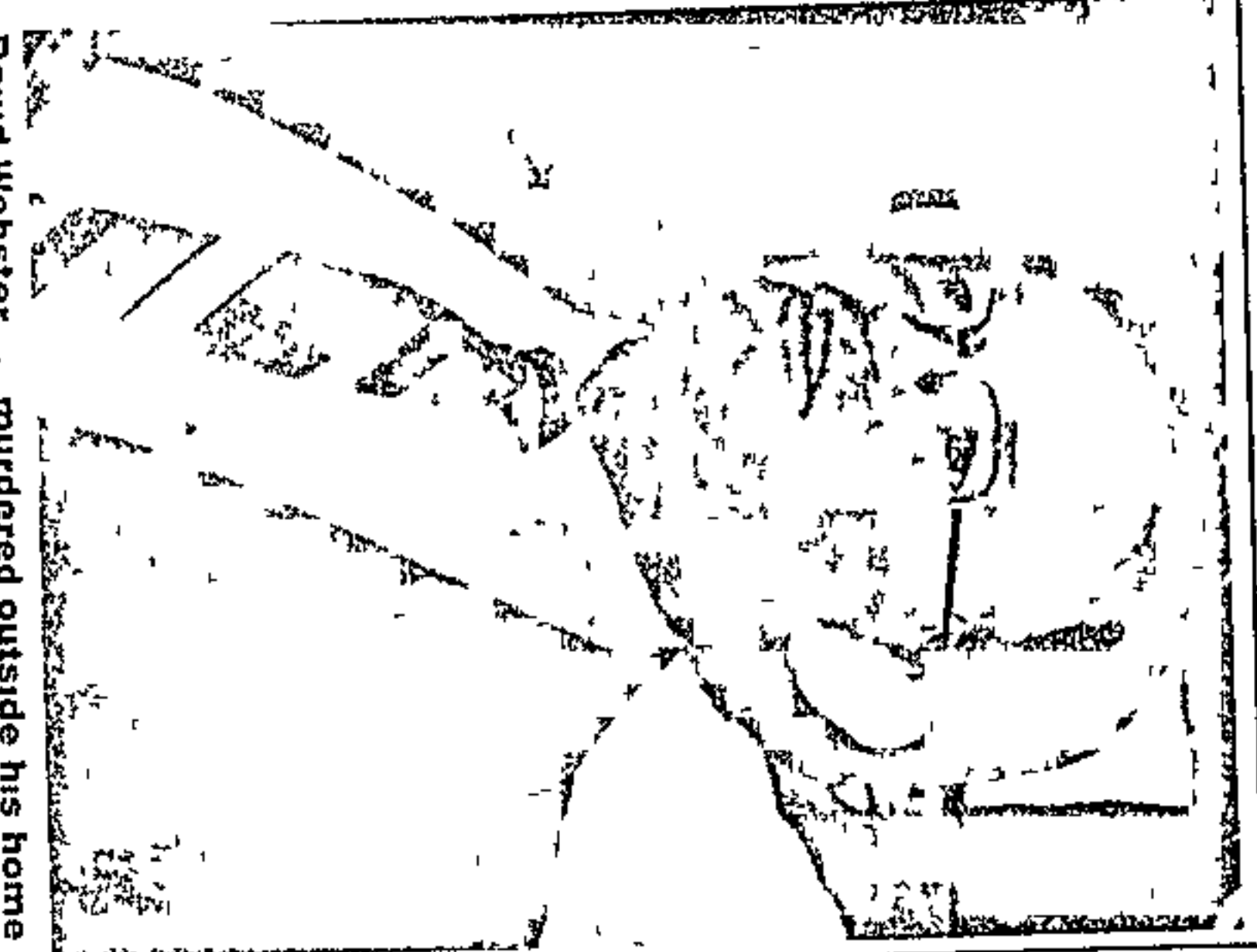
disposal about events such as the Webster murder

"It would appear no progress has been made and Barnard is withholding such information

"We say Barnard should be brought to court before a judicial officer so that such information and his involvement in the murder is tested in the course of a fair and public trial presided over by a judge"

The trust said the continued detention of Barnard under Section 29 created the perception that the investigation was being contained so information which might implicate security officials could be suppressed

"We call on the police to charge Barnard and to arrest and charge any other persons who they reasonably suspect of complicity in the murder of David Webster," the Trust said - Sapa



David Webster - murdered outside his home

NO end in sight to Natal's grim power struggle

CLIPPER 11/190

DURING the bright sunny days the green hills and streets full of laughing children give a deceptive sense of serenity to Inanda

But during the sultry nights the township becomes a battleground in a power struggle that is three years old and still raging out of control

Supporters of the United Democratic Front and Inkatha have been killing each other since late 1986, leaving an estimated 2 500 dead in Natal

The violence which began around Marrizburg, has spread across Natal and is most intense in Inanda just outside Durban

"There's no way to avoid the fighting. Everyone is involved," said Thulam Newame, 19, a UDF supporter

"Even if you are peaceful you must defend your home against attack," he said

Newame's chin is scarred from a bullet wound

His younger brother was killed a year ago

More than 160 blacks died in factional violence near Durban in December - the highest monthly toll yet, according to a Democratic Party monitoring group

The second-worst month was November when 62 died

In Inanda rows of burnt-out houses sit inconspicuously on

Quiet days turn to nights of killing, burning

Frightened residents seek sanctuary in churches and the homes of their white employers and friends and young men gather in small groups to patrol their neighbourhoods through the night

"The political temperature just keeps rising," said Roy Anstie, head of the unrest monitoring group

Natal's conflict began heating up in 1987 as the rest of the country's black townships began cooling off after two years of nationwide turbulence

Recent reforms by President FW de Klerk, such as allowing opposition rallies, have not eased the tensions in Natal

Most combatants are in their teens and early 20s and their focus is on the local power struggle rather than national political issues

Poverty, unemployment, overcrowding and lack of political rights are all cited as causes for the Natal violence although

similar conditions prevail elsewhere

What distinguishes Natal is that it is the one part of the country where two powerful black factions exist side by side

KwaZulu leader Chief Mangosuthu Buthelezi was long the major black political force in Natal

His Inkatha movement which claims 1.5 million members dominates rural areas

But when the UDF was established in 1983 it won support from young, urban blacks who embraced the organisation's aggressive anti-apartheid tactics and its alignment with the ANC

The UDF advocates sanctions, boycotts and strikes to put pressure on the white-led government and generally favours a socialist-orientated economy

Buthelezi is a proponent of capitalism and says sanctions harm blacks

"Black-on-black violence has become uglier and uglier and has now got about as ugly as it can get," Buthelezi told a rally in Soweto in August

"Without (black) unity we can forget about ever being able to destroy white oppression," he said

Frustrated residents have taken the law into their own hands, forming "defence committees" and "people's courts"

Police have been unable or unwilling to stop the carnage

Anstie said his monitoring group had recorded 1 500 violent acts in three years, but only five prosecutions

He said his group had submitted dozens of affidavits to police but charges had not followed

The UDF says police refuse to act against Inkatha and sometimes help Inkatha members carry out attacks

Police deny any bias and say they cannot build criminal cases because potential witnesses, fearing reprisals, will not testify

Law and Order Minister Adnan Vlok recently visited several townships with Buthelezi

He described the poverty and violence as "appalling"

Police have added 700 men to the forces in the area, but the government has not offered long-term proposals to address the problems - Sapa

Liberty is dead

Thousands attend funeral

By **DESMOND BLOW**

WITBANK'S best-known political activist, Eric Liberty, 33, was allegedly murdered by the son of a black policeman two nights before Christ-

C/Pres 7/1/90
mas when he went to stop a fight in the township of Schoongezicht. He was stabbed in the heart. A man has been arrested and charged with murder.

(22)
This week more than 6 000 people from Schoongezicht and the adjoining township of Guqa attended Liberty's funeral.

Liberty was detained frequently by the Witbank and Middelburg Security Police, but his spirit was never broken, report his comrades.

Towards the end of last year Liberty was responsible for stopping a gang war in the townships.

To celebrate the "peace" he held a braai for them, but police who suspected his motives raided the braai putting scores of people to flight. Liberty was arrested for disturbing the peace.

Witbank is a Conservative Party stronghold but anti-apartheid organisations including branches of NUM, Cosatu and junior church organisations are very active.

In an interview *City Press* had with Liberty before his death, the father of two said he had received threats from an anti-activist organisation which calls itself the South Eastern Transvaal Students' Association Committee.

Caricatures of well-known activists, including Liberty, were sprayed on walls in the townships with a hangman's noose around their necks.

Liberty refused to take these threats seriously.

Court case declined

By **DAN DHLAMINI**

C/Pres 7/1/90
A POTCHEFSTROOM magistrate has declined to hear two cases of obstructing the police because he saw the incidents from which the charges arose.

Magistrate Ben Bester this week recused himself from the proceedings involving Benjamin Hlanyane, 30, an executive member of the Vaal Civic Association, and Philip Ntepe, 26, who appeared before him separately on charges of obstructing police during the course of their duty.

Hlanyane and Ntepe, both represented by Advocate A Hussein, were not asked to plead and their cases were adjourned until January 18. They were granted R100 bail each.

Their appearance is a sequel to an incident on November 14 at Potchefstroom magistrate's court when seven ANC members were convicted on terrorism charges.

New date for trial

By **MARTIN NTSOELNGOE**

C/Pres 7/1/90
NOTORIOUS Soweto gang leader Mbumelelo "Sporo" Mandisi, who is serving a 75-year jail term for multiple crimes, made another appearance with two alleged henchmen this week.

The two, who are also serving long prison terms are, Benini Tshabalala, 20, and a 17-year-old youth.

Their appearance is a sequel to the murders of Christopher Ngwenya and Jacob Mokgakgali on November 23 last year.

Mandisi is also charged with the murder of Albert Ntsele on November 1 last year.

The three were not asked to plead and their case was postponed to January 19.

Mandisi and his gang allegedly conducted a reign of terror in Soweto.

(252)
Political comment and newshills by K Sibiva, headlines and sub-editing by J Boffon, both of 204 Eloff Street Ext. Johannesburg

Star 8/11/90

(252)

Tree murder: prisoners win appeal

Row over capital punishment grows

By Therese Anders, Highveld Bureau

The recent successful appeal by two death row prisoners against their death sentences for the 1987 Witbank "tree murder" has added to the controversy currently raging over capital punishment.

Olly Andrew Mamba (29) and Jan Morgan Jacobs (38), who sat on death row for more than a year, were originally denied leave to appeal against their death sentences for the murder of Hendrina housewife Mrs Frieda Scheepers (36).

Mrs Scheepers's badly decomposed body was found tied to a tree near a Witbank plantation in November 1987. The men were sentenced to death by Mr Justice Louis Esselen in the Witbank Circuit Court on September 29 1988.

When Mamba and Jacobs's case was heard by a full Bench of the Appeal Court in Bloemfontein before Christmas their death sentences were set aside, as were their murder convictions.

Instead they were found guilty of culpable homicide and sentenced to 10 years' imprisonment. The Appeal Court also set aside their convictions for rape.

"The courts can and do make mistakes, as has happened in this case," said Lawyers for Human Rights director, Mr Brian Currin, yesterday

"And more particularly mistakes are made when there is a racial involvement, such as when a black is involved in a crime against a white person, as was the case in this instance.

"All people are not equal before the law in South Africa and that in itself is a reason for the abolition of capital punishment."

Mr Currin said the successful "tree murder" appeal showed that at the very least leave to appeal should be mandatory in the case of the death sentence.

Mr Justice Botha, with Mr Justice Smalberger and Mr Justice Kumleben, found there was a reasonable doubt as to whether Mamba and Jacobs had actually realised that Mrs Scheepers could possibly die when they tied her up and left her.

He said the trial court, in taking into account the place and manner in which Mrs Scheepers was tied up, had accepted that the men had foreseen that their actions could have fatal consequences.

The judges said Mamba and Jacobs were patently guilty of an extremely serious case of culpable homicide.

They found there was no concrete proof that Mrs Scheepers had been raped, but confirmed the conviction and sentence of 10 years for the robbery of Mrs Scheepers's car.

Death sentence reprieve adds to controversy

The Argus Correspondent

JOHANNESBURG. — The recent successful appeal by two Death Row prisoners against their death sentences for the 1987 Witbank "tree murder" has added to the controversy raging over capital punishment

Olly Andrew Mamba, 29, and Jan Morgan Jacobs, 38, who sat on Death Row for more than a year, were originally denied leave to appeal against their death sentences for the murder of Hendrina housewife, Mrs Frieda Scheepers, 36

Mrs Scheepers' body was found tied to a tree near a Witbank plantation in November 1987. The men were sentenced to death by Mr Justice Louis Esselen in the Witbank Circuit Court on September 29 1988

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mistakes, as has happened in this case," said Lawyers for Human Rights director, Mr Brian Currin, yesterday

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Mr Justice Botha with Mr Justice Smalberger and Mr Justice Kumleben found there was a reasonable doubt as to whether Mamba and Jacobs realised that Mrs Scheepers could possibly die when they tied her up and left her

BENEFIT OF DOUBT

"They must be given the benefit of the doubt," said Mr Justice Botha

He said the trial court, in taking into account the place and manner in which Mrs Scheepers was tied up, had accepted that the men had foreseen that their actions could have fatal consequences

The judges said Mamba and Jacobs were patently guilty of an extremely serious case of culpable homicide, which justified an exceptionally heavy sentence

They found there was no concrete proof that Mrs Scheepers had been raped

Churchmen to see De Klerk

CHARLENE SMITH

The first of an anticipated series of meetings between church groups and President F W de Klerk takes place today when he meets a 12-member delegation from the conservative Church Alliance of SA (Casa)

De Klerk, in his Christmas Eve address last month, called on church leaders to meet him. It is believed he is to involve churches in remoulding racial attitudes of their congregations and in helping to create a climate of negotiations.

The Casa delegation, which claims to represent about 10-million church-going people, said issues it intended discussing with De Klerk included the state of the economy, constitutional development, the abolition of discriminatory laws, and the application of biblical

principles by the authorities when they decide on controversial moral issues.

A De Klerk spokesman said dates had not yet been set for meetings with other churchmen.

Casa, which was formed in June 1988, said it represented more than 900 denominations. Delegates at tomorrow's conference will include among others Casa president and Fellowship of Pentecostal Churches secretary-general M L Badenhorst, Reformed Independent Churches Association president Bishop Isaac Mokoena, the Zionist Christian Church's Rev Paul Mazibuko, and Dr Pierre Rossouw of the white Dutch Reformed Church.

Retirement villagers bale out developers

LESLEY LAMBERT

CAPE TOWN — Members of the 200 Silvermine retirement village Noordhoek are having to bale the village out of short term financial difficulties.

Earlier, another retirement village the Cape reported similar problems. The Silvermine villagers have taken over management of the "share-block" company after the negotiated departure of members of the controlling ARP & P Noordhoek Development Trust.

The trust is headed by Cape attorney Barry Burton Barbour, who was involved in the Helderberg Retirement Village near Somerset

West which ran into cash flow difficulties last year.

The Silvermine share-block scheme is said to owe creditors more than R3m while Helderberg's debt is reported to amount to R4,5m.

Burton Barbour said yesterday Silvermine's financial problems were not related to Helderberg's.

National Council for the Aged director Syd Eckley said yesterday at least 10 retirement village schemes had gone bankrupt in the Cape and Transvaal over the past year.

Legal profession 'wants to see black judicial officers'

SUSAN RUSSELL and GERALD REILLY

THE legal profession wants qualified black judicial officers appointed to the lower courts and the Supreme Court as soon as possible, says Johannesburg Bar Council chairman advocate L Goldblatt, SC.

Goldblatt was responding in a statement to an interview — with newly elected Association of Law Societies president Nico Coetzer — printed in attorneys' magazine De Rebus.

Coetzer said the nurturing of an unfaltering belief among all South Africans that courts were places where justice would prevail was the greatest challenge facing SA's legal system this decade.

Two major problems faced by SA's legal system were the question of legitimacy and access to the courts by everyone who needed it.

While the pro deo system had served a useful purpose, it should be replaced by readily available legal aid where an advocate could be supported by an attorney, Coetzer said.

The legal profession was doing ev-

everything possible to give everyone who needed it access to the law.

Responding to Coetzer's comments, Goldblatt said he believed the SA courts were already perceived as legitimate.

He agreed, however, that a legal system seen as legitimate by the entire population was one of the challenges facing the profession.

"Obviously among blacks they must be perceived as white courts and that creates a political problem."

"One hopes that in time to come there will be more blacks sitting in the various courts — the lower courts and the Supreme Court."

The legal profession, he said, wanted the appointment of black judicial officers to happen as quickly as possible.

"It is not a question of appointing people by virtue of colour."

"We must have people of colour and ability with the appropriate training and experience. We all hope these people will emerge."

Business Day 9/1/90

252

Escalating violence in Natal
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Star 10/11/90

252

~~218~~

'Legal system tied to apartheid'

Bar council's call 'cosmetic'

By Helen Grange

A call by the Johannesburg Bar Council to have qualified black judicial officers appointed to courts as soon as possible has been criticised by the black legal profession as a superficial attempt to legitimise the South African legal system among blacks.

The chairman of the Johannesburg Bar Council, Mr Louis Goldblatt SC, said this week that one of the challenges facing the legal profession was a legal system seen as legitimate by the entire population.

"Obviously among blacks the courts must be perceived as white courts and that creates a political problem

Apartheid

"One hopes that in time to come there will be more blacks sitting in the various courts — the lower courts and the Supreme Court," Mr Goldblatt said.

However, this move would do little to legitimise South Africa's legal system, according to Mr Keith Kunene, vice-chairman of the Black Lawyers Association.

"The problem stems from the offensive apartheid laws of the country. Many black lawyers would object to sitting on the bench and perpetuating the present legal system," he said.

Advocate Mr Jules Browde SC,

chairman of Lawyers for Human Rights, agreed that the question of credibility in the legal system was a "multi-faceted" problem.

"It is very important that the bench consists of both black and white judicial officers, because the courts at present are looked upon as part of the system and consequently don't have the respect of the mass of people in this country. Naturally, the presence of black judges would make a tremendous difference, particularly if they are chosen from the ranks of properly qualified black practitioners who themselves have the respect of the black community.

"I believe it would also lead to less disparity in sentences passed.

"At the same time, the obnoxious discriminatory laws would have to be removed before we could expect the enthusiastic participation of black lawyers in the legal system," he said.

According to the newly elected Association of Law Societies president, Mr Nico Coetzer, another problem facing South Africa's legal system is access to courts by all.

Mr Coetzer said in the attorneys' magazine, *De Rebus*, that while the pro deo system had served a useful purpose, it should be replaced by readily available legal aid where an advocate could be supported by an attorney

252

Staw 10/11/90

'Hit squad' reports – two subpoenaed

By Karen Stander

Vrye Weekblad editor Max du Preez and reporter Jaques Pauw have been subpoenaed to supply information concerning the murder of Durban lawyer Mr Griffiths Mxenge and other offences allegedly committed by a police "hit squad".

The journalists are to appear before Johannesburg magistrate Mr J F Zeelie on Friday.

They were ordered to surrender the original cassette tapes of interviews with former policemen and self-confessed hit squad members Captain Dirk Coetzee and Mr David Tshikalange, any notes on the interviews and all documents in their possession relating to the activities of the alleged hit squad.

They were also ordered to provide sworn affidavits saying the cassettes and notes were authentic and the originals.

Du Preez said the subpoena had been served shortly after lunch on Monday in terms of Section 205 of the Criminal Procedures Act. The subpoena said the journalists "probably have information" about the murder of Mr Mxenge "and other murders and offences" mentioned in the paper's November 17 and 24 editions.

Du Preez said the newspaper – the first to break the "hit squad" story – was committed to co-operating "with whoever wants to get to the bottom of the matter. We have nothing to hide".

Mystery over wife of alleged 'hit squad' cop

Sowetan Correspondent

MYSTERY surrounds the whereabouts of Mrs Karin Coetzee, wife of alleged "hit squad" policeman Captain Dirk Coetzee after she failed to arrive for a Media Council hearing in Cape Town yesterday on a complaint she lodged against the *Rapport* newspaper.

Coetzee, who lodged a complaint with the Council over three articles published in *Rapport* on December 3, 17 and 24, was expected to testify at the hearing yesterday morning.

She claimed that there were inaccuracies in the articles and it is understood she was keen to be present at the hearing.

It is believed that Coetzee intended driving from Pretoria to Cape Town for the hearing, scheduled to start at 9 30am, but she did not arrive.

Media Council chairman Mr Justice Jan Steyn did not convene the hearing, but, after discussions with deputy chairman Mr Justice GPC Kotze and panel members Mr Tertius Myburgh, editor of the *Sunday Times*, Professor SAS Strauss of the University of South Africa, and Mr Ed Linnington, editor of *Sapa*, he informally announced an indefinite postponement.

He said *Rapport* had fully answered Coetzee's allegations. Coetzee had been notified to attend the hearing.

She had 14 days to give satisfactory reasons for not appearing. If she failed to do so, the case would be dismissed.

Call for black judges

Stuckman 11/11/90

JOHANNESBURG Bar Council chairman Lewis Goldblatt says the legal profession would like to see suitably qualified blacks appointed as judicial officers including judges - as soon as possible.

In an interview on Tuesday, he warned that, among blacks, the courts must at present be perceived as "white" courts.

Goldblatt, SC, was responding to comments by the newly elected Association of Law Societies president, Mr Nico Coetzee, who said the nurturing of an unflinching belief among all South Africans that courts were places where justice would prevail was the greatest challenge facing South Africa's legal system this decade.

Goldblatt, in response, said he believed South African courts were

already perceived as legitimate.

The profession wanted the appointment of black judicial officers to happen as quickly as possible.

"It is not a question of appointing people by virtue of their colour."

"We must have people of colour and ability with the appropriate training and experience. We all hope these people will

emerge."

Goldblatt said judges were chosen from silks (senior counsels) and there were at least three people of colour who were senior counsels in South Africa.

He said he would also like to see more women appointed as judges. At present there was only one. He agreed, however, that a legal system seen as

legitimate by the entire population was one of the challenges facing the profession

"Obviously among blacks they must be perceived as white courts and that creates a political problem

"One hopes that in time to come there will be more blacks sitting in the various courts - the lower courts and the Supreme Court."

Time running out for ads

Today and tomorrow are the final days to pay for your adverts at last year's prices.

As reported in yesterday's *Sowetan* our advertising rates went up on December 1 last year.

All other advertisers were affected but we suspended the increase for our sponsored advertising clients for as long as we could.

Unfortunately, from Monday, all adverts must be paid for at the new price - R10 a column centimetre for entrepreneurs who qualify for our sponsored advertising scheme.

All other advertisers pay R20 a column centimetre. However if you place your advert

today or tomorrow you still pay last year's price of R8.50 a column centimetre.

It does not matter if you place adverts that will appear after next Thursday, that is after Monday, and several Thursdays thereafter.

As long as we get your order today and tomorrow, you will pay the old price.

If you have not yet placed your advert or adverts please telephone Paul Tshabalala at 474-0128.

Also, you can now also start giving us your announcements for our Business Diary column

Phone Joshua Raboroko on 474-0128 during working hours.

BUSINESS EDUCATION

ADVERTISING AND MARKETING



90/11/11

Charges against police not disclosed

CAPE TOWN — Defence attorneys for suspended policeman Lieutenant Gregory Rockman and 15 other men told a Mitchell's Plain magistrate yesterday they had not yet been told what the charges against their clients were

Lieutenant Rockman and others were arrested at an allegedly illegal gathering in Mitchell's Plain on November 14 last year

The cases against Lieutenant Rockman and the 15 others were combined yesterday during their third court appearance

The case was transferred to the Wynberg Magistrate's Court for trial on April 10

Mr Mushtaq Parker, for 13 of the men, said the defence had asked for details about the charges last year but had received no information

DECISION

He said his information was that only the docket concerning Lieutenant Rockman's case had been sent to the Attorney-General for his decision, but it was not yet known what that decision was.

Mr Parker said the defence would definitely draw up a comprehensive application for further particulars once the charge sheet became available.

"The defence makes a friendly request that, in the event of the charge sheet being made available late, or if there is not an early response to the request for further particulars, we would retain the right to ask for a further postponement on April 10," Mr Parker said

The gallery was again packed. — Sapa

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Hanged man denied plea for clemency lawyers

The Argus Correspondent
JOHANNESBURG. — The

last man to be hanged in South Africa, who was sentenced to death by controversial judge Mr Justice JJ Strydom, went to the gallows before being allowed to petition the State President for clemency, claims Lawyers for Human Rights (LHR).

This has been denied by the Department of Justice who say Solomon Ngobeni exhausted all his rights before being executed on November 14 last year.

Last year Mrs Helen Suzman attempted to have a motion of censure passed in parliament against Mr Justice Strydom for a lenient sentence he had passed on a Louis Trichardt farmer who had beaten his black employee to death.

Mrs Suzman was quoted as saying in parliament "It may well be asked whether this man should ever, indeed, have been appointed to the Bench".

A LHR spokesman on capital punishment said Mr Justice Strydom refused Ngobeni leave

to appeal on October 28, 1988

A petition for leave to appeal was then refused by the Chief Justice on May 9, last year.

The spokesman said Ngobeni's final right, to petition the State President, was dismissed by Mr Justice van Dyk on November 10 last year, four days before he was hanged.

Pro Deo counsel

The spokesman produced a copy of a document signed by Ngobeni's pro Deo counsel, Mr Charles Edward More, that he (Mr More) had not petitioned the State President for clemency on behalf of Ngobeni.

Mr More's statement was dated November 10, 1989. In an affidavit Ngobeni said he had thought his pro Deo counsel had been busy with further representations on his behalf and he had been "shocked" to receive notice of his execution as he had been advised by LHR that channels were still open to him to have his death sentence commuted.

The two documents were handed in to court on Novem-

Handwritten notes:
11/11/90
252
CMT 10/15

ber 10 during an unsuccessful application to have Ngobeni's hanging date postponed. A spokesman for the Department of Justice said Ngobeni had exhausted all his "remedies". He had applied to the trial court twice and the Chief Justice for leave to appeal.

All applications had been unsuccessful

The spokesman said Ngobeni had petitioned the State President for clemency, and this too had been unsuccessful. Ngobeni was sentenced to death in the Tzaneen Circuit Court by Mr Justice Strydom for the murder of Mr Mackson Kubayi during an armed robbery.

Vorster judgment

The sentence was handed down three days before Mr Justice Strydom gave his controversial "Vorster" judgment in the Louis Trichardt Circuit Court.

In parliament Mrs Suzman said Judge Strydom should be censured for the sentences passed on Louis Trichardt farmer Jacobus Vorster and his labourer Petrus Leonard,

who beat Mr Erick Sambo to death. Mr Justice Strydom sentenced Vorster to five years wholly suspended for five years, to a fine of R3 000 or 12 months in prison and was instructed to pay R130 a month to Mr Sambo's widow and children for five years.

Leonard was sentenced to a fine of R500. Mitigating factors taken into account by the judge were that Vorster was 22 years old, that he had no previous convictions, that he had a drinking problem that played a part in his behaviour, that he employed a number of people who would suffer if he went to jail, and that he and his wife had lived in tension since the incident.

Star 12/1/90

252

~~253~~

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Prosecution of editor 'invalid'

By Celeste Louw

Defence counsel for *Vrye Weekblad* editor Mr Max du Preez yesterday objected to his prosecution on charges of publishing subversive reports on the grounds that the Attorney-General was not entitled to prosecute

The publishers of *Vrye Weekblad*, Wending Publications and Mr du Preez, have not yet pleaded to the charges of contravening the media emergency regulations of 1988 by publishing six subversive articles in the weekly paper between February 2 1988 and February 24 last year

Some of the allegedly subversive articles dealt with conscription in the South African Defence Force

NO OFFENCE

Defence advocate Mr E Cameron argued that the prosecution was instituted last year after the expiry of the 1988 emergency

Therefore the charges did not constitute an offence

Mr Cameron submitted that the 1988 emergency, which formed the basis of the charges, was temporary legislation.

The notice of intention to prosecute was served on the accused after the expiry of the legislation

Therefore the prosecution was not entitled to prosecute

State prosecutor, Miss I van der Walt, argued that the State reserved the right to prosecute an offender of media emergency regulations even after the expiry date of the state of emergency

The hearing was postponed to February 12 when the magistrate, Mr P du Plessis, will give his finding



Editor Mr Max du Preez . . . accused of contravening the media emergency regulations.

It's high time we banned the rope

Stiles 14/11/90 252

LAST WEEK'S Sunday Times report about a British television programme on the death penalty in South Africa must have shocked many readers — particularly the interview with hangman Chris Barnard

Mr Barnard said officials had to wait up to a quarter of an hour before the people hanging on the rope could be certified dead "It took so long for their hearts to stop beating. In some cases they had to be pulled up and dropped again," he was quoted as saying

Some years ago, Professor Chris Barnard provided a terrifying description of the effect that hanging has on the person's body

"The man's spinal cord will rupture at the point where it enters the skull, electrochemical discharges will send his limbs flailing in a grotesque dance, eyes and tongue will start from the facial apertures under the assault of the rope and his bowels and bladder may simultaneously void themselves to soil the legs and drip on to the floor"

Notwithstanding this brutality, South Africa has invariably had one of the highest execution rates in the world — always higher than all of those First World countries with which we like to compare ourselves

Between 1911 and 1968, 2 323 executions were performed, an average of 40 a year. Between 1968 and 1988, 1 904 people were executed — an average of 95 a year

In 1989 the number of executions declined to 53 although some 300 people remained on death row

Violence

Despite the decline in executions, there is as yet no firm indication that the Government has changed its approach

What then are the arguments for the retention of the death penalty? In a study published in 1984 concerning the attitudes of criminologists, sociologists and lawyers to the death penalty in South Africa the three major reasons cited for its retention were

- It has a unique deterring effect,

- It prevents society from taking the law into its own hands,

- It protects society against violent crime

As far as deterrence is concerned, only one study has ever claimed that executing those convicted of crime is a deterrent against future criminal acts

And this study — by Isaac Ehrlich in 1975 — has been thoroughly discredited. A United States

by **Dennis Davis**

Professor of Law at the University of Cape Town and national director of the Society for the Abolition of the Death Penalty

Supreme Court majority has called it "inconclusive". One judge cited studies calling it "defective" and "unreliable"

Mr Laurence Klein, president of the American Economic Association, found Ehrlich's mathematical models to be flawed and his deterrent effect an illusion. The overwhelming majority of reputable criminologists argue that there is no evidence which supports the claim that the death penalty deters

Although it is suggested that the death penalty best satisfies the desire for retribution, it is a brutal mode of retribution which succeeds only in creating an ever-widening circle of tragedy among the families of victims and the person executed

Incredible

A rational retributivist must insist that like crimes carry like penalties. But this is not the case in most countries, including South Africa. A number of chance factors determine the outcome — including the defence counsel, the judge and the support enjoyed by the accused

In the vast majority of capital cases, the accused is defended by an inexperienced advocate fresh out of law school and acting without the benefit of an instructing attorney.

It is simply not conceivable that an accused can receive the best possible defence in such circumstances and consequently an unfair onus is placed on the judicial officer to ensure that the accused's case is put in the best possible light.

It is an incredible indictment on the value which our society places on human life that an accused whose life is at stake (he is generally poor and black) is represented by the most inexperienced legal counsel whereas commercial disputes invariably occupy the attention of the best legal minds South Africa has to offer

A recent study has confirmed the widely-held view not only that there are wide disparities among judges in handing down death sentences, but that that the penal

philosophy of each judge has an important influence on the sentence imposed.

A system in which a person's life depends on whether judge A or B hears the case is far too discretionary to be fair and can only harm the image of justice in our country

This has particularly been the case with the spate of common-purpose cases since the Appellate Division confirmed the sentences of the Sharpeville Six

The reprieve by the State President of the Sharpeville Six was undoubtedly a triumph for both national and international protest. Yet how many people are executed who have not had the benefit of such widespread protest?

It might be said that chance plays a part in all sentencing — not only that which relates to the death penalty. True, but chance becomes more obscene and retribution less rational when a person's life is at stake

Innocent

Those who maintain that the death penalty should be retained might well ponder the words of US Supreme Court Justice Thurgood Marshall in the 1972 *Furman v Georgia* case

"The death penalty," he said, "would offend the sensibilities of the American people if they knew that it would be no more effective a deterrent than life imprisonment, that most murderers who have been released from prison become law-abiding, that it is imposed discriminatorily; that there is evidence that innocent persons have been executed, and that the death penalty wreaks havoc on the criminal justice system"

Is it not time in the last decade of the 20th Century for South Africa to at least reconsider the system of capital punishment? The last time a commission of inquiry examined this issue in South Africa was in 1947

The minimum demand by all those committed to a humane system of criminal justice should be the appointment of a judicial commission and a moratorium on all death sentences pending its final report

Toddler run over, dies

A TWO-YEAR-OLD girl was killed at the weekend when she was struck by a car on the Grootdrakenstein-Franschhoek road. Anneline Beukes was walking along the road with her mother when she suddenly ran across the road opposite the farm Waterval and was struck by the car. She died instantly.

Death row visit protest

PRETORIA — About 45 supporters of the Save the Patriots Campaign Committee (SPCC) protested at the Pretoria Central Prison on Saturday morning at what they see as stricter procedures for visits to death row prisoners.

Long delays for trial date - official

By Janet Heard

Some people had been kept in jail for up to three years while awaiting trial because there was an insufficient number of courts, according to the deputy Attorney-General for the Eastern Cape, Mr Mike Hodgen.

The long delays facing awaiting-trial prisoners was highlighted last week by a report that an Eastern Cape prisoner, Mr Blom Pule, had embarked on a hunger strike in protest against the delay in setting him a trial date.

According to the report, Mr Pule was arrested on a murder charge in December 1987 and had appeared in court 13 times without being given a trial date.

Mr Hodgen said the situation had improved recently and there was a decreasing number of people who waited for long periods.

If the State was unable to bring a person to court within a few months of his arrest, it would be immoral to oppose a bail application and keep him in prison for a number of years, said Mr Brian Currin, the national director of Lawyers for Human Rights.

He added it was only justifiable to oppose a bail application when there

was a strong possibility the accused would abscond if he was released.

Legal sources in the Eastern Cape attributed the long delay for awaiting-trial prisoners to the backlog which had arisen from the large number of arrests during the 1984-6 political conflict.

A human rights attorney said there had been an improvement in the last year, but it was common for awaiting-trial prisoners to remain in prison for a year or more before a trial date was set.

Mr Silas Nkanunu, the Port Elizabeth regional chairman of the National Association of Democratic Lawyers, said "ideally a prisoner should be released on bail after the first court appearance".

The Transvaal Attorney-General, Mr Don Brunette, said the province did not have a backlog and monthly figures showed on average that a Supreme Court trial took eight to nine months from the time of arrest until the completion of the trial.

He said there were exceptions which included complicated political cases such as the Delmas treason trial and certain fraud cases.

252

slow 15/11/90

LHR, police versions of constable's death

(252) By Craig Kotze (252)

A black Johannesburg police constable died after an incident involving three white colleagues at the Jeppe police station last month, sparking conflicting versions of the event.

Lawyers for Human Rights say

The policeman died after being "brutally assaulted by white superior officers over a disciplinary matter" on December 29. Constable Elias Sanguane, was left "battered and bleeding outside the Jeppe police station" after the attack. He was taken to hospital only after colleagues called an ambulance.

LHR also allege police tried to cover up the incident. The matter was not reported to the press in the customary manner. LHR say witnesses deny that a gun was pointed at the white policemen and say police tried to cover up the incident.

They allege Constable Sanguane was brutally assaulted after a "disciplinary issue" and that he had unloaded his gun. However, he had refused to hand his service pistol over when ordered because "he could only do so, in terms of police regulations, to the source which issued it". Star 15/1/90

Police say

Police sources say the policeman had deserted his post, was drinking and cocked and pointed his rifle at a police major and two white constables.

Pointing a rifle or any firearm at a person is a criminal offence. One of the constables then hit Constable Sanguane across the face. He fell and hit his head against a wall and was fatally injured.

The white policemen included a senior police officer, believed to be a major, and two constables.

Police have admitted that the matter was not reported at the time because of a "misunderstanding" arising from the reorganisation of the SAP's public relations and policing functions on January 1, but denied any cover-up.

Witwatersrand police spokesman Colonel Frans Malherbe said an investigation into the matter, which is being treated as a murder investigation, was due to be completed this week after post-mortem results were made available.

"This will not happen again. Details will be released immediately they are available," said SAP public relations chief Major-General Herman Stadler. The three white policemen involved have not been suspended.

Jan 16/1/90

New hope for 8 on Death Row

Court reopens 1986 murder trial

252

Own Correspondent

CAPE TOWN — A 1986 murder trial, for which eight Oudtshoorn residents were sentenced to death for the killing of a community councillor, has been reopened in the Cape Supreme Court with the State President's consent.

The hearing, in terms of chapter 32 of the Criminal Procedure Act, is to hear further evidence in the trial of Patrick Madinga, Desmond Majola, Dickson Madikane, Chwete Mackay and Jimmy Sitwayi, as well as Abraham Galant, Andries Saptoe and Ronnié Nyuka who were minors at the time of the hearing.

The men are on Death Row in Pretoria Central prison.

They were convicted of murdering Bongoletu town councillor Mr Patrick Marenene in November 1985 by chopping him with an axe and stoning, stabbing, hitting and kicking him before setting him alight.

In terms of chapter 23 of the Act, the State President may sanction the reopening of a case on petition if further evidence has become available which could affect the conviction or death sentence.

The Act provides that the court be constituted as it was at the time of the trial, where possible, but does not deem the presence of the accused as essential.

The evidence is evaluated by the court and submitted with

recommendations to the State President, who may or may not act on it. No finding is given by the court.

Yesterday, Bongoletu resident Ms Olga Claasen (29) told the court she had been at her home in Third Street on November 22 1985.

She, her sister Catherine and a friend, Jennifer MacLean, were standing at the garden gate when they heard a loud noise and gunshots from a parallel street. They saw people walking in the street to find out what was happening, and they followed.

They saw Mr Marenene running down the street onto an open piece of veld, chased by Mackay. A large crowd was following behind them.

Mr Marenene was carrying a gun and fired a shot as he ran.

Chanting

A group of people coming from the direction of Brixton township stopped Mr Marenene, and Ms Claasen said that the next thing she saw was him lying face down on the ground.

Mackay had picked up a large rock which he dashed down on Mr Marenene's head. Almost simultaneously she saw Majola chopping at Mr Marenene with an axe, and she looked away.

The large crowd was singing and chanting that "the *impimpi* (informer) must die".

Ms Claasen said she saw a group of people walking with a tyre, wood and paper. Although

she did not know for sure, she thought they were going to set Mr Marenene alight.

She said she knew Madinga, Madikane, Sitwayi and Nyuka well, and had not seen them at the scene.

The three women did not stay to see what happened, and went home.

Three days later she and many others were arrested on charges of public violence but were acquitted after two months in detention.

Ms Claasen said she had told Madinga's father what she had seen and had come to Cape Town for the Supreme Court trial, believing she was going to give evidence.

Not understanding court procedure, she stayed at court for three weeks and then realised she was not going to be called as a witness.

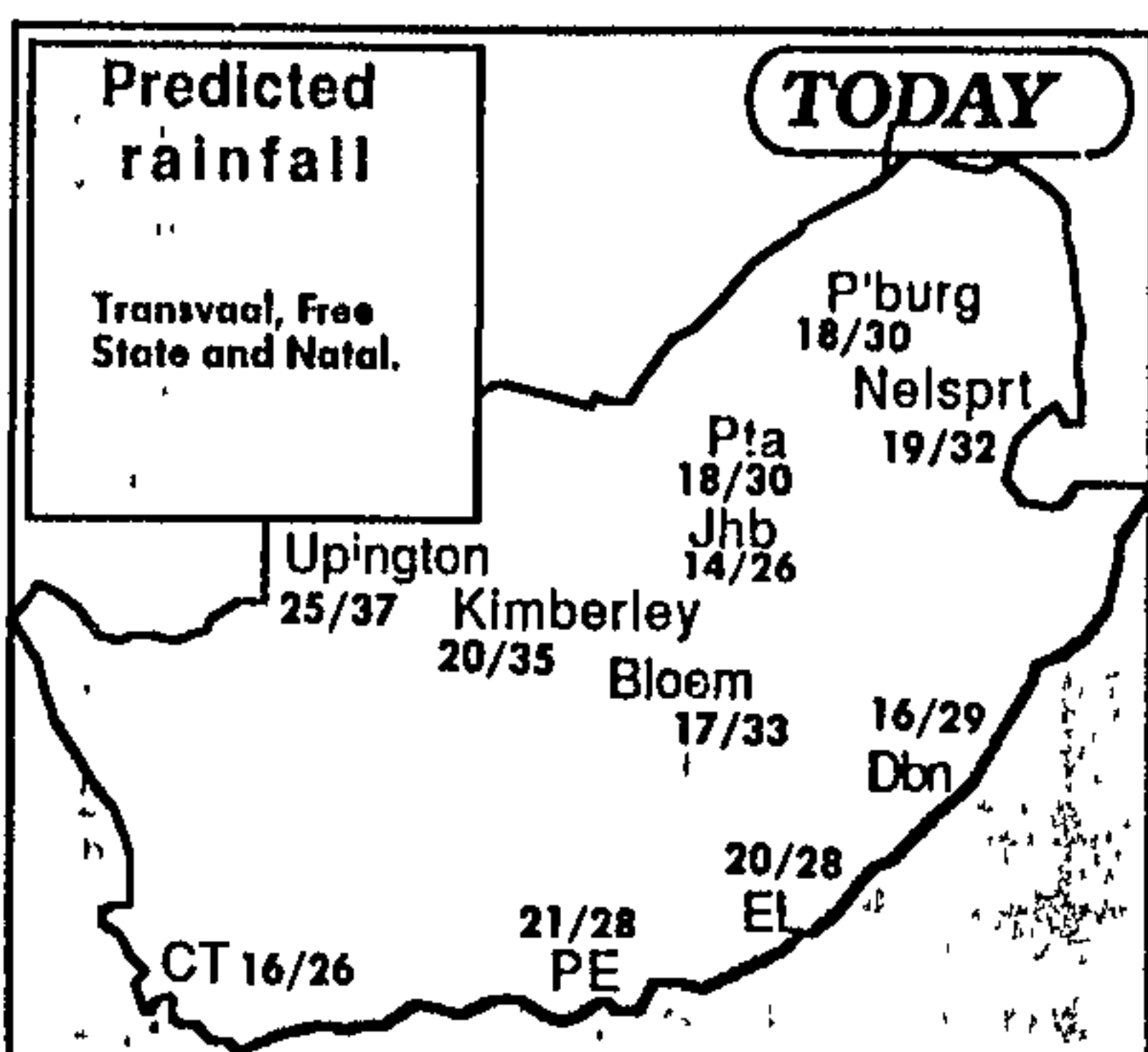
A year later, lawyers for the eight approached her after taking a statement from Ms MacLean.

Under cross-examination by Mr P Prins, for the State, Ms Claasen said that although she disagreed with the crowd who had killed Mr Marenene, he had deserved a beating because he acted wrongly as a town councillor and took decisions without consulting the community.

Mr Justice A J Lategan said he found it strange that Ms Claasen had been to the trial for three weeks and not told anyone she had evidence to submit.

The hearing continues today.

WEATHER



TRANSVAAL — Partly cloudy and warm but hot in the west and lowveld. Isolated thundershowers are expected in the south but scattered in the south-west.

JOHANNESBURG CENTRAL — Today: 8 am 20 deg C; yesterday: max 26 deg C; min 15 deg C; rainfall Nil mm; so far this month 21,7 mm; so far this year 21,7 mm; average rainfall for January over 92 years 153 mm; average annual rainfall 769 mm.

(012) 21 9621 for Tvi update

Round the World

	Max	Min		Max	Min
Amsterdam	9	5	Nassau	24	20
Athens	14	13	New Delhi	24	11
Auckland	21	17	New York	2	0
Bermuda	20	15	Oslo	2	1
Brussels	9	2	Paris	8	5
Budapest	-1	-4	Perth	32	25
Copenhagen	3	1	Rio de Janeiro	38	21
Dublin	11	6	Rome	10	-2
Frankfurt	4	1	Seoul	2	-5
Geneva	0	-3	Singapore	30	23
Helsinki	-4	-18	Sydney	21	19
Hong Kong	20	17	Taipei	17	14
Lisbon	14	7	Tel Aviv	16	7
London	12	7	Tokyo	9	1
Los Angeles	18	10	Toronto	3	-5
Miami	21	20	Vancouver	7	4
Moscow	-4	-4	Vienna	-2	-6
Nairobi	23	11	Warsaw	5	4

SUNSET today, 7 05, sunrise tomorrow, 5 31, sunset tomorrow, 7 04

MOONRISE today, 3 11 pm

Officer tells why he shot demonstrator

Own-Correspondent

PRETORIA — A Pretoria police officer shot dead a demonstrator because he regarded him as the leader of a stone-throwing mob, the inquest into the death of 12 Mamelodi residents has heard (252)

Captain Hermanus Arnoldus le Roux told the inquest — which resumed yesterday in the Pretoria North Magistrate's Court after being adjourned last year — that the man was part of a stone-throwing mob which placed his life and that of his colleagues in danger.

Captain le Roux said during cross-examination by Mr Morris Basslian, counsel for the families of the deceased, that several objects were thrown at the Casspir in which he and his colleagues were travelling Jan 16/11/90.

"I regarded the man as the leader of the group because I saw him throwing objects at the Casspir on two occasions."

Captain le Roux said he shot the man as he was about to throw a second object at the Casspir.

Earlier Captain le Roux said a restive crowd surrounded their Casspir in another section of the township and threw objects at them.

He was hit with two objects — one struck him on the head and the other one on the leg

(Proceeding)

Death row prisoners 'on hunger strike'

CAT
7/11/90
16/1/90

252

JOHANNESBURG — Political prisoners on death row at the Pretoria Central Prison have embarked on a hunger strike, according to Mr Jerry Ndou, spokesman for the "Save The Patriots Campaign."

He claimed at a press conference that this was in protest at the harsher regulations controlling visits to death row prisoners, which were instituted last week.

The new regulations require that appointments be made by visitors before coming to the prison.

A spokesman for the Prisons Services yesterday denied knowledge of a hunger strike at the prison.

"No one is on hunger-strike at Pretoria Maximum Prison and there hasn't been any hunger-strike since

the new regulations were imposed" Yesterday's announcements of protest action follow a Pretoria Central Prison demonstration on Saturday where about 45 parents of death row prisoners and supporters of the Save the Compatriots Campaign Committee (SPCC) handed a petition to police concerning visitation rights.

The petition, addressed to the head of the prison, was also faxed to State President F W de Klerk and the Minister of Law and Order, Mr Adriaan Vlok.

The new regulations came in the form of letters to family members saying appointments would have to be made with prison authorities in advance if someone intended visiting a prisoner. — Sapa

'I'd shoot if I thought my life was in danger'

97/11190 Pretoria Correspondent (252)

A former police sergeant told the inquest on the deaths in 1985 of 12 Mamelodi residents that he would shoot any person throwing a stone at him if he thought his life was in danger.

Mr Willem Jacobus Stroh, who has since resigned from the police and is now a traffic officer, told the inquest at the Pretoria North Magistrate's Court yesterday, that his life and those of his colleagues were in danger on the day of the shooting.

Mr Stroh said several objects, including bricks and bottles, were hurled at their Casspir by groups of angry residents while they were on patrol.

They were trapped at a barricade in one of the streets in the township and their Casspir was pelted with stones and other objects.

He said the Casspir was under the command of Captain Hermanus Albertus le Roux, who told him to stay at the back of the Casspir to keep watch on the people who were throwing stones from the rear.

PATROL DUTY

Mr Stroh said he fired several shots with his shotgun at the stone-throwers.

A police officer, Warrant Officer John Miller, said he was in the same Casspir as Captain le Roux and Mr Stroh. He was hit with an object while on patrol duty in one of the streets.

Warrant Officer Miller said Captain le Roux screamed and said he had shot the person who threw the object with his R1 semi-automatic assault rifle.

"Captain le Roux also screamed, saying some people were dragging the man who was shot away."

Warrant Officer Miller said Captain le Roux also shot dead a man who allegedly threw a stone at a passing Defence Force patrol vehicle.

Asked by Mr Morris Bassian, counsel for the families of the deceased, whether he personally saw the man throwing the stone, Warrant Officer Miller said he was told by Captain le Roux that the man had done so.

The hearing continues.

Report by ^{CAPL} ^{Times} ^{17/11/90} ²⁵² judge over Death Row 8 for President

Supreme Court Reporter

EIGHT Oudtshoorn men on Death Row for the murder of a community councillor, whose trial had been reopened, will have to wait for a judge's finding to reach the State President before they will know what their fate is.

The men are Patrick Manginda, Desmond Majola, Dickson Madikane, Chwete Makay, Jimmy Siwayi, Abraham Galant, Andries Saptoe and Ronnie Nyuka. They were sentenced in the Cape Supreme Court to death in 1986 for the death of Bongoletu town councillor Mr Patrick "Big Boy" Marenene.

The men's convictions and sentences were confirmed by the Appeal Court and the State President was then petitioned. In terms of Section 327 of the Criminal Procedures Act, the State President referred the matter back to the trial court to hear the evidence of two witnesses.

The Act provides that the trial can be reopened if further evidence which may materially affect a conviction or the death sentence comes to light.

The court should assess the value of further evidence and advise the State President whether and to what extent the evidence affects the conviction and sentence.

Shouting, shots

Earlier this week, Ms Olga Klaasen, 29, of Bongoletu, said she was at home in Third Avenue on November 22, 1985 and had been in the company of her late sister and a friend, Ms Jennifer Maclaine.

They had heard people shouting and shots being fired and moved to a corner where they saw Mr Marenene, holding a firearm, run across a field.

The shouting continued and "every now and then" a shot was fired. A little distance from Mr Marenene she saw Makay followed by a large crowd. The crowd caught up with Mr Marenene, surrounded him and it was clear he was being assaulted.

Ms Klaasen said she saw Makay fall to the ground and later saw him pick up a big stone and throw it down towards Mr Marenene's head.

She had also seen Majola with an axe and when he lifted the axe she could see what he was going to do and turned away. The crowd was chanting that "the impimpi (informer) must die", Ms Klaasen said.

She had later seen a group of people walking with a tyre, wood and paper and although she was not sure what they were going to do, she suspected they were going to set Mr Marenene alight.

Ms Klaasen said she had known Manginda since childhood and also knew Nyuka and Makay well.

After the incident, police had surrounded the township and had arrested a few hundred people, including Ms Klaasen.

Mr Justice A. J. Latagan presided and was assisted by Mr P. Vlok and Mr H. van Huysteen as assessors. Mr G. D. van Schaikwyk SC, with Mr A. M. Omar and instructed by Mr E. Mohammed of E. Moosa and Associates, appeared for the eight men.

Inquest told about Mamelodi shooting

19/11/90 Pretoria Correspondent (252)

The inquest on the deaths of 12 Mamelodi residents in 1985 heard how a senior police officer ordered the driver of a Casspir to stop the vehicle before he allegedly shot a man dead with his R1 semi-automatic assault rifle.

Mr Ian Pretorius, who was a constable in the SA Police at the time and was stationed at Wonderboom police station, told the inquest at the Pretoria North Magistrate's Court yesterday that Captain H A le Roux had ordered him to stop the vehicle while they were on patrol in the township.

The man was on the roof of one of the houses in Section B when he was allegedly shot.

Mr Pretorius, who resigned from the SAP in March 1988, said Captain le Roux ordered him to reverse the vehicle after he had stopped. "I then heard a shot and saw the man who was on the rooftop falling"

Asked what the man was doing when he was shot, Mr Pretorius said the man was about to hurl an object at the police vehicle.

Immediately after the man was shot, Mr Pretorius drove off and stopped next to a house. "I stopped next to this house because I thought it was the one where the man was shot," he said.

The hearing is proceeding.

JCI's share price is due for correction ²⁵² brokers

JCI's share price has outrun the company's growth potential for the moment and is due for a correction, brokers Edey, Rogers and Co say in a mining financial research report for January

JCI, which celebrated its centenary last year, had shown three times as much income growth in the past seven years as it had in the entire preceding 93 years, Edey said

By 1982 profits attributable to ordinary shareholders had reached nearly R90m. In the year to June 1989 it exceeded R360m.

The report said the market value of JCI's net assets over the same period grew from R751m to R7 107m in June 1989. In the ensuing six months the value had grown by a further R1 600m, or more than twice the company's total size in 1982.

"One reason (for the growth) has been the low base from which they began, but more importantly has been the fine (if interrupted) growth of platinum and diamonds and the steady expansion of its food and beverage interests."

Edeys said these operations, which re-

RIAAN SMIT

presented more than two-thirds of JCI's equity-accounted earnings, should produce another excellent year to June 1990, but indications were that 1991 would be more difficult and that the results of other group interests would be disappointing.

Earnings and dividend rates that could be projected from figures in the report place JCI on a two-year future yield of below 3%. "Even a historic yield as low as this is well below JCI's norm," Edey said.

The discount of the share price on net asset value at 6% was also relatively slender. Until the latter 1980s, a range of 20%-40% was the prevailing norm, the report said.

"This net asset value obviously does not bring to account JCI's stake in South Deep, which is due to be floated early this year, but even in a rampant bull market it would be surprising if the premium on the listing price were to add (and then, perhaps, only temporarily) more than 5% to JCI's NAV," it said.

Coetsee 'promised inquiry'

WASHINGTON — Justice Minister Mr Kobié Coetsee told US lawmakers he would appoint an objective investigation into the allegations of death squads if the present departmental inquiry failed

Congresswoman Constance Morella told a meeting in Washington yesterday that Mr Coetsee gave the visiting US House of Representatives delegation this indication when the death squads were raised. She added she did not think anything would come of it —

The Star Bureau

(252)

Jan 18/11/90

Judgment delayed in poet Mbuli's grenade hearing

19/11/90 By Abel Mushi

Judgment in the trial of "people's poet," Mzwakhe Mbuli and his wife Nomsa who appeared in the Protea Magistrate's Court yesterday on a charge of being in possession of a hand grenade at their home in Pimville, Soweto, was postponed to February 2

The Mbulis were arrested on March 17 last year and were released on bail of R1 000 and R500 respectively.

The two also appeared on an alternative charge of failing to report to the police the location of the grenade at their home

They both pleaded not guilty to the main and alternative charge

COMMON PURPOSE

The couple's defence counsels questioned the imposition of the same charge on both when the device was neither found on either of their persons nor a common purpose proved.

They argued that the grenade could have been brought into the house by someone else as the couple were not the only people who had access to it and asked that the charges be withdrawn

The first accused, Mr Mbuli, was represented by Mr L Tonkin and his wife by Mr T M Boyce

They appeared before Mr T F Veldman and Mr S T Voight appeared for the State.

W/Mant 19/11/90 - 25/11/90.

252

337

Light sentence for ANC woman

By PHILIPPA GARSON

LIGHT sentences handed down recently to convicted African National Congress members is a sign that the courts are changing their attitude to the banned organisation, say some lawyers

Last week Sheila Mathabe — who alleges she was abducted from Swaziland in 1987 — was found guilty in the Bethal Magistrate's Court of being a member of the ANC, undergoing political training outside the country and furthering the aims of the organisation. She was sentenced to three years imprisonment, suspended for five years.

Mathabe, charged on seven counts of terrorism, pleaded guilty to membership and furthering the aims of the ANC, and not guilty to having undergone military training. Her lawyer, Lawrence Tonkin, said "She could have got 10 years for what she pleaded guilty to, and we certainly thought — up until the end — she would have received a jail sentence." He described her light sentence as "highly unusual, even historic in a Conservative Party stronghold like Bethal".

Mathabe, 37, is suing the minister of law and order for abduction, arrest

and assault by members of the South African Police

Mathabe, wife of ANC member Guebuza Nyanda, claims she was slapped, punched, burned and whipped when she was abducted from Swaziland in May 1987.

She was held in solitary confinement for 18 months and released in November 1988 without being charged. But six months later — after proceeding with her own case against the state — Mathabe was rearrested and charged with terrorism.

Though overjoyed at her light sentence, Mathabe says she is bitter at the "stress and pain I suffered during my arrest and detention". She views her freedom as a sign that "things are relaxing" but describes as absurd the fact that "minor political activists like myself are being charged while our leaders walk free".

Tonkin says that recent lenient sentences handed down to ANC members in the Cape may have had some influence on the case. Lawyers there are surprised at recent developments in the Cape Regional Court.

Last month two people convicted of ANC membership and having undergone military training, Agnus Yoyo and Linda Tsoki, were given suspended sentences. Yoyo got four years jail suspended for five years and Tsoki received a sentence of five years suspended for five years. One person who appeared with the two received a jail term for his involvement in handgrenade explosions.

Lawyer for the two, Ebrahim Mohammed, says that though neither Yoyo nor Tsoki committed acts of violence inside South Africa, Tsoki was a trained member of the ANC's military wing, Umkhonto weSizwe, and Yoyo was found with two AK47's in her possession.

Although there is no mandatory jail term for being convicted of military training, Mohammed says the practice, until recently, was to hand down jail sentences. He adds that there has been a definite shift in the approach of court officials and the department of justice over the past few months.

Some lawyers say that leniency of the courts comes as a response to what court officials see as a change in state policy.

Alleged 'hit squad' three for inquest

w/Mail 19/11/90-25/11/90

By CARMEL RICKARD

THREE South African Police officers implicated in alleged hit squad activity are due to give evidence in court next week, their first public appearance since the allegations were first made.

The three, Brigadier Willem Schoon (now retired), Major Eugene de Kock and Lieutenant Paul van Dyk, are to give evidence in the inquest into the deaths of four Durban youths in June 1986.

De Kock and Van Dyk have both taken "voluntary suspension" pend-

ing the outcome of investigations into allegations of police hit squads

The three were subpoenaed to give evidence in the Durban inquest court during December, but they failed to appear, prompting counsel for the families to charge that they showed a distinct reluctance to give evidence.

This, however, was denied by counsel for the police, who said their failure to arrive was due to a misun-

derstanding, and that they would be available when the court reconvened on January 24.

All are, or were, stationed at security police headquarters in Pretoria and were part of a secret unit which worked with members of the African National Congress who had been "turned"

All have been named by Death Row prisoner and former colleague, Butana Nofomela, as being members of police hit squads.

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'Elevated role' for courts foreseen

Staff Reporter (252)

STW 19/11/90

South African courts are likely to play an increasingly significant role in a more relaxed climate, the Deputy Minister of Justice, Mr Danie Schutte, said yesterday

Addressing 200 magistrates during a long-service award ceremony at the Johannesburg Magistrate's Court, Mr Schutte said the elevated role of the courts in such a climate would come about because the State would find it

less necessary to "make use of direct measures to ensure peace"

The duty to ensure that justice prevailed was not the responsibility of only one section of the population. All population groups had a "rightful role to play regarding this matter"

The number of non-whites involved in the justice system was increasing considerably, Mr Schutte said. At present, there were 183 non-white magistrates and 279 prosecutors.

The Wait of Justice

PATRICK LAURENCE

Delay in releasing McNally report raises the spectre of a cover-up

252

On December 12 last year human rights lawyer Mr Norman Manheim sent letters to President F W de Klerk, the Minister of Justice, Mr Kobie Coetsee, and the Minister of Law and Order, Mr Adrian Vlok.

The almost identical letters, written on behalf of the Independent Board of Inquiry, into Informal Repression, contained a simple request; they asked for a copy of the McNally report on allegations that a police-controlled death squad had killed anti-apartheid activists.

The letters noted that board members had met the men who headed the inquiry, Mr T M McNally, the Free State Attorney-General, and General Alwyn Conrade, the Chief of the CID, and supplied them with information to assist their investigation.

In what can only be described as an understatement, the letters said, "We believe we have an interest in the report."

Mr Brian Currin, director of Lawyers for Human Rights and one of the four-member board delegation which flew to Bloemfontein to see Mr McNally and General Conrade in November last year, was involved in the event which brought the question of death squads dramatically to the public's attention.

On 19 October last year Lawyers for Human Rights took an affidavit...



Council of Churches said last July at the time of the meeting between Mr Mandela and former President Botha "It is our view that the Government has an ace up its sleeve, namely the Stompie issue."

It added with possible precision "There are people who argue that the Government may release Mandela at the same time as it blows up the case. If it does so, it will subject Mrs Winnie Mandela to a trial by media the objective will be to tie Mr Mandela's hands and defuse the political implications and impact of his release."

Nine people have been arrested in connection with the abduction and murder of 14-year-old Stompie Only one, however, Mr Jimmy Richardson, former coach of the disgraced "Mandela Football Club", was charged with his murder. Those arrested with him have been charged with kidnapping and assault with intent to do grievous harm.

Stompie, it will be recalled, was kidnapped from a Methodist Church house in Soweto and taken to a house in Diepkloof occupied by Mrs Mandela, where he was reportedly assaulted. At least three youths were kidnapped — and allegedly assaulted — with him.

They subsequently made sworn statements to a Methodist Church lawyer. Mrs Mandela was named in the affidavits what was not generally known at the time was that they made statements to the police soon afterwards. The SABC later re-

po ceman ... in a mout ...
fomela; in it he stated that he
had been a member of a police
death squad which assassinated
opposition leaders with suspect-
ed links to the outlawed African
National Congress

Unlike previous allegations
about police-directed assassins,
Nofomela's sworn statement
contained specific details, it
named the members of his
squad, identified its alleged
commanders and gave grue-
some details of the murder in
November 1981 of the civil
rights lawyer Mr Griffiths
Mxenge

A reply acknowledging re-
ceipt of Mr Manom's letter was
sent to him from Minister Vlok's
office on the same day. It said in
part "The Minister . . . has re-
quested the Commissioner of the
South African Police to attend
to the matter. You may there-
fore expect a further communi-
cation from his office in due
course."

Nearly six weeks have lapsed
since then without a word from
the commissioner's office.

The silence, like Mr de
Klerk's original decision not to
release the McNally report to
the public, has aroused deep sus-
picion in human rights and
extra-parliamentary opposition
circles that it contains informa-
tion which is embarrassing to

the authorities

Specifically, there is con-
jecture that the report may have
recommended that a judicial
commission be appointed to
conduct an inquiry in open court
into the allegations that a spe-
cial police unit had murdered
anti-apartheid activists.

Mr de Klerk, of course, re-
jected widespread calls to ap-
point a judicial commission on
— in the opinion of many legal
observers and political oppo-
nents — specious grounds, he ar-
gued that it might "take years"
to reach a conclusion and that it
would thus contravene the ac-
cepted legal principle that "jus-
tice delayed is justice denied"

But, legal analysts pointed
out, the appointment of a judi-
cial inquiry did not preclude
prosecution against individuals,
Mr de Klerk, they argued, could
pursue the two courses at the
same time, thus ensuring both a
thorough inquiry into the
broader question of death
squads and specific action
against individual suspects

Mr de Klerk's statement con-
cided with a simultaneous an-
nouncement by Justice Minister
Coetsee that the Attorney-Gen-
eral of Natal had decided to
prosecute Nofomela for the

murder, Mr Coetsee announced
further that the Natal AG
planned to issue a warrant for
the arrest of Captain Dirk Coet-
zee, the retired police officer
who was named by Nofomela as
the commander of the alleged
hit squad and who subsequently
admitted that he was indeed the
commander in a sensational in-
terview with *Vrye Weekblad*

Nofomela was duly charged
with the murder of Mr Mxenge
(he was stabbed to death in Um-
lazi, near Durban, hence the in-
volvement of the Natal AG, Mr
Mike Imber, in the prosecution)
Mr Nofomela pleaded guilty, say-
ing that he was a member of
the police "assassination squad"
and that he had been "instructed
by Brigadier (Willem) Schoon
and Captain (Dirk) Coetsee" to
kill Mr Mxenge. The hearing
was adjourned until February
28.

Later, on January 4, warrants
were issued by Mr Imber for the
arrest of Captain Coetsee and
Mr David Tshikalanga, another
alleged member of the purport-
ed police death squad. Captain
Coetsee and Mr Tshikalanga
were both in hiding.

Looking back on these events,
two points arouse suspicions of
a cover-up. Mr de Klerk's refus-

al to appoint a judicial commis-
sion of inquiry and the prima
facie evidence of deliberate
stalling by the Commissioner of
Police and the Minister of Law
and Order to the board's request
for a copy of the McNally re-
port

But, human rights lawyers
argue, these suspicions have
been reinforced by two apparent
anomalies.

The focus of prosecution is
narrowly confined to the men
who admitted involvement in
the alleged police death squad,
Nofomela, Captain Coetsee and
Mr Tshikalanga, no action was
taken against the men named by
them as co-members of the
death squad

heir affidavits and state-
ments were accepted as the
basis for prosecution against
them but rejected or ignored as
a reason for litigation against
their alleged co-assassins, in the
normal course of events, action
against them would have im-
plied action against their pur-
ported accomplices

The second anomaly concerns
the strange non-appearance of

police officers at an inquest into
the death of four youths in Ches-
terville, near Durban, in June
1986

The Chesterville Youth Con-
gress was infiltrated by a police
squad operating under the com-
mand of Major Eugene de Kock
According to the police, the
youths were killed in a shootout.
One of the survivors, however,
disputed that his evidence sup-
ported community suspicions
that they were assassinated by
police infiltrators

A second affidavit by Nof-
mela appeared to buttress de-
ductions that the four youths
were killed by the alleged police
assassination squad. The names
of police officers who submitted
affidavits on the Chesterville
shooting were all named by No-
fomela as members of the al-
leged death squad

Three senior police officers —
Brigadier Schoon, Major de
Kock and Lieutenant Paul Van
Dyk — were due to appear at
the inquest last month. They did
not. It would have been their
first appearance before the
court since the publication of al-
legations of their involvement in
the "death squad"

At the time legal counsel for
the families of the dead youths

charged that the police officers
seemed strangely reluctant to
appear before the court. Police
counsel, however, countered by
saying that their failure to ap-
pear was due to a "misunder-
standing". His explanation
raised eyebrows

The officers are due to appear
in court when the inquest re-
sumes on Thursday. Counsel for
police has given assurances that
they will be in court.

Allegations of a police death
squad, and more particularly
President de Klerk's refusal to
appoint a judicial inquiry, cast a
dark shadow across South Afri-
ca at the threshold to the 1990s,
dulling, if not extinguishing, the
glimmer of hope aroused last
year by Mr de Klerk's bold re-
formist moves

But, if it is any consolation to
President de Klerk, a spectre is
also haunting his adversary in
prison and future interlocutor at
the negotiating table, Mr Nelson
Mandela

Mr Mandela's wife, Mrs Win-
nie Mandela, was a central fig-
ure in the controversy surround-
ing the abduction and death
early last year of the young ac-
tivist Stormie Mokhelets.

In was with that very much in
mind that the South African

Stompie had been handed to the
Attorney-General

The trail of events in the trag-
ic saga of Stompie's death is lit-
tered with many clues, some
will cause those who subscribe
at the "conspiracy theory of his-
tory" to ponder and perhaps
even gasp

To cite three

● The ANC charged that Mrs
Mandela's notorious Mandela
United Football Club was infil-
trated by the police

● Mr Richardson, reportedly its
toughest member, is alleged to
be a former policeman

● Mrs Mandela's Soweto houses
were presumably kept under
tight police surveillance, if only
because the murder weapon in a
Soweto killing, an AK 47 rifle,
was found in her Orlando home,
yet police were unaware for
weeks that four youths from the
Methodist Church house were
held against their will at her
Drepanloof home and allegedly
beaten

Then, too, a curious conjunc-
tion of events is pending. Mr Ri-
chardson's trial starts in Soweto
on February 12, just 10 days
after President de Klerk's long
awaited speech to Parliament
on February 2, at which he is
expected to make a major an-
nouncement on the release of
Mr Mandela

Eight men who pray for FW's goodwill

clips 2/1/90

252

THE fate of eight Oudtshoorn men who are on Death Row for the murder of a community councillor is in the hands of the State President.

Their trial was reopened and they have to wait for a judge's finding to reach FW de Klerk before they will know their fate.

Patrick Manginda, Desmond Majola, Dickson Madikane, Chwete Makay, Jimmy Siwayi, Abraham Galant, Andries Saptoe and Ronnie Nyuka were sentenced to death in the Cape Supreme Court in 1986 for the death of Bongoletu town councillor Patrick "Big Boy" Marenene in 1985.

Evidence was that they had struck him with an axe, stoned, stabbed, hit and kicked him before setting him alight.

The men's convictions and sentences were confirmed by the Appeal Court and the State President was then petitioned.

In terms of Section 327 of the Criminal Procedures Act the State President referred the matter back to the trial court to hear the evidence of two witnesses.

The Act provides that the trial can be reopened if further evidence which may affect a conviction or

the death sentence becomes available.

The court should assess the value of further evidence and advise the State President whether and to what extent the evidence affects the conviction and sentence.

Earlier this week Olga Klaasen, 29, of Bongoletu, said she had been at home on November 22, 1985 in the company of her late sister and her friend Jennifer MacLaine.

They had heard people shouting and shots being fired and moved to a corner where they saw Marenene running across a field with a firearm in his hand.

The shouting continued and "every now and then" a shot was fired.

A short distance from Marenene she saw an angry Chwete Makay followed by a large crowd. The crowd caught up with Marenene, surrounded him and it was clear he was being assaulted.

Klaasen said she saw Makay fall to the ground and later saw him pick up a big stone and throw it towards Marenene's head while others assaulted him.

She had also seen Majola with an axe and when he lifted the axe she could see what he was going to

do and turned away.

Klaasen said the crowd was chanting "the impimpi (informer) must die".

She had later seen a group of people walking with a tyre, wood and paper and although she was not sure what they were

going to do, she suspected they were going to set Marenene alight.

Klaasen said she had known Mandinga since childhood and also knew Nyuka and Makay well.

After the incident police surrounded the township and arrested a few

hundred people. She had also been arrested and held for two months.

Judge AJ Lategan presided and was assisted by P Vlok and H van Huyssteen as assessors. GD van Schaikwyk, SC, with AM Omar appeared for the eight

Court action over Zairean copper exports

AN URGENT application was brought before the Rand Supreme Court by a senior Zairean police officer yesterday to "freeze" about R1.5m worth of illegally exported copper hidden in nine Sats railway carriages now lodged at a Sats goods yard.

The application follows the recent arrival in SA of Zaire's Industrial Security Police Inspector-General Mola-M'Bunza Ekekyia to conduct investigations into large-scale illegal exports of Zairean minerals to SA.

Advocate Chris Eloff, who acted for Zairean state company Gecamines, which

DANIEL SIMON

owns Zaire's copper resources, said the matter had been postponed to February 13.

"The respondents have been given until next Monday to file affidavits. We will then bring in a replying affidavit by February 8," he said.

In a letter included in court papers, Ekekyia also appealed to Foreign Affairs Minister Pik Botha to help his country, which faced serious economic problems, including frequent mineral thefts.

"The latest occurrence has been exposed by the impoundment of 33 railway car-

loads of minerals by the SA Police," Ekekyia said in the letter.

He told Botha that the frauds had been committed through Zaire's state railways and customs department through the falsified invoicing of railway bills and the non-payment of tariffs.

Ekekyia told the court the respondents in the matter were Sats, Eufrasia Trading, Universal Wholesalers, Joannides Agencies and Zairean national Bintu Kasongo.

He said Eufrasia Trading was a sole proprietorship based in Kinshasa and owned by one Kungulu Gbemani whose

□ To Page 2

Zairean copper

interests were represented in SA by BT Hillary of Universal Trading Incorporated. Ekekyia said Kasongo was represented in SA by Germiston export agents Joannides Agencies. Another SA firm mentioned in papers is Universal Wholesalers CC.

He said Eufrasia Trading was the holder of a Zaire Department of National Economy and Industry permit entitling it to trade and carry out marketing operations in copper scrap only inside Zaire.

He said all copper exports to SA were carried by Sats and handled by Renfreight Forwarding.

He said that on January 11 Renfreight Forwarding export manager Fernando Boloto told a Gecamines official that railway

carriages, which had not been consigned to Renfreight, had been recently shunted into a private siding. The doors were welded shut and the contents said to be timber.

The carriages were opened on January 15 and copper slag found which, said Ekekyia, was identifiable as the property of Gecamines.

Ekekyia said that a further seven carriages found at Sats's Kaserne depot, also contained copper in various forms.

Ekekyia said the carriages were consigned to a person known variously as Mr John and Mr Joannides, care of Magnew Transport, Railway Siding, Rooikop.

He said that on being notified, the SA Police launched an investigation.

□ From Page 1

Court bids in four countries to identify Interboard's top shareholder

LITIGATION has been initiated in four countries in a dramatic bid to identify Interboard's controlling shareholder after an unexplained share issue late last year.

And Interboard's directors have successfully resisted three attempts by an unknown entity to interfere in the company's affairs.

Affidavits lodged in the Witwatersrand local division of the Supreme Court on Friday also allege that Interboard "founder" Ed Dutton is attempting to interfere with the company's affairs from a prison cell. He is arraigned on charges involving more than R130m.

In the most serious allegation, Inter-

board MD Barrie Jones submits that steps have been taken by Dutton and others to remove members of Interboard's board to obtain control over the applicant, Interboard.

"This will result in the concealment of Dutton's involvement in the alleged fraudulent transactions. Further he will attempt to utilise the structures that have been created, both locally and abroad, to place his alleged ill-gotten gains beyond the jurisdiction and control of the applicant and its subsidiaries."

The affidavits show Interboard BV, which is registered in the Netherlands and is evidently controlling shareholder of In-

BARRY SERGEANT

terboard, failed in a bid to remove Jones and chairman David Olsen in November.

A similar attempt utilising Johannesburg attorneys Bowman Gillfillan Hayman Godfrey Inc on December 29 has not been resolved. A third attempt to interfere with Interboard's management, namely the appointment of a Dutch director, has also been resisted.

The affidavits also show that litigation is pending on the matter in Guernsey, Netherlands and the Netherlands Antilles.

The papers also allege the assets controlled by Interboard BV controlling entity

Stonehage Guernsey consist of cash representing certain of the proceeds of the transactions entered into by Ligneus (also once administered by Stonehage) and the entire share/capital of Interboard NV, which owns the share capital or almost the entire share capital of Interboard BV.

The Johannesburg action, brought as a matter of urgency on Friday to clarify the position in respect of Interboard's affairs, was successful and Mr Justice MacArthur granted an order for an investigation under Section 258 of the Companies Act.

The court papers also claim Interboard is solvent, with assets exceeding liabilities by more than R100m. Since September, the

papers claim, Interboard has paid off more than R8m in debt.

In an affidavit by Jones, supported by SAP Mayor George Frederick Kitching and others, it is alleged the sole director of Interboard BV, Joost Versluis, and Dutton are in communication with Raksons, the London solicitors.

States Jones "It is believed that Dutton, in his apparent capacity as consultant to the beneficiaries, is the person from whom Raksons has apparently been taking its instructions and that Versluis has throughout been acting on Dutton's instructions."

□ To Page 2

New application ~~251~~ to free Barnard ²⁵²

Star 23/11/90
Pretoria Correspondent

The second application for the release of the former police detective, Mr Ferdinand "Ferd" Barnard — whom police are detaining for questioning on the murders of Swapo official Mr Anton Lubowski and slain activist Dr David Webster — is expected to be heard in the Pretoria Supreme Court today.

The urgent application, against the Minister of Law and Order, the Commissioner of Police and the Divisional Commander of the Witwatersrand division, was instituted by Mr Barnard's father, Mr P J Barnard of Nylstroom — a retired colonel of the CID.

In his affidavit, Mr Barnard snr said that since October 31 last year, after his son's detention he had made continuous inquiries about when his son would be released.

At the time of the first application, police said they believed Mr Barnard jr was withholding information.

South 25/1/90 - 31/1/90

Bid to reopen 'Trojan' trial

252

THE father of a schoolboy killed in the 1985 "Trojan Horse" shooting is to make an application in the Supreme Court in Cape Town on Monday in a bid to have the trial in which 13 security members were acquitted reopened.

Mr Justice D Williamson will be asked for leave to appeal against his decision not to take into account the evidence of the inquest of Shaun Magmoed, 16, and the record of a trial in which several Athlone residents were acquitted on charges of public violence.

Magmoed, Jonathan Classen, 21, and Michael Miranda were killed in October 1985 when police hidden in crates on the back of a Sats truck opened fire on a crowd in Thornton Road, Athlone.

After the attorney-general, Mr Niel Rossouw, declined to prosecute Mr Martin Magmoed instituted a private prosecution against the security force members.

However, Mr Justice Williamson at the end of last year acquitted the policemen, saying that it had not been proved that "each and every accused shared a prior common purpose to ... force"

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Top cop recalls Vaal killings

FORMER chief deputy Commissioner of Police, General Albertus Johannes Wandrag, remembered the 1960 Sharpeville shootings as he looked over Mamelodi from a helicopter on the day 12 township residents were killed.

He said this before a Pretoria North inquest magistrate yesterday

By ALINAH DUBE

Wandrag was testifying before Mr J N Pretorius during an inquest into the deaths of the 12 on November 21 1985.

He said he suspected there would be violence when he heard that

residents planned to stage a march that morning.

He and the then Divisional Commissioner of Police, Brigadier D J Malan, flew to Mamelodi in a helicopter.

He said he wanted to see for himself what was going on.

252
Sowetan 25/11/90
"As we were observing the area from the air, I could see one Casspir and about 20 000 people moving in the direction of the administrative buildings.

He said he saw the crowd bringing down the fence at the council offices, doing the toyi-toyi dance, stoning cars, barricading roads and also raising clenched fists

He said he then called riot control unit members

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Enigma

'Hit squad' inquest delayed

Own Correspondent

^{15/10 ay}
DURBAN — The inquest into the alleged killing of four Chesterville activists by a police "hit squad" in June 1986 was adjourned in the Durban Regional Court yesterday when three of its members, former ANC guerrillas, expressed reluctance to appear while media artists were present.

The three formed part of a seven-man squad of counter-insurgency policemen — posing as an ANC cadre — alleged to have been involved in the killings.

The men allegedly murdered were Russell Mngomezulu, 23, Mutuwenkosi Khan-yile, 24, Joseph Mthembu, 20, and Sandile Khawala, 23. Their families claim they were killed by a police hit squad.

Appearing for the Law and Order Minister, Advocate G Lotz said former ANC guerrillas who had switched allegiance "are viewed by the ANC as traitors"

According to "literature" he had seen, one of the men had been "actually sen-

tenced to death by the ANC for his change of allegiance".

He said the men were not unwilling to give evidence, but were reluctant because of the presence in the courtroom of two Press artists. They had previously given evidence in a number of ANC trials, but they had felt safe as these were all held in camera, unlike the inquest.

Sapa reports that Lotz had previously applied to the Supreme Court to overturn a decision by Magistrate B J Olivier that the inquest be heard in open court.

Olivier yesterday said he could see no reason why, after eight weeks, the attorneys instructing Lotz did not have the papers ready.

He ordered that the inquest be adjourned to noon today and that the papers be served on him by then. (252)

Death of minister: man appears in court

Own Correspondent

MARITZBURG — A 19-year-old man, Gerhardus Botha, appeared briefly in the magistrate's court at Grootvlei, near Villiers, yesterday in connection with the killing of Maritzburg theologian, the Rev Gert Landmann this week.

Botha, of no fixed address, was not asked to plead when he appeared before magistrate P C B Luyt, and the hearing was adjourned until February 8.

Botha was remanded in custody.

Landmann was shot dead near Villiers on Tuesday after picking up a hitchhiker on the N3 near Maritzburg.

The killing has led to another warning by police to motorists not to offer lifts indiscriminately to strangers.

Father's plea fails

^{15/10 ay}
PRETORIA — An urgent application for the release from detention of former policeman Ferdinand Barnard was dismissed with costs in the Supreme Court yesterday. (252)

Barnard is being held in connection with the deaths of Swapo official Anton Lubowski in Windhoek on September 12 last year, and Wits University lecturer and activist David Webster in Johannesburg on May 1 last year.

Barnard's father, Col Piet Barnard, also a former policeman, applied urgently for his son's release, for a second time, on Tuesday.

Mr Justice H J Preiss said the court had seen enough facts to reasonably judge the police's suspicion that Barnard was withholding vital information.

Brigadier 'checked his information'

Judge rejects bid to release Barnard

Skor 2

26/1/90

252

By Cathy Stagg

An urgent application to free former detective Mr Ferdinand Barnard, an alleged hit squad member, was turned down by a Supreme Court judge yesterday.

Mr Barnard (31) has been linked to the murders of Mr Anton Lubowski, an advocate and Swapo member, and Dr David Webster, a left-wing academic and anthropologist.

Mr F B Barnard, a retired colonel, launched the application to free his son on the grounds that no reasons existed for his continued detention.

Found to be reasonable

In reply, investigating officer Brigadier Floris Mostert said he had reason to believe Mr Barnard jun was withholding information

Mr Justice H J Preuss, who handed down his judgment in Pretoria, said the kernel of the matter was whether Brigadier Mostert's reasons were objectively reasonable

The judge found they were

Mr Justice Preuss referred to the recent case launched by Mr C C Botha against the Minister of Law and Order and the SAP for the release of Mr Botha's son, Calla. In that case, Mr Justice J Krieger found the police had not revealed enough for the judge to conclude that their reasons for detaining Mr Botha jun were reasonable

In this case, the judge found, enough facts had been placed before the court for it to weigh up if Brigadier Mostert's belief was reasonable

In papers, the brigadier referred to an organi-

sation with members from all levels of society which aimed attacks at people to the left of the Government. He said Mr Barnard was a member of, or in the service of, the organisation.

The judge said the brigadier had cross-referenced his information and there was no allegation that the police were merely relying on hearsay

Mr Barnard's counsel submitted there was a lack of intent to commit a crime, but the judge said the activities of the organisation and Mr Barnard's involvement could be inferred from Brigadier Mostert's evidence.

It was argued that the change from an arrest in terms of the Criminal Procedures Act, on October 31 last year, to an arrest and subsequent detention in terms of section 29 of the Internal Security Act two days later showed that the police were not convinced of Mr Barnard's involvement

Previous arrest

But the judge said that that issue was not in the papers before him. All he had was Brigadier Mostert's view that Mr Barnard did not want to give him any information

Brigadier Mostert personally told Mr Barnard jun that his previous arrest in terms of the Criminal Procedures Act had been ended and, because of his refusal to reveal information, he was now held in terms of section 29. All his rights had been read to him at that stage

There was no reply to this, the judge said, so he was therefore of the opinion that the arrest and detention were correct

The judge dismissed the application with costs



Mr F B Barnard leaves the Pretoria Supreme Court after his application to free his son — former detective and alleged hit squad member Mr Ferdinand Barnard — had been turned down.

Notes and first information

Chesterville ^{Staw} deaths: ruling ^{26/11/90} is challenged ²⁵²

Own Correspondent

DURBAN — There was a further delay yesterday in the inquest on the deaths of four Chesterville men shot dead by undercover policemen in June 1986.

A Supreme Court application is being planned to upset the inquest magistrate's ruling that certain witnesses give evidence in open court.

Yesterday the magistrate, Mr B J Olivier, ordered that the papers in the proposed Supreme Court application be served on him by noon today.

The families of the dead men claim they were the victims of a "hit squad".

SELF DEFENCE

The police claim the undercover policemen were trying to infiltrate an African National Congress group and that the policemen fired in self-defence when they were shot at.

Last year Mr G G Lotz, SC (for the police), applied for a ruling that certain of the witnesses, former ANC members now working for the police, give their evidence in camera.

This was opposed by Mr G Penzhorn (for the families of the dead men).

The magistrate ruled that the men give their evidence in open court.

The inquest was then adjourned for Mr Lotz to apply to the Supreme Court to upset the magistrate's ruling.

At yesterday's hearing Mr Lotz asked for a further adjournment and this was granted until noon today.

'Cowards' get 74 years' jail for murder

EIGHT Mgwali Residents Association (MRA) members, described as a gang of cowards by Judge EM du Toit, were this week sentenced to a total of 74 years' imprisonment.

The eight were found guilty of murder with extenuating circumstances and other unrest-related crimes in the East London Supreme Court in a trial that concerned an attack on the kraal of David Mgwetana in the East London area.

Two of the accused were also sentenced to a total of 24 years for murder. The other accused were sentenced on one of the counts of murder and culpable homicide to a total of

26 years' imprisonment

Imposing sentence, Judge du Toit found extenuating circumstances, with regard to two of the accused, Mandla Sawuli, 27, and Mxolisi Mtantsiso, 26, on who a death penalty would otherwise have been imposed. He said all the accused had been found guilty of severe assault.

The incident at David Mgwetana's kraal cost him his life. The judge said the attack at the kraal was not, in his view, an act of political unrest. The matter concerned the removal of people from the area to Ciskei.

At the time of the incident, people had been taking the law into their own hands.

According to the evidence before the court there had been opposition by residents to being removed to Ciskei.

At the time there had been unrest in the area, residents' emotions were high and lawlessness prevailed.

He said the attack on Mgwetana's family had been cowardly and unprovoked, there had apparently been no prior trouble between the accused and the deceased.

The judge said in imposing sentence it should be regarded as a deterrent and a warning that such people should not be regarded as heroes — Sapa

B/Dam 29/1/90

Shift in policy seen in political cases

THE legal profession is closely monitoring what it perceives to be a major shift in government policy towards the prosecution of political crimes.

Witwatersrand University Centre for Applied Legal Studies director John Dugard said the centre was attempting to monitor political cases being withdrawn before they reached court.

Dugard said it was too early to be certain of the trend, but added it was clear some charges under the Internal Security Act were being dropped.

The trend included not enforcing bans on meetings, and not prosecuting those who quoted listed people or those found in possession of banned documents.

"They are letting these things go quietly but intelligently. However, my guess is that they won't repeal the Act at this stage."

Dugard said there was a mood of greater confidence in the courts.

Lawyers, advocates and legal academics see a trend towards lighter or suspended sentences in the past three months. Some say they would not be surprised if political trials, where violence is not a factor, ceased and those involved in non-violent political trials were pardoned.

The consensus appears to be that the courts are taking the initiative.

Johannesburg human rights lawyer Azhar Cachalia said he had had a case involving a woman accused of harbouring an ANC guerrilla withdrawn last Monday.

He said government's political decision to allow a rally in October that turned out to be a *de facto* ANC rally had certain legal implications, and therefore

CHARLENE SMITH

it may have been considered difficult to prosecute people for furthering the aims of the same organisation or possessing its publications.

Cape Town human rights lawyer Ibrahim Mohammed said he believed government allowing protests, talk about the return of exiles, the unbanning of the ANC and the release of Nelson Mandela had all influenced court officials.

Mohammed, who has dealt with Internal Security Act and terrorism cases for some years, gave some examples of the new trend in sentencing.

In the recent trial of the Leza sisters, they received a suspended sentence for harbouring an ANC guerrilla. In the past, Mohammed said, they would have received at least 18 months in jail.

252 No directive

Mohammed cited several other cases as further examples, including some from the judicially more conservative Transvaal.

Justice Munster Kobie Coetsee, replying to a Business Day question on whether lighter sentences for political crimes were in response to a directive from his department, said: "Most definitely not."

Two of the pre-negotiation stipulations of the ANC document on negotiations, the Harare Declaration, contain demands for the abolition of the Internal Security Act and an end to political trials.

However, legal sources canvassed, almost without exception, said they did not believe this was at issue at this stage.

Rather, they believed the new political climate was influencing the courts.

Police 'were right to fire on Mamelodi residents'

A WITNESS told a Pretoria North inquest magistrate on Friday that police were justified in shooting at Mamelodi residents on November 21, 1985

Mr Pieter Coetzee, who held the rank of captain in the "citizen force" at the time, was giving evidence before Mr J N Pretorius

He was testifying at the inquest into the Mamelodi mass killings

By ALINAH DUBE

He said although defence force members placed under his command did not use live ammunition in the township on that day, police actions were justified under the circumstances they were faced with

Another witness, Miss Yvonne Maphayi of Section C,

Mamelodi West, said she heard gunshots and on investigation saw people running from the administrative offices

"Some of these people ran into my house for cover. Among them was a man with a bullet wound

"He was bleeding and lay down on the kitchen floor," Maphayi said

She could not establish the type of wound the injured man

had suffered as the house was "full of people".

She said that shortly after that she saw a police Caspir parked in the street

Some of the police got out and came into her home.

She said she also noticed someone lying on a pavement near a house opposite hers.

She did not see whether it was a man or a woman

Soweto 29/11/90

(252)

Surviving Spouses Bill provides for widows, widowers

STW
30/11/90 Political Staff 252

CAPE TOWN — A surviving spouse who was unable to support himself or herself would be able to claim maintenance against the estate of his/her deceased marriage partner in terms of a Bill published in Parliament yesterday

Four Bills covering the survival of spouses, amendments to the laws covering attorneys, the Small Claims Courts and the reciprocal service of civil process were published

The Maintenance of Surviving Spouses Bill stems from the recommendation of the South African Law Commission's research of the law of succession

Under present legislation a spouse could be left destitute until the estate was wound up

Surviving spouses would now be able to claim maintenance from the estate. The amount would depend on their age, earning capacity and financial needs. It would be equal to that of a dependent child against the estate of their deceased parent

The Master of the Supreme Court may refuse to allow a maintenance claim until the court had decided on the validity of the claim

The Small Claims Courts Amendment Bill seeks to extend the existing areas of jurisdiction of the courts

A memorandum on the Bill said there was an urgent need for the establishment of small claims courts in various areas. Due to a shortage of funds it was impossible to establish courts for all areas so it was consequently envisaged to extend existing areas of jurisdiction

The Attorneys Amendment Bill seeks to provide that an advocate "will not be allowed to register his articles until such time as his name has been removed from the roll of advocates"

Advocates will therefore be entitled to enter into articles, but will be obliged to have their names removed from the roll of advocates in the period between the entering into and the registration of articles

The object of the Reciprocal Service of Civil Process Bill is to facilitate the reciprocal service of civil process between South Africa and countries designated by the Minister of Justice.

Dead man — 'no link to Zindzi'

(252)

Star 1/21/90
Staff Reporter

The State President yesterday appointed a judicial commission of inquiry into the death of Mr Clayton Sizwe Sithole (20) who, according to police, was found hanged in a cell at John Vorster Square late on Tuesday afternoon.

Reports yesterday said Mr Sithole was the boyfriend of Miss Zindzi Mandela, daughter of Mr Nelson Mandela.

When The Star contacted the Mandela home in Diepkloof Extension, Soweto, yesterday it was referred to South African Youth Congress secretary Mr Rapu Molekane, who denied any knowledge of an affair between Miss Mandela and Mr Sithole.

"As far as we know, that man was not married to anyone," he said.

Mr Sithole was apparently arrested with four others on suspicion of being involved in a number of murders in Soweto.

The commission of inquiry appointed by Mr de Klerk will, according to a statement from the office of the Minister of Law and Order, Mr Adriaan Vlok, be chaired by a judge.

Mr Vlok said "I wish to give the assurance that the law will take its course."

A Johannesburg-based state pathologist will conduct a post mortem. Mr Sithole's family is understood to have appointed a private pathologist.

Political Correspondent

CAPE TOWN — In a surprise turnabout, President de Klerk last night appointed a judicial commission of inquiry to investigate the activities of alleged police death squads as well as other political crimes

The decision was widely welcomed today, although doubts were expressed about the commission's terms of reference.

The announcement was made by Justice Minister Mr Kobie Coetsee, who said Mr de Klerk had decided to appoint a commission of inquiry to probe "murder and acts of violence allegedly committed with political motives"

The chairman and sole member of the commission would be Mr Justice L T C Harms, who headed the commission which probed financial fraud.

Further details would be published in the Government Gazette, he said.

Mr Tian van der Merwe of the Dem-

Commission to probe hit squad allegations

ocratic Party today welcomed the decision but said he was concerned about the lack of clarity in the commission's terms of reference.

"If the brief is what the police spokesman suggested — to investigate everything from the necklace murders to the killing of David Webster — then it may well be an impossible task for a one-man commission to fulfil."

OPEN TO PUBLIC

"There are two suggestions that in my view are vital if the commission is to effectively address our main concern, which is the series of unsolved murders against opponents of the Government," he said.

Firstly, the judge should be given an adequate budget and the authority to

appoint an independent team of investigators, as it was unreasonable to expect policemen to investigate the actions of their own colleagues.

Also, to ensure public confidence it was vital that the proceedings be conducted in public.

The Labour Party appealed to all parties with relevant information to assist the commission.

Conservative Party spokesman on justice, Mr Moolman Mentz, expressed surprise at the Government's turnabout but said the CP had no objection to the commission.

● The Campaign for a Judicial Inquiry into Hit Squads, which was due to have marched on Tuynhuys this evening, called off its protest after the Government's announcement.

SOME 1/2/90
252

Bitter freedom

252

From MONO BADELA
JOHANNESBURG. —

When former Cape Town trade unionist Lucienne Abrahams walked out of the Johannesburg regional court this week after 14 months in custody, her overwhelming feeling was one of sadness.

For the alleged ANC cadre, acquitted on charges under the Internal Security Act, the joy of being free was soured when her co-accused and husband Gerald Nyembe was sentenced to an effective five years in jail.

Abrahams said her release brought her only "the strongest pain of my life".

Magistrate BP Luyt sentenced Nyembe to eight years' imprisonment, three years of which were suspended for five years on condition he is not sentenced again in terms of the Internal Security Act.

Abrahams, former Western Cape organiser for the Media Workers Association of South Africa (Mwasa) and now working for the Paper, Print, Wood and Allied Workers Union, said she had "no regrets" about her 14 months in custody.

"I always knew I had the support of my family and the organisations I had been working with, and that helped me to cope with my ordeal."

Abrahams and Nyembe had pleaded not guilty and had denied leaving the country to undergo military training at ANC camps in Angola and Luşaka.

Three members of Askaris, a special police squad comprising former ANC members, had given evidence against the couple.

The trial, which began in May last year, took a dramatic turn in October when the Johannesburg regional court ruled as inadmissible a "confession" Abrahams had made to security police in Cape Town.

Abrahams claimed that the confession had been made under duress while in detention. The security police had threatened to "kill me", she said.

Mrs Julia Abrahams, 58, said in Cape Town on Wednesday she was relieved her daughter was free but "sad" that Nyembe was still imprisoned.

A BILL of rights for South Africa is not — as one position taken has it — meant to protect the interests of the white minority against a future black majority government

Instead, a bill of rights can be a major instrument to guarantee that the whole population, including the black majority, effectively realises the rights they have for so long been denied

To project a bill of rights as essentially a mechanism to frustrate majority rule is to doom it from the start

It should be used to enlarge, rather than to freeze, the area of human rights and to eliminate, rather than perpetuate, racial distinctions and the fruits of such distinctions

The bill of rights must not be seen as a positive, creative mechanism that would encourage orderly, progressive and rapid change in the direction of real equality

In the South African situation, it would thus provide for general, civil and political rights — including a multi party system based on freedom of speech, association and organisation — but there would be no freedom to call for apartheid to be maintained or restored

Other rights, such as the right to peace, development and a clean environment, must also be addressed

This might upset lawyers used to Anglo American legal conventions who argue that such concepts are political, not legal, and as such have no place within a bill of rights

Sweeping

Any serious look at the needs of a post apartheid society, however, shows that sweeping changes will be needed to ensure that the majority of the people have genuine and not merely token access to the rights, privileges and benefits of society

A fundamental feature of a meaningful bill of rights for South Africa is that it must be structured around a programme of affirmative action

Not only individuals will be looking to the bill of rights to increase their freedom and improve the quality of their lives, but also whole communities — especially those whose rights have been systematically and relentlessly denied by the apartheid system

Politics of human rights

South 1/2 - 7/2/90

A bill of rights is being debated by a broad spectrum of South Africans, from the Nationalist Party to the African National Congress. In this focus, SOUTH looks at the proposals of Judge Pierre Olivier's SA Law Commission and an ANC viewpoint:

The advantage of corrective action is that clear and irreversible goals with an undeniable social and moral purpose are stated, but considerable flexibility is permitted in terms of how the goals are to be realised

There is no area of South African life that apartheid has left untouched. It will therefore be necessary to extend affirmative action to every aspect of South Africa society — for example, in the areas of health, education, work and leisure

The assumption in most current writing on a bill of rights is that its final watchdog should be a body of highly trained and elderly judges, applying traditional legal wisdom in what is considered a neutral and objective manner

Disturbance

If the goal of a bill of rights is selfishly to guarantee the continued existence of property and social rights — and that these suffer minimum disturbance — one has to put rights in inverted commas, as the power to ensure your child goes to a whites only school cannot be dignified with the word "rights" — then who better to fulfil the role than those who not only belong to and share the values of the very group to be protected, but whose whole professional mode has been shaped in the context of the interests, values and styles of that group?

If, on the other hand the dog is to watch the interests of the oppressed — it would have to have a totally different pedigree and training

It is unthinkable that the power to control the process of affirmative action in South Africa should be left to those who are basically hostile to it



Judge Pierre Olivier

At present, the great need will be to give people confidence in parliament and representative institutions, to make them feel their vote really counts and that parliamentary democracy serves their interests

The principle of equal rights, which in other countries is regarded as ordinary as not to merit any explanation or require any defence is projected as something quite wondrous in South Africa

It is considered so astonishing as to

be constitutionally illusory and practically unattainable

Yet, essentially this is what the anti-apartheid struggle is directed towards — the achievement of full equality between all South Africans, independent of race, colour, ethnic origin, sex or creed

The measure of the success of any new constitutional order will thus be the degree to which it enshrines and helps materialise the principle of full, genuine and inalienable equal rights

In the ANC's view, as race classification and group areas will disappear from legislation, they will vanish from citizenship and the electoral system

There will be a common voters roll made up of all adult South Africans to elect a parliament representative of and speaking in the name of the whole nation

The constitution in this sense will be completely non-racial. There will be no special privileges for racial or ethnic groups

Race will enter the constitution only as a negative principle in that the constitution will be not only non-racial but also anti-racist

The anti-racist character will specifically

- outlaw racial discrimination
- prevent the dissemination of racist ideas and the organisation of racist parties, and
- ensure that measures are taken to overcome the effects of past racial discrimination

Persecuted

What guarantee would exist in a constitutional order based on majority rule against minorities being persecuted by the majority? It may be argued that, while recognising the evils of apartheid it would be unjust to inflict on future white generations the very kinds of discrimination which their fathers have been and are inflicting on blacks

At the pragmatic it may be contended that if one wishes to persuade whites to relinquish power now they must be given reasonable guarantees against persecution in the future

The general scheme already outlined presupposes guarantees against the persecution both of individuals and of groups — but accomplishes this without introducing racist concepts

Besides the cultural diversity of the country will get a degree of constitutional recognition that will permit groups to develop certain aspects of what they might call their own way of life with a view to enriching the texture of society as a whole. This is the guarantee of equal rights for all national groups

Isolation

The increasing precariousness of the apartheid regime inside South Africa and its growing isolation internationally could tempt it to stage-manage a solution similar to the Lancaster House agreement in Rhodesia

It could, namely, try to negotiate a constitution and a bill of rights that keep racist principles alive and guarantee privileges (not rights) for whites but that nevertheless permit some kind of majority rule

The position of the anti-apartheid forces has long been that the people as a whole acting through a democratically elected constituent or national assembly should be responsible for drawing up a constitution for a democratic South Africa

Negotiations for a transitional arrangement could in fact pave the way to dismantle apartheid relatively peacefully and to establish a democratic South African state

The goal of a race free democratic society would not be negotiable. The means of getting there, however, and in particular the timetable and method of transferring power from a racial minority to the people as a whole, would be

In this context it is more important than ever that opponents of apartheid do not lose sight of the goal of genuine democracy in South Africa

To suspend sanctions because apartheid managed to don attractive new clothes would be to betray the country to racial oppression and exploitation. It would be to negate the principles of equality and democracy

It would also be to postpone peace in South Africa and delay the reconstruction necessary to ensure that the country truly becomes a country that belongs to all who live in it and a proud member of the community of nations

(This article was extracted from an ANC document on a bill of rights)

Bill could lead to end of apartheid

South 1/2 - 7/2/90

TRADITIONALLY, a bill of rights is the constitutional instrument used to protect the individual against the power of the state

It can be used to circumscribe the power of the state to prevent free expression, free association and other human rights, while also making detention without trial and other forms of government tyranny illegal

A good bill of rights is also a measure against which all present and future legislation can be assessed. If such legislation infringes upon the human rights provisions of the bill of rights, the legislation can be rejected by the courts

The National Party government until 1986 adamantly opposed a bill of rights. The Constitutional Committee of the President's Council which devised the tricameral parliament, had refused to consider a bill of rights for South Africa

On the other side of the political divide, the ANC has advocated a bill of individual rights since at least 1942 when, in African Claims, they proposed such a document for South Africa. Mr Govan Mbeki was on the drafting committee

Today, Albie Sachs is working on a bill of rights project for the ANC

The South African government finally appears to be coming round to considering a bill of rights. If it accepts proposals on the issue, it could mean the scrapping of apartheid in South Africa RORY RIORDAN reports:

His drift report has been widely circulated for comment both inside and outside South Africa

In 1986, the NP government appears to have changed its attitude to a bill of rights. It appointed the SA Law Commission a government body to investigate two issues: the relationship between individual and group rights, and how the courts could play a better role in protecting these rights

The Law Commission appointed a team of researchers under Judge Pierre Olivier to perform this investigation, and circulated a working paper on Group and Human Rights for comment in 1989

The Commission is now preparing its final report, which it expects to have ready by the end of 1990. It will then be handed to the government, who may or may not use its recommendations

What value is the working paper for democracy in South Africa?

In the words of Etienne Murenik, Professor of Law at the University of the Witwatersrand, Judge Olivier's report has been described as the most important document to emanate from an official body in the past 40 years

My own view is that we could just as easily make that 400

Some major points of the SA Law Commission's proposed bill of rights are

- it unequivocally commits South Africa to equal, universal franchise for all adults

- it states clearly that a bill of rights is the instrument to protect the individual against the state. It is not the instrument to protect groups one against the other — such protection if desired should be in the constitution itself

- it outlaws state involvement in discrimination — any institution that receives state funding may not discriminate because of race. The proposed Bill does allow for discrimination to continue at schools, hospitals for example — provided that no state money is involved,

- it allows for the principle of affirmative action programmes to try to redress the historic imbalances of apartheid,

- the Commission recommends the bill of rights be implemented in five stages, the fourth would entail "reaching consensus in a future constitution and finalising the bill of

rights. The fifth is the legitimation, by referendum of the new constitution — including the bill of rights

- it would commit South Africa to a future dispensation based on an acceptance of international human rights norms. Should the proposed bill of rights be accepted, South Africa could sign the 1948 Universal Declaration of Human Rights

The proposals however also have shortfalls. The most obvious is that it appears to entrench capitalism and private property

Most worrying is that it is being created without consultation with the ANC. Judge Olivier argues that he would welcome ANC participation. He sent a letter to the recent Paris Conference in this regard

But ANC suspicions of South African government bodies are deep seated. To the writer's knowledge, the ANC has not yet responded to the letter

Thus the fundamental hurdle still awaits the SA Law Commission's proposed bill of rights. Can one construct a political initiative in South Africa today — no matter how good — which will be accepted by the majority of the people if the mass populist movements have not been involved in its having been drawn up?

This is the hurdle that the SA Law Commission must resolve. I do not believe they can

(Rory Riordan is Director of the Human Rights Trust in Port Elizabeth)

Probe into man's detention death

DANIEL SIMON

252

PRESIDENT F W de Klerk has appointed a judicial commission of inquiry to investigate the circumstances surrounding a man's death in police custody on Tuesday. The man, Clayton Sizwe Sithole, was being held in connection with the deaths of five policemen in Soweto.

A Law and Order spokesman said the issue was "extremely sensitive" as Sithole was the father of one of Zinzi Mandela's three children.

Zinzi is the daughter of ANC leader Nelson Mandela.

Sithole was found hanging in his cell at John Vorster Square on Tuesday night, five days after his arrest last Friday.

Law and Order Minister Adriaan Vlok said yesterday in a statement the commission would be convened immediately.

He said Sithole was arrested on January 26 together with four others. Police took possession of two firearms, including an AK-47 rifle and several rounds of ammunition.

Two of the others arrested with Sithole and detained under Section 29 in connection with the deaths are brothers Philamon Menziwa, 19, and Muzi Menziwa, 18.

Neither Winnie Mandela nor her daughter Zinzi were prepared to comment yesterday on Sithole's death.

A friend at Mandela's Orlando West home said: "They are unable to comment because there has been a tragedy in the family".

Probe into man's detention death

DANIEL SIMON 2529

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MR JUSTICE M Corbett's appointment as Chief Justice in November 1988 came at a time when the Appellate Division was faced with unprecedented criticism for its passivity when called to rule on the validity of increasingly harsh emergency legislation.

After the imposition of the first state of emergency in 1986, lawyers grew openly critical of the Appellate Division's reluctance to use its power of judicial review to check the erosion of human rights and the rule of law by the executive.

Decisions in cases such as Omar vs Minister of Law and Order (1987), Minister of Law and Order vs Dempsey (1988) and State President vs UIDF (1988) confirmed for disillusioned legal experts that the Appellate Division had chosen not to assert its independence and exert any meaningful control over arbitrary executive action.

However, Mr Justice Corbett's appointment, widely praised across the legal and political spectrum, raised hopes that the Appellate Division was entering a new era in which the protection of fundamental rights would take precedence over the demands of the executive.

One year later indications are that these hopes were not ill-founded. Wits legal academic Prof Etienne Murenik believes there has been a change in the Appellate Division.

"One no longer has the impression that only a handful of judges are dealing with sensitive emergency judgments," he says. "A striking number of key emergency judgments before Mr Justice Corbett's appointment were given by Acting Chief Justice Rahe himself and by Mr Justice Hefer."

Dean of the Natal University law faculty in Durban Prof David McQuoid-Mason also sees a perceptible shift in the Appellate Division's approach to individual rights.

"I think administrative lawyers would say there has been, because if we look at some of the judgments coming through now we don't seem to have quite the same pro-executive approach which came through in cases dealt with under former Acting Chief Justice Rabie."

McQuoid-Mason says a number of Appellate Division decisions under

Appeal Court takes a stronger line on individual rights

B/Daw 1/2/90

252

SUSAN RUSSELL

Chief Justice Corbett indicate a move once again towards the reinforcement of the principles of procedural fairness.

"Chief Justice Corbett is probably one of the most enlightened Chief Justices since Centlivres who was Chief Justice in the 1950s. We have good expectations that Mr Justice Corbett is in the same sort of mould."

Director of Wits' Centre for Applied Legal Studies Prof John Dugard says he is "cautiously optimistic" about the change in the Appellate Division.

"These are early days but I would think there has already been some shift, particularly in the manner in which the courts are constituted."

Lawyers agree that the most significant Appellate Division decision since Mr Justice Corbett's appointment was his judgment in Administrator of the Transvaal vs Traub.

In what is described by lawyers as a landmark judgment, Mr Justice Corbett, with judges G G Hoexter, E M Grosskopf, M E Kunnleben and F H Grosskopf concurring, ruled that a government official cannot deprive an individual of something to which he has a legitimate expectation without first giving him a hearing.

"The Traub case is a dramatic opening up of the possibilities for judicial review," says Murenik.

"I cannot think of another Appellate Court decision which has so strongly invited people to come to court and question government deci-

sions. What is significant about the Traub decision is that it is a very extensive interpretation of the principle of judicial review," he says.

McQuoid-Mason sees the Appellate Division's acceptance of the principle of legitimate expectation in the Traub case as bringing SA back into step with the jurisprudence of Britain and the US.

"He (Mr Justice Corbett) has shown that the Appellate Division is prepared to move in favour of reaffirming individual rights."

Another indication of the emergence of a more vigorous Appellate Division is the recent appointment of Mr Justice R Goldstone as Acting Judge of Appeal. Like Mr Justice Corbett, he has given a number of important judgments taking a firm stand on individual rights.

"The lead given by the Appellate Division is crucial," Murenik says. "First of all its judgments bind the lower courts to the extent that they are directly applicable to the cases considered by the lower courts. Even to the extent that judgments are not directly applicable, the approaches it adopts are very influential."

McQuoid-Mason points out the Appellate Division has the power to change its previous decisions and he believes it should be given an opportunity to do so, given the changes in SA's judicial and political climate.

"The time is ripe for human rights lawyers to take some of the cases which were decided on the Omar principle back to the Appellate Division. The Appellate Division should be given an opportunity to reconsider these judgments."

Critics of the Appellate Division's apparent passivity have often been countered with the argument that enabling legislation left judges with

little scope to interfere with executive action on review.

"Legislation, if it expresses itself absolutely explicitly, can deprive the judges of the power to protect individual rights," Murenik says. "But legislation often fails to be very explicit. There is considerable room for the judgment exercised by the courts to decide the outcome of cases, even cases decided under legislation."

"If a judgment is interesting enough to be published in the law reports, that is usually because a plausible argument can be made on both sides. That suggests the role of the judges in choosing between the arguments is very significant."

Dugard agrees that the role of the judges is not purely a passive one and that they have considerable room to interpret legislation.

A more independent Appellate Division also raises the question of how much judicial interference the executive is likely to tolerate.

Murenik believes the executive is likely to tolerate far more interference than before. He says it is no longer so easy for government to procure a legislative reversal of a judgment.

For one thing the new constitution makes it more difficult. "In any event they would have to pay the political cost of being seen to reverse a carefully considered judgment favouring individual rights," he says.

Some lawyers have expressed concern that the promotion of progressive judges to the Appellate Division would deprive the lower divisions of judges prepared to take a firm stand on individual rights.

Murenik disagrees. "The history of the state of emergency refutes that argument. There were a lot of very courageous, progressive and innovative judgments emanating from people like Mr Justice Goldstone and Mr Justice Diddcott which were reversed on appeal and therefore lost their significance. Perhaps one of the greatest causes of disillusionment was that expectations had been raised by early judgments in the provincial courts which were frustrated by the Appellate Division.

"The Appellate Division is now composed of judges with such a mixture of orientations that Mr Justice Goldstone's appointment is likely to have a very significant effect," he

The Transvaal Attorney-General's office announced in Johannesburg yesterday that five people from a "so-called far-right group" were due to appear in court today.

The AG's office said in a statement that following the completion of an investigation into certain unlawful activities allegedly performed by the group, the investigating officer, Major JL Pretorius of the Johannesburg Security Police, had submitted a docket to the Attorney-General for a decision on January 15

The members of the group listed in the docket are Mr Fanie Goosen (29), Mr Dawid Johannes de Beer (38), Mr Cornelius Johannes Lottering (24), Mr Hendrik Francois Binneman (41) and Mr Cornelius Gerhardus van Zyl (28).

Mr Goosen, Mr de Beer and Mr Lottering, all of Vereeniging, and Mr Binneman and Mr van Zyl, both of Randburg, were detained by police in terms of Section 29 of the Internal Security Act (No 74 of 1982)

Damage to property

The statement did not say when the men had been detained

After considering the docket, the Attorney-General decided as follows

- Mr Lottering and Mr Goosen would be indicted to stand trial in the Johannesburg Supreme Court on March 19 on counts of murder, robbery with aggravating circumstances, malicious damage to property, attempted intimidation in contravention of Section 1 of Act 72 of 1982, and various offences in contravention of the Arms and Ammunitions Act (No 75 of 1969) regarding the possession of firearms and ammunition without necessary licences.

- Mr de Beer would stand trial in the Johannesburg Regional Court for various alleged offences in contravention of the Arms and Ammunitions Act regarding the possession of firearms and ammunition without the necessary licences and the Teargas Act (No 16 of 1964) for being in possession of teargas

Separate trials

- In a separate trial in the Johannesburg Regional Court, Mr van Zyl, Mr Goosen, Mr Lottering and Mr Binneman will stand trial on counts of housebreaking with intent to steal, theft, conspiring to sabotage in contravention of Section 54 (Act 74 of 1982), malicious damage to property, attempted intimidation in contravention of Section 1 (Act 72 of 1982)

- Mr van Zyl and Mr Binneman will also appear on charges of illegal possession of firearms and ammunition (Act 75 of 1969) and illegal possession of explosives (Act 26 of 1956), while Mr van Zyl will also appear on teargas and grenade contraventions

The AG's office pointed out in the statement that the separate Regional Court trials would commence only after completion of the Supreme Court trial on dates still to be determined

"As is customary, the above-mentioned people have already been informed of the Attorney-General's decisions and they will appear in the Johannesburg Magistrate's Court on February 1," the statement said — Sapa

A-G acts on 'ultra-rightists'

Pair to be charged with murder, robbery and intimidation

STW 112190

252

252

Surprise over swift inquiry into detainee's death

THE announcement of a judicial commission of inquiry into the death in detention of Sizwe Sithole this week is the first of its kind

There have been 70 deaths in detention since 1963 and three in the past 10 days, but only Sithole's death has met with such a swift response

The inquiry was announced on Wednesday by State President FW de Klerk within hours of Sithole's death

According to police, Sithole was found hanging from a shower-pipe in his cell in John Vorster Square on Tuesday night, five days after his arrest.

A Law and Order representative told

the press this week that the case was "extremely sensitive", as Sithole was the father of the youngest of Zinzi Mandela's three children, and an investigation had thus been speedily instituted

Zinzi Mandela is the daughter of Nelson and Winnie Mandela

The Mandela family have denied that 20-year-old Sithole is involved in a relationship with Zinzi Mandela, and that he is the father of her son

Sithole was detained under Section 29 along with four others on January 26 in connection with 12 murders in the Soweto area. Five of the deaths are those of policemen in Soweto

Audrey Coleman, a prominent human rights activist, welcomed De

BY THANDEKA GOUBULE

Klerk's move, saying she could not recall such a swift and emphatic response to any of the scores of other deaths of detainees which she has monitored in recent years

Sithole's father suspects that his son was mistreated and will employ a family pathologist to conduct an independent post-mortem this week

Police told the press that Sithole had made a confession to a magistrate prior to his death, implicating himself in several killings

One of the incidents in connection with which Sithole and four others were held is an armed attack on a

meeting of the former Soweto Mayor Ephraim Tshabalala's Sofasonke Party in May 1988, in which four people died and 36 were injured. AK47s and hand grenades were used in the attack

In another of the incidents, also in 1988, two policemen and two civilians were killed in Orlando when, late one night, their vehicle was attacked with AK47s

Two more alleged attacks, on the Soweto municipal police, in which AK47s were also used, took place. Police are attempting to establish whether these attacks were part of the group's activities. Four individual murders are also

being investigated

Although the alleged victims of the group were mainly police and political parties, police do not believe that the group was operating as combatants of the African National Congress, but as a criminal gang.

There is likely to be a local outcry in Khutsong, Sithole's home township near Carletonville. On Saturday, residents of Khutsong will bury four people killed in recent clashes with the police.

Two of the residents were allegedly been shot by police, and a baby is said to have died from teargas. It is uncertain how the fourth person died



Mr Nic Strydom (right) the father of convicted mass murderer Barend Strydom with an unidentified supporter of the five former AWB members who appeared in the Johannesburg Magistrate's Court yesterday. ● Picture by Stephen Davimes.

Court told of bombing and killing

By Celeste Louw

An indictment served on two former AWB members in the Johannesburg Regional Court, described in detail the crimes they had allegedly committed, including a bomb explosion at former *Sunday Times* columnist Miss Jani Allan's residence and the murder of a taxi driver.

The father of convicted mass murderer Barend Strydom was among supporters when the case against Mr Fanie Goosen (29) and Mr Cornelius Johannes Lottering (24) was referred to the Rand Supreme Court for trial on March 19.

Mr Goosen of Mimosa Street, Vereeniging, and Mr Lottering of Rivonia Road, Sandton, were not asked to plead on eight

charges, including murder, malicious damage to property, attempted intimidation, robbery with aggravating circumstances and the illegal possession of arms. They were arrested on December 5 last year.

The indictment said the two men exploded a device on a wall of Miss Allan's home in Sandhurst on July 14 last year.

This was claimed to have been done in an attempt to intimidate Miss Allan into publishing reports in the media which would have been detrimental to the expected nomination of Mr Eugene TerreBlanche as parliamentary candidate in last year's general election.

The indictment said the two men assaulted Mr Pokota Makgalemele on August 29 at Gold

Reef City and took his car.

It said Mr Makgalemele was put in the boot of a taxi, taken to the Daleside Ski-Club and shot in the stomach. Mr Lottering then allegedly shot the driver.

On September 19 last year the two men allegedly went with a third man to the liquor store of a Mr and Mrs Pita in Vanderbijlpark where the woman was hit with a firearm and robbed of R70 and cash from the safe.

The two men then appeared with Mr Cornelius van Zyl (28) of Randburg and Mr Hendrik Binneman on various other charges. Mr van Zyl and Mr Binneman will apply for bail on February 5. Mr David Johannes de Beer of Kruger Avenue, Vereeniging, was granted bail of R1 000.

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Executions put on hold by Govt

5/1/40 Political Staff (252)

No executions will take place until Parliament decides on Government proposals to reform the application of the death sentence, President de Klerk announced today.

He said the Government had decided that the death sentence should be limited as an option of sentence to extreme cases, specifically through broadening judicial discretion in the imposition of sentence, and that an automatic right of appeal be granted to those under sentence of death.

Those awaiting execution "will be accorded the benefit of the proposed new approach".

New and uncompleted cases would still be adjudicated in terms of existing law, and "only when the death sentence is imposed will the new proposals be applied".

There would be no executions until Parliament took a final decision on the proposals.

Mr de Klerk said the Government had been giving attention to this "extremely sensitive issue" for some time.

The proposals followed consultations with the Chief Justice and the Bench, and after the Government had noted the opinions of academics and other interested parties

W/Mail 2/21 - 8/21/90

Harms: The man behind the inquiry

252 Weekly Mail Reporter

MR Justice Louis Harms' one-man investigation into the death squad allegations will not be his first encounter with white South African terrorism.

The Pretoria judge is also the same man who last May sentenced mass murderer Barend Hendrik Strydom to hang for the Strijdom Square slaughter in November 1988.

Despite hearing police testimony during Strydom's trial that there was no evidence to back up the killer's claim of being a member of death squads and the Wit Wolwe, Harms was nevertheless placed under "protective surveillance" at the end of the nine-day trial.

In summing up evidence, Harms attributed Strydom's motives to political beliefs the killer had acquired from his father.

"It was Strydom's opinion that a *Boerevolkstaat* could only emerge if drastic action was taken and that is why he carried out the killings. The motives for the killings was propaganda for a *volkstaat*," Harms said.

Harms first rose to public prominence when he led another one-man commission of inquiry — into gambling corruption in the Transkei and Ciskei "homelands".

The inquiry was credited with "exposing fraud and corruption reaching the highest echelons of business and government" but many of the most prominent suspects were left out of its final report and never prosecuted.

Harms, also credited with extracting an admission from gambling tycoon Sol Kerzner, that he (Kerzner) paid a R2-million bribe to ex-Transkei Prime Minister George Matanzima, later told the Pretoria Afrikaanse Sakekamer that the "hysteria" about the corruption and decay in South African society was exaggerated.

Harms also told the chamber that several theories in the English-language press linking corruption to the character of the Afrikaner were manifestations of this section of the media's capacity for "boere-bashing".

Harms, now 49, graduated cum laude from Pretoria University's law faculty and was offered professorship of the department at the age of 28.

He instead decided to join the Pretoria Bar, which he is credited for opening to all races in the early 1970s. He was appointed a judge early in 1986.

jected. Several other tenderers expressed their

whose building was estimated at R200 000.

Ex-AWB members in court over bomb

Sowetan 2/2/90

252

AN indictment served on two former AWB members in the Johannesburg Regional Court this week, described in detail the trail of crimes - which included a bomb explosion at former *Sunday Times* columnist Miss Jani Allen's residence and the murder of a taxi driver - they had allegedly committed.

The father of convicted mass murderer Barend du Plessis, was

among the small group of supporters when the case against Mr Fanie Goosen (29) and Mr Cornelius Johannes Lottering (24) was referred to the Rand Supreme Court for trial on March 19.

Goosen, of Mimosa Street, Vereeniging, and Lottering, of Rivonia Road in Sandton, were not asked to plead on eight charges, including murder and malicious damage to property.

PROTECTED from public gaze by beige notice boards, three Askaris from the feared secret police C1 unit were grilled in court this week about the shooting of four Chesterville youths in 1986.

The three — two former African National Congress members and one from the Pan-Africanist Congress — all confirmed they had undergone military training but were now members of the South African Police.

After lawyers for the police said the three were afraid they would be killed if they were identified, magistrate Ben Olivier ordered they give evidence "hidden" in some way.

The next day the courtroom was arranged with two strategically placed notice boards screening witnesses from the public gallery to one side of the box.

Lawyers sitting directly in front of the witnesses were, however, able to see whoever was in the box.

The screens were tall enough for no-one to be able to see over them, but most people in the audience spent hours staring at the only part of the Askaris visible from the gallery — their legs from the knees down.

This arrangement did not satisfy everyone, and some members of the families wept loudly during lunch the first day, saying they wanted to see the people who had killed their children.

Three pairs of knees and three distant voices appear in court

Police witnesses give evidence from behind screens

First to give evidence, Thabo Mokoage, was almost inaudible from the other side of the screen, and relatives said they wondered whether he wanted to ensure he could not be identified by his voice.

He was one of three members of C1, all of them armed and with an AK47, who had made contact with six youths in the hut.

He said their instructions were to infiltrate the circle and arrest Charles Ngejubo. Asked why the three police had left the hut for "further instructions" instead of arresting the youths inside, he said it had not entered his mind to make arrests and in any case he felt they were greatly outnumbered. He said for the purposes of making an arrest he felt "there were only two police" in the hut as he did not count the third, a former commsar in the ANC women's unit "because she was a woman".

The second Askari, Mamopotoko Makgopa, said he joined the PAC in about 1978 but quit the movement

The 'hit-squad' inquest into the deaths of four youths is told of the night three police Askaris tried to infiltrate a group of 'comrades'.

CARMIEL RICKARD reports

because he was dissatisfied with the way the PAC carried out their policies.

According to Makgopa he felt that in the SAP he would be protecting the public from "dangerous people".

The third Askari caused the most interest. Former ANC commissar Virginia Shosha worked for Radio Freedom and was trained in a number of countries including Lesotho, East Germany, Angola and Libya.

Under cross-examination she said she joined the police after being arrested and spending 10 months in detention. She said she was now a loyal member of the SAP, just as she had previously been a loyal member of the ANC

Describing her role in the operation that led to the deaths of the four, she said the "comrades spoke a special language" and that she was instructed to infiltrate the network as she had a good knowledge of this "language".

She and Mokoage, with another member of C1, went to a shebeen in Chesterville, believed by the local police to be a haunt of "comrades". They asked for a drink and began talking to the people in the room. The conversation turned to arms and ammunition, and Shosha and the others said they were from "Soweto and Piet Retief" and had come to help the comrades.

Asked for proof that they were sympathisers, Shosha went to the mini-bus outside where several other members of the C1 unit were waiting, and returned first with an R4 magazine, and subsequently with an AK47.

Later she and her two colleagues who were trying to establish contact with the "comrades" met six youths

in a shack and once again showed them the AK47.

She said she went outside for further instructions. The two remaining police inside the shack were then also called out and all the members of the unit gathered outside the door. As they were told to arrest those inside, they heard a shot.

Believing they were being attacked, she and the other members of the SAP opened fire on the shack. After some 90 bullets had been fired into the hut — some of them from the AK47 — they left hurriedly, without looking into the shack to see whether anyone had been injured.

Shosha said after she fired two shots from her pistol it jammed. She tried unsuccessfully to fix it and said if she had been able to do so, she would have continued firing until the magazine was empty because she believed their lives were in danger.

The families, however, believe the police who shot the youths did so deliberately as part of a pre-planned scheme, a suspicion fuelled by the fact that the Askaris and other SAP involved were under the command of senior security police officers named by former colleagues as part of hit squads

However, police have denied any suggestion that the shooting was planned.

The inquest has now been adjourned until May when both sides will give argument and the magistrate will make a ruling on whether the police were justified in shooting into the hut and killing the four.

UPI

1990 2/21/90

252

Men in court on arms charges

NEIL YORKE SMITH

FIVE men, allegedly members of the AWB splinter group The Order of Death, appeared in the Johannesburg Magistrate's Court yesterday.

Dawid Johannes de Beer, 38, of Kruger Avenue, Vereeniging, was charged with contravening the Arms and Ammunition Act, illegal possession of firearms, possessing ammunition without a licence and possession of teargas.

He was not asked to plead and bail of R1 000 was set. A provisional date of February 15 has been set for him to reappear in court.

The other four — Cornelius Gerhardus van Zyl, 28, and Hendrik Francois Binneman, 41, of Randburg; Fanie Goosen, 29, of Vereeniging; Cornelius Johannes Lottering, 24, of Sandton — were charged with conspiring to commit sabotage, attempted intimidation, and malicious damage to property.

Van Zyl was further charged with illegal possession of a firearm, and illegal possession of ammunition, a hand grenade, teargas and explosive substances.

Binneman was also charged with illegal possession of firearms and illegal possession of ammunition.

In addition, Lottering and Goosen were charged with murder, malicious damage to property, attempted intimidation, and robbery with aggravating circumstances.

Court papers show the attempted intimidation charges involve the placing of an explosive device outside the Sandhurst flat of former Sunday Times columnist Jani Allan.

Van Zyl and Binneman will reappear in court on Monday when an application for their release on bail will be made.

Goosen and Lottering will appear in the Supreme Court on March 19 where they will face the murder charges.

Nic Strydom, father of jailed mass murderer Barend Hendrik Strydom, was present at the proceedings.

win at their Parktown North 100 subscribers to the challenge, for two years. Picture: ROBERT BOTHA

2/290
252

Unionists plead guilty to Afcol worker murders

MATTHEW CURTIN

THE trial of five unionists who pleaded guilty to murdering five Afcol employees was adjourned yesterday after the court heard lengthy mitigation in the Rand Supreme Court.

Elias Phasha, 40, David Molebala, 25, Bongani Mazibuko, 34, Michael Machepe, 25, and Jerry Ranteoka, 44, had pleaded guilty to murder, culpable homicide and assault.

Five non-strikers were killed during attacks on Afcol workers at the Croesus and Booyens railway stations on June 2 and 10 last year. Another six were injured in the attacks.

Industrial relations consultant Theo Heffer said in testimony that it was essential to view the actions of the accused in light of both a troubled history of industrial race relations in the furniture industry, which had resulted in "bitter polarisations" amongst Afcol employees, and unsuccessful dispute resolution manoeuvres prior to the strike.

The trial continues today.

□ Phasha, Molebala and Ranteoka are members of the Paper, Printing, Wood and Allied Workers Union (Ppwawu) which represents between 65% and 70% of Afcol employees.

Mazibuko and Machepe are members of the National Union of Metal Workers of SA which has a joint collective bargaining relationship with Ppwawu. The National Union of Furniture and Allied Workers (Nufaw) is also operative at Afcol in terms of a closed shop agreement.

The strike last year was triggered by the of four employees found guilty of assaulting a Nufaw member trying to poach Ppwawu members.

A sympathy strike ensued on May 30 last year during which Numsa and Ppwawu strikers, in the aftermath of a management lockout, became involved in altercations with non-strikers and Nufaw members.

THE trial of seven people charged with the murder of Mandela United Football Club member and bodyguard to Winnie Mandela, Maxwell Madondo, opened in the Rand Supreme Court in Johannesburg yesterday.

Mandela football club murder trial begins

MATTHEW CURTIN

The seven trialists — Lerothodi Ikaneng, 23, Isaac Mazibuko, 22, Nklanhla Blanket, 19, Sandile Blanket, 22, Dudu Chili, 47, Sibusio "Sponge" Chile, 25 and Mpila Chili, 22 — all pleaded not guilty to murdering Madondo on January 13. Madondo's body was found in a

field near Uncle Tom's Hall in Orlando West, Soweto.

His murder came a week after the corpse of activist "Stompie" Moeketsi Seipei, 14, was found in a Soweto field.

Former football club coach Vusi Richardson is standing trial for Seipei's murder on February 12. Five other suspects have yet to be charged.

Justice A J Simon adjourned the day's proceedings early to allow de-

fence counsel to discuss the afternoon testimony of investigating officer Detective Const Wessel Bouwer with the accused.

The morning session saw a review of the victim's post mortem by State pathologist Johannes Steonekamp. Steonekamp said Madondo had died from severe head and neck wounds caused by a panga, an iron rod and stones.

The Madondo trial continues today.

Inquiry into Sithole's death in jail

STATE President FW de Klerk yesterday appointed a judicial commission of inquiry into the death of Mr Clayton Sizwe Sithole (20) who, according to police, was found hanged in a cell at John Vorster Square late on Tuesday afternoon

Sithole was the boyfriend of Miss Zinzi Mandela, daughter of Mr Nelson Mandela, according to sources including family friends. They said he was the father of her child. (S) 252

Ex-members of Mandela FC in court for murder

STAK
2/2/90
(252)

By Helen Grange

Six former members of the Mandela United Soccer Club yesterday pleaded not guilty to the murder of another former club member, Mr Maxwell Madondo — who was allegedly beaten to death in Orlando West, Soweto last year.

A seventh accused, Mrs Dudu Chili (47), also pleaded not guilty to the murder charge in the Rand Supreme Court.

Mr Lerotodi Ikaneng (22), Mr Isaac Mazibuko (23), a 17-year-old youth, Mr Sandilo Blanket (22), Mr Sibusiso Chili (25), Mr Mpeaker Chili (22) and Mrs Dudu Chili allegedly murdered Mr Madondo on February 13 by attacking him with stones, pangas and iron rods.

A state pathologist, Dr Johannes Steenkamp, told the court yesterday that Mr Madondo's death had resulted from extensive cerebral injuries, caused by sharp and blunt objects.

Detective Sergeant Jean van Zyl of the Soweto Murder and Robbery Unit said that members of the club had tried to kill Mr Ikaneng by slashing his throat.

DROPPED A ROCK

Mr Ikaneng had then decided to "put things right with the soccer club".

The court heard how "Sponge" Sibusiso Chili grabbed Mr Madondo on February 13 and took him to a house in Orlando West. Other people, including the other accused, arrived at the house.

Mr Madondo was then assaulted Mr Chili allegedly dropped a rock on Mr Madondo's head.

After Mr Madondo was left in the veld to die, the accused had fled because they feared revenge by members of the soccer club, according to Sergeant van Zyl.

"There was an attack on Sponge's house where an innocent person died after being shot with an AK 47 rifle. People inside the house also sustained burning wounds after petrol bomb attacks," the court heard.

"It is known that the soccer club of Mrs Winnie Mandela conducted a reign of terror. They would not hesitate to eliminate people who went against their wishes," Sergeant van Wyk said.

The hearing continues.

'common gossip'



REUNITED. Self-confessed hit squad leader Captain Dirk Coetzee was joined in Harare by his wife and sons this week. Captain Coetzee has now joined the ANC.

Hit squads: judge given wide powers

TWO commissions of inquiry were last night appointed officially by the State President, Mr F W de Klerk, to look into hit squads and the death of Mr Clayton Sizwe Sithole, the boyfriend of Miss Zinzi Mandela, daughter of ANC leader Nelson Mandela

Mr Justice Louis Harms has been formally asked by Mr de Klerk to head a one-man commission into "alleged occurrence of murders and other unlawful acts of violence"

A Government Gazette published last night

B/PCW
3/2/90

NORMAN CHANDLER
Pretoria Bureau

352

says Mr Justice Harms has to report on which institutions or organisations "cause or instruct" murders to be committed and who is financing the acts.

He is also given wide-ranging powers to report on any other matter which is relevant. The terms of reference cover not only South Africa but also

self-governing territories.

The second commission — into the death of Mr Sithole, who died at John Vorster Square police station in Johannesburg on January 30 — will be chaired by Mr Justice R J Goldstone

Mr Justice Goldstone has been asked to look in to the "factual circumstances relating to the death", the causes, and whether or not death was the result of an offence being committed by any person.

'Wit Wolf' may escape gallows

577K 3/2/90
(257)
Joy and relief among
Death Row families

CORRESPONDENTS
and SAPA

THE Pretoria branch of the Society for the Abolition of Capital Punishment yesterday expressed its "gratitude" to President F W de Klerk for the moratorium on executions. And the announcement was met with relief and joy by families of prisoners on Death Row, including "Wit Wolf" Barend Strydom.

The co chairman of the branch, Professor Jan van Rooyen of the faculty of law at Unisa, also praised the Government's readiness to consider further limitations on the death sentence.

"We believe our society contributed to this decision," he said.

"We also believe that the announcement is the prelude to the eventual total abolition of the death penalty.

"We shall continue to engage in dialogue with the Government about this matter.

"In the meantime, President de Klerk deserves our thanks."

Clemency petition

Among those who will benefit immediately from the announcement is Barend Strydom, who was sentenced to death eight times for the mass murder of eight blacks in November 1988.

He is currently awaiting the outcome of a petition for clemency to the President. At the time of his trial he said he was confident that Mr P W Botha would have "unlocked his cell" while he was still President — but Mr Botha lost the presidency after a stroke.

The last man to have been executed was Solomon Ngobeni, on November 14.

Lawyers for Human Rights said Ngobeni was hanged before being allowed to petition Mr de Klerk for clemency — but this was denied by the Department of Justice. It said Ngobeni had exhausted all his remedies.

Ngobeni was executed for the murder of Mr Mackson Kubayi during an armed robbery.

The Prisons Service was not immediately able to say how many people are currently on Death Row at the Pretoria Prison.

Family delighted

Transvaal Attorney-General Mr Don Brunette said he would have to wait for the law to be changed before he could decide if certain cases were to be withdrawn.

"There are a number of cases currently before the courts, and due to come before the courts, that could be affected. We will have to look at all these cases first."

The family of "Wit Wolf" Strydom are delighted with the suspension of his death sentence.

Mrs Trudie Rautenbach, mother of his wife Karin said the family was excited.

"I am so excited I don't know what to say, but thank you, thank you all," she said from her home near Brits.

She expects Karin to break the news to Strydom during her visit this afternoon.

Lawyers, academics and human rights activists have reacted favourably to the news that executions have been suspended pending reforms to the law.

Several acclaimed the move as the first step towards a total abolition of capital punishment.

Seven hurt as police



CASUALTY: Alexandra resident Mr Dumisani Thsabalala receives help from bystanders after smashing into shop window during yesterday's confrontations with police.

Photograph: Boy George N

'Viva ANC and Comrade de K

SHOUTS of "Viva ANC, Viva" and "Amandla" rang from the pavements and rooftops of Johannesburg as the State President unbanned the ANC yesterday.

Leaflets saying "Viva ANC" fluttered down from buildings. People waved clenched fists, posters and ANC flags from their cars or office windows in spontaneous glee.

"Viva ANC", shouted an ebullient

Stew
7/1/80
DAWN BARKHUIZ

group on the steps of the South African Council of Churches offices in Street

"Viva Umkhonto We Sizwe
Viva Nelson Mandela!"

"Viva Comrade F W de Klerk"
Minutes later police tear group

Prisoners on Death Row 'jubilant'

Weekend Argus
Correspondent

JOHANNESBURG — Death Row prisoners were "overjoyed" and "jubilant" and planned to spend the weekend playing table tennis to celebrate President F W de Klerk's moratorium on executions.

According to Lawyers for Human Rights lawyer Mr Shucks Sefanyetso, who visited the prisoners on Death Row at Pretoria Central Prison, the mood was "very positive".

"They listened to President De Klerk's announcement on the radio, but because it was in Afrikaans, many could not understand and I had to explain it to them."

He said ANC prisoners on Death Row "are hopeful they are going to leave soon".

Mr De Klerk's announcement has been widely welcomed in legal circles.

Intense pressure

It is understood the government has come under intense pressure from judges concerned at the deteriorating image of the South African judiciary and comparisons with countries like Iran.

According to the Director of Wits Centre for Applied Legal Studies, Professor John Dugard, judges were recently sent a questionnaire by the government sounding their views on capital punishment.

"The judges have not been happy with the spiralling rate of executions. Many judges are strongly opposed to the death penalty, and feel their hands are tied by the present law."

Mr De Klerk's announcement gives judges more discretion in applying the death penalty and gives the accused the automatic right of appeal.

Professor Dugard said the announcement would go a long way towards the abolition of the death penalty, which he believed was not as strongly supported as it may have been in the past.

Professor Etienne Murenik, a national executive member of the Society for the Abolition of the Death Penalty in South Africa, welcomed the move.

"I believe he would have been supported by a significant number of judges."

"Weaknesses"

"I would not imagine the complete abolition of the death penalty would be imminent. But these developments entail a recognition of weaknesses in the notion of the death penalty."

Lawyers for Human Rights director Mr Brian Currin predicted a "drastic reduction" in the number of executions in the near future. He said broadly based political pressure had had an effect.

He said there was a feeling among judges that the number of executions was "unacceptably high".

He said the judiciary was being discredited and that blacks "saw it as part of the oppressive system".



Paula McBride . . . petition for a stay of execution is now irrelevant.

Hope for reprieve of Robert McBride

APress 4/2/90
By SANDILE MEMELA



PAULA McBride's hopes to save the life of her husband, condemned ANC bomber Robert McBride, were satisfied when President FW de Klerk halted all executions of political prisoners on Friday.

"It is almost too much to take in. Although I have always been optimistic I did not expect a moratorium. I just did not know what to expect, but this is too much," said Paula.

Paula, a committee member of the Society for the Abolition of the Death Penalty, vowed never to let Robert die. But this week she was forced to abandon her campaign to draw up a petition to have his life spared.

"With the stay of his execution it is now reduced to irrelevance," said a beaming Paula.

She told *City Press* she was so overjoyed that she immediately dashed off to Pretoria Central Prison to share her happiness with her husband.

While she welcomed De Klerk's decision to halt all execution of political prisoners on Death Row, Paula was saddened by the distinction between criminal political activists and those of a non-violent nature.

"When Robert was involved in the bombing there was no other way for him to express his political convictions. He has been dulled by the distinction, but there is little doubt that his release is the next project," said Paula.

"When I spoke to Robert's mother on Friday she said she will have a peaceful sleep for the first time in many months," she added.

Parents show delight at stay of executions

By SANDILE MEMELA

TEARS of relief streamed down the face of 67-year-old George Mncube of Diepkloof, Soweto, when President FW De Klerk announced a moratorium on executions

Mncube's son Mthetheli and Mzondeleli Non-dula are now to be spared after they were sentenced to death 11 times and 50 years in jail at the sensational Messina trial for murder, treason, attempted murder and terrorism

Mncube and his wife Winnie both burst into tears when De Klerk announced that the lives of those convicted for acts of violence on behalf of the ANC would be spared for now

Mncube said the moment the news was heard in his sitting room, he and his wife Winnie sat in a trance as they struggled to contain their joy

"In the past few years we have not known so much happiness in our home. We were so overjoyed by the impact of the announcement that we could not believe it was true

"The news moved me so much that tears just flooded uncontrollably down my cheeks, while my wife moved around the house as if she were in a trance. The day was a milestone in our lives," said Mncube

The grey-haired old man told City Press that his family had gathered at the radio to hear the broadcast of the speech as early as 9am

"I must admit that

what was said was far beyond our expectations. De Klerk has shown himself to be a compassionate man. The next step is for him to release our son," said Mncube

"Since De Klerk has gone a long way towards defusing the potential conflict in the country. He can make my family and hundreds of others very happy if he releases the children to be reunited with their families

"I am happy that my

son's life has been spared, but I will be happier when he can return to his home to sit at the same table with me," said Mncube

Mncube said his wife last year wrote an open letter to De Klerk pleading for clemency for her son

"Her weekly visit marks the renewal of our hope to be reunited with our son. We are looking forward to see him in his home where he belongs," said Mncube



George Mncube... "a milestone in our lives".

Hit squad probe hailed as tribute to Abraham Tiro

Handwritten notes: 252, and some scribbles.

By SANDILE MEMELA

THE appointment of a judicial commission of inquiry into hit squad allegations is a tribute to Abraham Onkgopotse Tiro on the 16th anniversary of his death, said Black Consciousness Movement president Lybon Mabasa this week.

Justice Minister Kobic Coetsee announced this week that President De Klerk had decided to appoint a commission of inquiry to probe "murder and acts of violence allegedly committed with a political motive".

The decision was welcomed by the Black Consciousness Movement as a recognition of the existence of hit squad as early as the early 1970s.

Tiro a South African Students' Organisation

member, was killed by a parcel bomb in Botswana on February 3, 1974.

"Tiro's name has become synonymous with police harassment, hit squads and brutality in the political scene in South Africa," said Mabasa.

"He was the first young person to suffer a brutal death at the hands of political assassins in the employ of the State," he claimed.

His body was found at the house where he was living at St Joseph's Roman Catholic church at Khale, 11km south of Gaborone.

Tiro's attack on Bantu Education at the University of the North's graduation ceremony in 1972 continues to haunt black education.

Yesterday the Azan-

ian People's Organization held a joint commemoration service for Tiro and Dr Abu-Asvat Baker at the Gandhi Hall in Lenasia.

It was attended by hundreds of Black Consciousness supporters who recognised the contribution of the two men to the country's political development.

"Asvat is still fresh in the minds of the people after his brutal death, but Tiro can never be forgotten as his endeavours are still part of the struggle for a true free society today," said Mabasa.

Dr Asvat, a well-known "people's doctor" was killed in his Rockville, Soweto, surgery in January last year.

Meanwhile, more than 150 members of the Black Consciousness Movement in Grahamstown met on Thursday evening to commemorate Tiro's death.

Former Azapo vice-president for the Cape Province Mouyiseli Mahlali said what happened to Tiro did not frighten people away from their movement.

He said. "Comrade Tiro was respected as a leader by the Azanian nation because he belonged to the exploited of this country."

The organiser of the service, Mbongeni Babinzi, said the BCM in Grahamstown, which had been very strong in the early 1980s had died down, but had been revived since last year.

From Page 1

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C/Pres 4/2/90



Nelson Mandela ... his release is expected in a few days and he will play a vital future role.

No more to be changed until policy made

C/Pres 4/2/90

(252)

ALL hangings have been stopped and no further executions will take place until Parliament has taken a decision on new government proposals. The government has been considering the issue of hangings for some time and on April 27 last year the Minister of Justice indicated there was merit in suggestions for reform in this area. The government feels it is now in a position to be able to make concrete

proposals for reform, after consultations with a broad range of bodies, including the Chief Justice and, through him, the benches and academics and other interested parties. The following broad principles had been decided upon from a variety of options:

- That reform in the area was indicated.
- That the death penalty should be limited as an option of sentence to extreme cases and specifically through broadening judicial discretion in the imposition of sentence; and
- That an automatic right of appeal be granted to those under sentence of death.

'Time for violence to end, reconciliation to begin'

C/Pres 4/2/90

THE season of violence in Southern Africa was over and the time for reconstruction and reconciliation had arrived, De Klerk said. He said Southern Africa now had an historical opportunity to set aside its conflicts and ideological differences and draw up a joint programme of reconstruction. "It should be sufficiently attractive to ensure the region obtains adequate investment and loan capital from the industrial countries of the world. Unless Southern Africa achieves stability and a common approach to economic development rapidly, it will be faced by further decline and ruin." The government was prepared to enter into discussions for formulating a development plan. "The government believes the obstacles in the way of a conference of these states have now been removed sufficiently. Hostile postures have to be replaced by co-operative ones - confrontation by contact, disengagement by engagement, slogans by deliberate debate." He said there had recently been unusually positive results in contacts and relations with other African states. "During my visits to their countries I was received cordially, both in private and in public, by Presidents Mobutu, Chissano, Houphouet-Boigny and Kaufida

These leaders expressed their clear concern about the serious economic problems in our part of the world. They agreed that South Africa could and should play a positive part in regional co-operation and development." De Klerk said South Africa's positive contribution to the independence process in Namibia had been recognised internationally. Similarly, its efforts to help bring an end to the domestic conflict in Mozambique and Angola had received positive acknowledgement. Turning to foreign relations in a broader sense, De Klerk said that without contact and co-operation with the rest of the world "We cannot promote the well-being and security of our citizens." The year 1989 would go down in history as the year in which Stalinist Communism expired. These developments would entail unpredictable consequences for Europe, but they would also be of "decisive importance" to Africa. "Indications are that the countries of Eastern and Central Europe will receive greater attention, while it will decline in the case of Africa." The collapse, particularly of the economic system in Eastern Europe, also served as a warning to those who insisted on persisting with it in Africa - Sapa

If the proposals are adopted they should have a significant influence on the imposition of death sentences and should ensure that every case in which a person has been sentenced to death will come to the attention of the Appellate Division. No executions have taken place since November 14. New and uncompleted cases will still be judged in terms of the existing law. Only when the death sentence is imposed will the new proposals be applied, as in the case of those currently awaiting execution - Sapa

X

Group rights under a new spotlight

Open 4/2/90

252

THE government is asking the Law Commission to investigate ways of protecting group rights in a future constitution

President FW de Klerk said any constitution which disregarded the reality of South Africa's diverse population would be harmful

The task given to the commission is to protect the human rights of all the country's citizens, as well as associations, minorities and nations

"This investigation will also serve the purpose of supporting negotiations towards a

new constitution"

The commission must identify the main types and models of democratic constitutions, analyse ways the relevant rights are protected in each model and find ways in which such constitutions could be made to succeed

De Klerk said he wanted the Law Commission to give priority to its current investigation into the protection of fundamental human rights

He said the government accepted the principle of the recognition of the funda-

mental individual rights which formed the basis of most Western democracies

"We acknowledge the most practical way of protecting those rights is by an independent judiciary

"However it is clear a system for the protection of the rights of individuals, minorities and national entities has to form a balanced whole

"The formal recognition of individual rights does not mean the problems of a heterogeneous population will simply disappear" - Sapa

Surplus predicted for Govt budget spending

Open 4/2/90

GOVERNMENT expenditure was now thoroughly under control and it appeared the year would close with a budget surplus

Outlining the government's economic plans, De Klerk also said fiscal and monetary policy would be co-ordinated in the coming year to allow a continued easing of the tax burden - especially on individuals - the generation of surpluses on the current account of the balance of payments and reconstruction of gold and foreign reserves

Referring to government spending, he said the government's financial year only ended in two months' time and several other important economic indicators for the 1989 calendar year were still subject to refinements

"In respect of government expenditure, the budget for the current financial year will be the most accurate in many years

The government intended to co-ordinate fiscal and monetary policy in the coming financial year in a way which would ensure that the present downturn would take the form of a soft landing which would help to make adjustments

as easy as possible

It was also intended the economy would consolidate before the next upward phase so that "we will be able to grow from a sound base"

He said a new South Africa was possible only if it was bolstered by a sound and growing economy, with particular emphasis on the creation of employment

The central message of the advice received by the government was that South Africa would have to make certain structural changes to its economy, just as its major trading partners had to do a decade or so ago

Substantial progress had already been made towards reducing the State's role in the economy

This had been achieved by restricting capital expenditure in parastatal institutions, by privatisation, deregulation and curtailing government expenditure

This did not mean the State would give up its indispensable development role. The government would concentrate an "equitable portion of its capacity" on these aims - Sapa

ANC

Open 4/2/90

Through 30 years of persecution and exile, of underground action and guerrilla war against apartheid, the ANC has embodied the aspirations of millions of South African blacks.

This is how the ANC has come up through the years:

1912	The ANC began as a cautious middle-class group whose appeals against the removal of blacks' land and civil rights failed to moderate government race policies.
1948	Young radicals like Nelson Mandela and Walter Sisulu took over the leadership after the white Afrikaner National Party's electoral victory.
1952	The ANC backed the first systematic campaign against the government when thousands of blacks were arrested for defying discriminatory apartheid laws.
1955	The ANC organises a congress and adopts "The Freedom Charter" at Kliptown calling for a non-racial democracy.
1959	Divisions within the movement led to creation of the PAC, which objected to white participation, argued for black self-reliance in the fight against white rule and proposed South Africa be renamed Azania.
1960	The ANC is banned and it forms a military wing, Umkhonto we Sizwe (Spear of the Nation). Other movements banned are the SACP and the PAC. The ANC bases itself in Zambia, while the PAC moves to Tanzania.
1963	Mandela and most other ANC leaders had been caught and sentenced to life imprisonment.
1976-1986	After years of stagnation, the ANC gained new waves of young recruits when new South African opposition groups and youth revolts were crushed.
1988	ANC guerrillas mined South African border roads, ambushed black policemen and planted bombs in public places. But the organisation renounced attacks on civilian "soft targets" in August.
1990	The ANC, PAC and SACP are unbanned

TIMELINE

Unbanning of the ANC, PAC and SACP. On this page we carry excerpts from the special

Jail death inquiry

JUDGE RJ Goldstone will begin his one-man judicial commission of inquiry on Tuesday into the death of Clayton Sizwe Sithole, who was found hanged in his cell, at John Vorster Square police station last Tuesday.

Earlier reports said Sithole was arrested on January 26, together with four others, in connection with the death of five policemen.

Judge Goldstone has invited verbal and written evidence - Sapa.

Mandela FC man's death recalled

THE fateful February afternoon last year when a Mandela Football Club member was brutally killed in Soweto was recalled this week (25)

Judge Solomon, sitting with two assessors in the Rand Supreme Court, heard Mr X describe in chilling detail how Maxwell Zanele Madondo was killed when he was set upon by a group of Orlando West, Soweto residents (25)

Mr X told the court, sitting in camera, that Madondo screamed for mercy saying. "I am dying, I am dying, I am dying"

Appearing in court are Lerotodi Andrew Ikaneng, 22, Isaac Mazibuko, 23; Moses Nhlanhla Blanket, 18, Sandile Blanket, 22, Dudu Chili, 47; S'busiso Chili, 25; and Mpiyakhe Chili, 22

They have all pleaded not guilty to a charge of murder and are all residents of Orlando West

People who packed court 4E were mostly family friends, family members and girlfriends of the accused before the court was cleared for Mr X to give evidence

Joy on Death Row over FW's mercy

Apr 21/90

252



Relatives and friends of prisoners on Death Row, visiting from Oudtshoorn, rejoice at the news.

By CHARLES MOGALE

AN atmosphere of rejoicing swept through Death Row in Pretoria when news of the suspension of the death penalty was announced

Inmates burst into song and prayer, and relatives and friends who went to visit were showered with praises and thanks to pass to the outside world for pressuring the government to reconsider capital punishment

State President F W de Klerk announced when he opened Parliament on Friday that executions would be suspended until Parliament reviewed the death penalty

De Klerk's announcement followed months of intensive campaigning for the abolition of what has been described as a barbaric, vengeful punishment of offenders

Laywers for Human Rights employee Shucks Sefanyetso, who works closely with prisoners on Death Row, said he had

Inmates burst into song and prayer

never seen the inmates so happy

"They were overwhelmed. Some of them could not even believe it was true"

Anti-capital punishment campaigner Sue Groves, who visited Death Row prisoner Mzondeleli Nondula just minutes after the President's speech, said the prisoners had been given the opportunity to listen to the address

"It was a special day on Death Row. The prisoners inside were hoping for something in the President's speech. They had been waiting for it with anticipation. Today (Friday) though, they thought De Klerk had surpassed expectations. Hopes are high, the people are happy, but the struggle must

continue," Groves said

Pensioner Maggie Majola of Bongoletu, Oudtshoorn, was besides herself with joy. Her son Desmond Majola has been on Death Row for three years following the killing of local councillor Patrick "Big Boy" Makhekhenene

Tears welling in her eyes, she said on Friday. "I thank God. He has answered our prayers. I could not eat, my child, all the mothers could not eat, or sleep. I thank all those who have helped us with their prayers"

The SACC's Dependence Conference fieldworker Mzukisi Mooi said he had brought good news for Majola's co-accused and fellow prisoners, Dixon Madikane and Patrick Manginda

Those who face the death penalty

People on Death Row for crimes arising out of political protest (arranged by date of sentence):
Patrick MANGINDA, 23, Desmond MAJOLA, 27; Dickson MADIKANE, 26 Sentenced September 1986 in Cape Town Supreme Court for murder following killing of a councillor by crowd in Bridgton, Qudushoorn in November 1985 Appeal rejected, September 1988 Lawyers petitioning State President to reopen trial for new evidence
Robert John McBRIDE, 23 Sentenced April 1987 in Maritzburg Supreme Court for murder of three women killed in car bomb explosion in Durban, Appeal turned down, March 1988 Petition for clemency submitted
Daisy MODISE, 25, Thomas CHAUKE, 27, Johannes TSHABALALA, 18 Sentenced in Temba court of Bophuthatswana in May 1987 Allegedly participated in people's courts Appeal thought to be pending
George SKOSANA, 22 Sentenced in Pretoria Supreme Court June 1987 for killing suspected police informer Refused leave to appeal Execution set for August 1988 but granted stay of execution to petition for clemency
Basayi MAQOKO, 34, Zuelinkosi MJO, 29, Sentenced in Ciskei Supreme Court, Bisfo, for killing Whitesea resident who refused to hand over firearms
Sibusiso Senale MASUKU, 22, Oupa Josias MBONANE, 21: Sentenced August 1987, Pretoria Supreme Court, for murdering policeman Masuku was already serving 10-year sentence for participation in ANC's armed struggle Execution set for May 24, 1989 but granted stay of execution for lawyers to try to present new evidence
Joseph CHIDI, 23 Sentenced in Rand Supreme Court September 1987 for murdering councillor in Tembisa Appeal Court ordered trial to be reopened after the only State witness retracted his evidence, saying he had given it after police assault Death sentence upheld on August 25
Nico Ledube MNVAMANA, 31, Menzi TAFANE, 21 Sentenced in Port Elizabeth Supreme Court September 1987 for a killing in Burgersdorp in January 1986 Leave to appeal granted
Reuben Clifford Sentenced in November 1987 in the Nelspruit area for murdering suspected police informer

Mtuzeli Bottoman MGOANDU, 22 Sentenced November 1987 in Supreme Court, Uitenhage, for killing policeman in Port Elizabeth September 1985 Granted leave to appeal by Chief Justice
Abraham ZEYO, 23 Sentenced 1987 in Eastern Cape for murder following death of a woman killed by crowd searching for an informer in Kirkwood April 1985 Appeal due, March
Mvobise NCAPHAYI, 20, Vuzunusi JACK, 24, Samson BOOYSEN, 35, Bennet SONAMZI, 22 Sentenced in Grahamstown Supreme Court January 1988 for murder of man stoned by a crowd in Kwezi, Hanover Only Neaplayi granted leave to appeal but other three successfully petitioned Chief Justice to be allowed to do the same
Ghindoda Norman GXEKWA, 22; Vuyani Petrus JACOBS, 19, Mthetheli LUCAS, 24, Tozani MODOI, 27 Gxekwa and Jacobs with two others were sentenced in Grahamstown Supreme Court in March 1988 for killing suspected police collaborator in Uitenhage October 1985 Only MODOI was granted leave to appeal
Rodney MOLOI, 24, Stanford LEBBE, 24 Sentenced in March 1988 in Rand Supreme court after being convicted on the basis of common purpose of killing a policeman Extenuating circumstances were found in respect of Lebbe but Justice TF Spoelstra used his discretion to sentence him Appeal failed
Eliot Malindana NKUNA, 37, Mpande Joseph MALHALELA, 30 Sentenced in the Supreme Court, Nelspruit, for murdering a man at Mbozini In July 1988 they were granted leave to appeal and to reopen their trial
Mthetheli Zephania MNCUBE, 27, Mzondeleli Euclid NONDULA, 24 sentenced in the Circuit Court, Messina for murder by causing landmine explosions Mncube was also charged with killing two policemen while escaping from custody Granted leave to appeal
Sibusiso SINDANE: Sentenced in Durban Supreme Court May 1988 for his part in the killing of a Kwamakhutha councillor who died following a petrol bomb attack on his home in January 1987 Granted leave to appeal

Mandla MNGOMEZULU, 25 Sentenced May 1988 in Supreme Court, Stanger, for killing a suspected police informer.
Ringo FARLAND, 19, Sipho GONYA, 18, Phuntumle DLABATHI, 18 Sentenced in Supreme Court, Port Alfred, for murdering suspected informer in Duncan Village October 1985 Granted leave to appeal Farland absconded but was re-captured and sentenced December 1988
Israel MACHASA, 25, Jerry MOLEBENG, 25, Johannes MONO, 23 Sentenced August 1988 in Bloemfontein Supreme Court for killing municipal policeman
Dizintaba "Lucky" NOMGANGA Sentenced Free State Supreme Court for murder of two mine officials Granted partial leave to appeal
Wilson MATSHILI, 33, Patrick MOLEFFE, 27; Takalani David Mamphanga, 25, George Maugelezo, 36: Sentenced in Rand Supreme Court for murdering four Sats strike-breakers Granted leave to appeal
Nkosinathi ZUMIA, 25 Sentenced in Pietermaritzburg Supreme Court for killing suspected informer
Leonard Natange SHEHAMA, 25: Sentenced in Cape Supreme Court, Walvis Bay for murder following explosion in Walvis Bay which killed five people
Jabu Obad MASINA, 36, Frans Tung Tung MASANGO, 30, Neo Garfith POTSAANE, 28 Sentenced in Delmas Circuit Court April 1989 for killings including those of two policemen
Ndubulele NDZAMELA, 24; Punzile MAYYAP, 32 Sentenced May 1989 in Transkei Supreme Court for murder following deaths of two people in Impet mine explosion
Kenneth KHUMALO, 33, Eric Tros GUBULA, 30, David LEKHANYANE, 24, Myner Gardam BOYU, 29, Zako KABENDLINI, 32, Andrew LEKHANYANE, 28, Justice BEKEBEKE, 27; Zonga MOKGATLE, 31, Wellington MASIZA, 27, Boy JAPHTA, 24, Evelyn de BRUIN, 60, Gideon MADLONGOLWANE, 60, Xolile YONA, 24, Albert TYWILL, 27 Sentenced to death May 1989 in the Circuit Court, Upington, for murdering a municipal policeman Granted leave to appeal

C/Pren 4/2/90 252

Questions over return of exiles

THE return of ANC, PAC and SACP exiles hinges on the government's exclusion of so-called "terrorists" and freedom fighters from its limited offer of amnesty

ANC leaders and civil rights lawyers are now questioning the government's pledge to release political prisoners convicted of membership of the liberation movements

Said ANC stalwart Ahmed Kathrada "There are a lot of things which have to be explained, such as why only prisoners who participated in the activities of the unbanned organisations will be released and political trials for only such people will be scrapped, while others are left in the cold"

Thabo Mbeki, the ANC's secretary for international relations, said while ANC members who were jailed for terrorism remained in prison, it was unlikely he would return

The ANC regards these members as political prisoners," he said

A spokesperson for the Minister of Justice, Mr Kobie Coetsee, said that 77 political prisoners had already been identified for release within the next few days

Amnesty

Officials were examining all warrants to determine other prisoners who qualified for release or reduction of sentence

The Minister of Constitutional Development and Planning, Dr Gerrit Viljoen, said ANC president Oliver Tambo and other South African political exiles now facing criminal charges were welcome to come home.

Viljoen emphasised that there was no general amnesty and made it clear that the government's intention was to move its focus from people who faced prosecution through membership of formerly banned organisations to individuals guilty of purely criminal acts

"The purpose of the package is to normalise the situation and to encourage all those who followed the peaceful course to involve themselves in negotiations," Viljoen said

"Mr Tambo is welcome to return. As far as I know he faces no charge. So is any other South African who is not guilty of criminal activity," he added

Natal University's Political Science academic, Mr Ian Phillip, said Umkhonto we Sizwe was an integral part of the ANC, bound into the organisation historically by membership, and administratively and institutionally

"The exclusion of army soldiers from the terms of the statement also fails to address the whole campaign for prisoner of-war status for captured cadres," he said.

"The same problem, the severe distinction between the military and the political, affects the definition of re-

leased prisoners'

Phillip said it appeared a very small proportion of political prisoners would be released in those terms because of the state's widespread policy of charging people as members of the ANC and MK respectively and independently of "terrorism"

He said the extremely generous 'definition of terrorism' contained in the Internal Security Act provided the state with extreme ammunition to restrain future action

Lawyers urged caution, warning families of political prisoners not to raise their hopes

'It seems at this early stage that no one in Cape Town qualifies for early release,' said Athlone attorney Mr Ibrahim Mohamed

However, the trial of community leader Mr Johnny Issel came to an abrupt end on Friday

He was informed by a prosecutor that he need not appear in court today as his charges of promoting the aims of the ANC have been dropped

On death row, political prisoners are reportedly 'excited' by the news that their executions have been suspended pending judicial review

Mr Shucks Sefanyetso, Lawyers for Human Rights' executions monitor who rushed to Pretoria Central on Friday afternoon to break the news to prisoners awaiting the hangman, said they were "celebrating with a party"

"I broke the news to them, no one had told them that the State President had suspended all executions," he said

"I saw Almond Nofomela, I saw Selwyn Simon, I saw many of the others and they're all having a big party tonight"

While the suspension of all executions was welcomed by human rights and legal organisations, they pledged to continue to campaign for the total abolition of the death penalty

Discretion

A spokesperson for the National Association of Democratic Lawyers, Mr A Soman, said his organisation was "disappointed" that De Klerk had not abolished the death penalty from the statute books

"The granting of judicial discretion to judges in the imposition of the death sentence and an automatic right of appeal does not address the fundamental objections to the imposition of the death sentence

"The death sentence does not act as a deterrent and there will still be the danger of judicial error," Soman added.

The national director of Lawyers for Human Rights, Mr Brian Curran, said he believed the reform initiatives would move South Africa towards abolitionist status within the next few years

'Giving judges a wider discretion and the principle that the death sentence will only be exercised in exceptional cases will, I believe, result in a dramatic reduction in executions over the coming years,' Curran said

"We of course also support the State President's decision to suspend all executions, pending appropriate law reform. We remain committed to total abolition"

South 5/2/90 - 14/2/90
252

Probe into Sithole's death

MR Justice R.J. Goldstone will tomorrow begin his one-man judicial commission of inquiry into the death of Mr Clayton Sizwe Sithole, who was found hanged in his cell at John Vorster Square last Tuesday.

Announcing this on Friday, Goldstone said the Commission would report on the factual circumstances relating to Sithole's death, the circumstances which might possibly have given rise to his death, the cause or

likely cause of death, and finally, the question whether death was caused by any act or omission involving or constituting an offence by any person.

Earlier reports said Sithole was arrested on January 26 with four others, in connection with the death of five policemen (252) (252).

Police took possession of two firearms, including an AK-47, and ammunition.

Goldstone has invited verbal and written evidence.

He will conduct his inquiry at the Mayoress' Parlour in the Johannesburg City Hall. - Sapa.

Harms to also probe funding of killings

MANDY JEAN WOODS

AN INVESTIGATION into which organisations or individuals, if any, have funded politically inspired murders will form part of the Harms Commission of Inquiry into alleged hit squads and other political murders, according to the Government Gazette of February 2.

The Commission's terms of reference allow Mr Justice L T C Harms to investigate the pattern behind politically motivated murders and other politically inspired acts of violence.

This could also include the unsolved disappearances of political activists.

The Gazette said the Commission would "report on who or what bodies, institutions or organisations commit or cause or instruct such murders or acts of violence to be committed" whether they be the principal offender, accomplice or accessory after the fact.

Among the cases which Mr Justice Harms will review will be those in which the judicial process has been completed and those which have not been solved or, owing to lack of evidence, into which investigations are not progressing, according to the Gazette.

There is no time limit on the cases which could be investigated.

Cases which could be investigated include the murders of: NP parliamentary candidate Robert Smit and his wife Cora who were shot in November 1977, political science lecturer Rick Turner (shot in Durban in January 1978); UDF organisers Matthew Goniwe, Sparrow Mkhonto and Sicelo

Mhlawuli who went missing in June 1985 and were later found murdered, human rights lawyer Griffiths Mxenge (found stabbed to death in 1981) and his wife Victoria (hacked to death in December 1985); and Fabian and Florence Ribiero (murdered in December 1986).

The judge is also instructed to report on "any other matter which, in (his) opinion, is relevant".

President F W de Klerk announced the formation of the commission last Thursday. This followed increasing public pressure from all sectors that a judicial commission be established to investigate allegations by former police Capt Dirk Coetzee of the existence of police hit squads.

Hanging

□ The Goldstone Commission of Inquiry into the death of Clayton Sithole will begin tomorrow in Johannesburg.

Sithole was found hanging from a pipe last Tuesday night while in detention in the John Vorster Square police cells. He had been arrested, along with four others, four days previously in connection with the murders of at least five policemen in Soweto.

The Commission hearings, expected to last about a week, will be held in the Mayoress's Parlour at the Harrison Street entrance of the City Hall at 9am.

'Apartheid court' ignored (252)

5772 1/2/90
A Soweto man was convicted yesterday in the Johannesburg Magistrate's Court of being a member of the ANC and of possession of weaponry, including a Makarov pistol, hand grenades and ammunition.

Simon Modise (25), who was a "commander" of the ANC, refused to take part in the trial, saying that as a black man he did not believe he would be given a fair trial in an "apartheid court".

Defence counsel, Ms Caroline Nichols, said she hoped the sentence would reflect the current political developments — Sapa.

CP town to defy repeal of Act

THE Rustenburg Town Council will continue to reserve the use of its facilities for whites only despite of President F W de Klerk's stated intention to scrap the Separate Amenities Act.

It said in a statement yesterday that the council had decided at its monthly meeting to adopt a motion to this effect by councillor Ryk van Jaarsveld, and seconded by councillor Johan Vosloo, both CP members.

The town council is controlled by six independent Conservative councillors. The three NP members in the council voted against the motion. 0109/6/2/90

Van Jaarsveld said the NP councillors had specifically said they were opposed to the opening of facilities in the run-up to the 1988 municipal elections.

"By now voting against the motion they are breaking their promises to the voters and are showing that the NP's so-called own affairs policy was just a political ploy," Van Jaarsveld said.

The motion said: "It is the duty and the responsibility of this council, in terms of the mandate on which it was elected, to ensure that Rustenburg's white community life will be guaranteed. Therefore this council will control its facilities in such a manner that this ideal will be realised."

Meanwhile the CP has applied for permission to have a protest march from Pretoria's Church Square to the city hall on Thursday, February 15.

The march has been called to protest against what the CP called the "revolutionary left-wing announcements" made by De Klerk.

The move was the beginning of the "intensification of the people's freedom struggle," a CP statement said.

CP leader Andries Treurnicht is to address the marchers at the Pretoria City Hall.

"The CP is determined to lead its people towards their own freedom in their own fatherland," the statement added. — Sapa.

Free State bodies owe R141m

CAPE TOWN — Black local authorities and development boards owed more than R141m in mid-1988 on loans from the Free State Provincial Administration, according to a report published yesterday by the Auditor-General on the province's accounts.

The province's accounting officer said in a statement included in the report that loans totalling R102,304m had been outstanding on March 31, 1987.

By March 31 1988 this had increased, with interest and further loans, to R141,126m.

This included an amount of

R6,698m described by the accounting officer as "unidentified" loans.

Only R82 648 of this amount had been recovered during the 1987/88 financial year.

Unauthorised loans to black town councillors in the province which had remained uncollected for more than three years amounted to R155 065 in March 1988, the report said.

The Auditor-General said the loans were made in 1984/85.

According to information furnished, no progress had been made with the recovery of the loans since that time. — Sapa.

Death penalty review hailed

CAPE TOWN — The SA National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) welcomed President F W de Klerk's announcement that the death penalty would be reviewed and that in the interim no further executions would take place. (252)

In a statement yesterday Nicro said it had commissioned a marketing and media research company in November to do research on public attitudes regarding the death penalty.

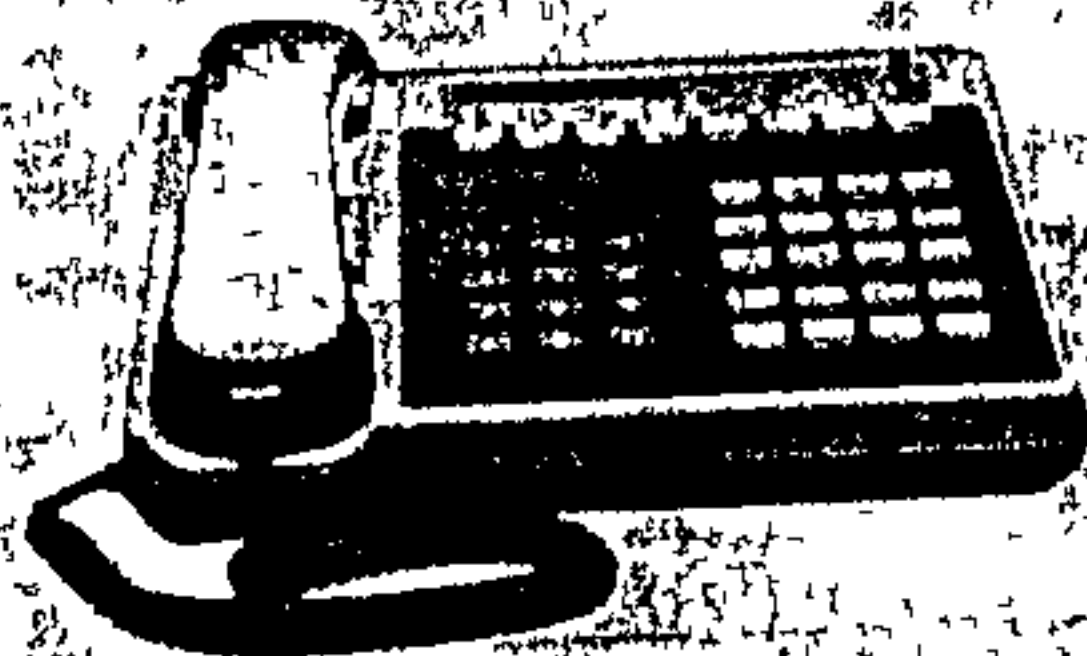
Of the respondents, 42% wanted it retained while 39% felt it should be abolished. About a fifth did not know. 0109/6/2/90

Those more in favour of the abolition of the death penalty were blacks (65%) and Asians and coloureds (55%), while 62% of whites wanted it retained. — Sapa.

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B/Pay 6/2/90

Madondo attack 'lasted 3 hours'

TANIA LEVY (252)

MANDELA Football Club member Maxwell Madondo was stabbed and stoned for more than three hours before he died, a state witness told the Rand Supreme Court yesterday.

He was being cross-examined in the trial of seven people accused of murdering Madondo — allegedly Winnie Mandela's former bodyguard — in Soweto last year.

The accused are Lerotodi Ikaneng, Isaac Mazibuko, Moses and Sandilo Blanket, Sibusiso and Mpeaker Chili and their mother, Dudu Chili.

The trial is being held in camera to protect state witnesses.

The witness said he had seen three of the accused and a man called Bonny carry Madondo across a road outside the Chilis' home. He said Sibusiso Chili had thrown a large rock onto Madondo's head and chest, and Mazibuko had stoned him.

Bonny had knifed Madondo in the solar plexus and then wiped the bloodied knife on the grass.

Defence counsel Advocate Norman Kades said the post mortem showed no such a wound.

He said Sibusiso Chili's evidence would be that he had been accosted by Madondo and another boy, who later fled. He would admit he had thrown a rock on Madondo's head but would say this occurred outside his mother's house, Kades said.

The case continues tomorrow.

D/P 9/6/2/90

4 court cases affected by De Klerk's changes

252

FOUR different court cases across the country were affected yesterday by President F W de Klerk's address to Parliament on Friday.

The trials were those of Tony Yengeni and others in Cape Town, Siphosiso Mokwena in the Pretoria Regional Court, Post Natal news editor Muhammed Rafiq Rohan in the Maritzburg Supreme Court; and community leader and UDF member Johnny Issel in the Parow Regional Court.

De Klerk announced the unbanning of the ANC, the SACP and the PAC and lifted the restrictions on several organisations on Friday.

Leader of the State team, Hendrik Klem, SC, asked yesterday for the Yengeni trial to be postponed until Monday for the State to reconsider the position of the accused in the light of the President's speech.

D P de Villiers, QC, for the defence, said he wanted the trial to proceed as smoothly as possible, but had no objection to the postponement. The defence would use the time to make representations to the State.

The main charge against all the accused is terrorism, but the charge sheet states some are charged with furthering the aims of the ANC.

Sapa reports from Pretoria that a copy of De Klerk's speech was handed to the Pretoria Regional Court yesterday

Own Correspondent

day in mitigation of Mokwena's sentence

Mokwena had been convicted of ANC membership and terrorism.

Mokwena had been found to have received military training from the ANC and to have possessed hand grenades and a Makarov pistol on the date of his arrest in 1988.

Withdrawn

Defence council for Mokwena, D J van der Riet, said he would be addressing the court on sentence on Tuesday and would be applying for bail.

Our Maritzburg correspondent reports seven counts against Rohan, 35, relating to his alleged participation in ANC activities were withdrawn by the State. This was said to be linked to the unbanning of the ANC.

Rohan had pleaded not guilty to a total of 22 charges, including terrorism, attempted murder, wilfully causing explosions and possession of bombs, arms and ammunition.

Rohan is charged with causing an explosion outside the officers' club at the SADF Natal Command headquarters on March 10 last year in which 16 people were injured and R92 000 damage was caused.

He also allegedly caused a blast at the single quarters of the SA Police at C R Swart Square on April 7 last year, injuring three people and causing damage worth more than R87 000.

Constable Robin Scott of the Berea SAP told the court yesterday that he discovered a mini-limpet mine in a plastic cooler bag off Ridge Road near the SA Police radio technical workshop on January 28 last year.

About 15 minutes later there was an explosion.

Constable Scott had been summoned to the scene and found the bag containing explosives near an electricity transformer after a guard, Constable L N Makhanya, saw a person enter the premises with a bag.

The hearing continues today.

In Cape Town yesterday Issel had charges of furthering the aims of the ANC withdrawn against him.

The charges were withdrawn in absentia.

Issel said yesterday the Attorney-General's office had telephoned his lawyers and said he need not come to court.

Issel first appeared in court on March 16 last year, after he was in hiding for almost three years, to face charges of furthering the aims of a banned organisation.

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Judges slam 'remarks' by magistrate

CMT TUB 6/2/90
252

By **RONNIE MORRIS**
Supreme Court Reporter

TWO Supreme Court judges yesterday slammed remarks made by a Regional Court magistrate about black witnesses as "tactless, insensitive" and "damaging not only to the administration of justice but to the country".

The rebuke by Mr Justice C T Howie was supported by Mr Justice A M van Niekerk.

Scathing attack

Mr Justice Howie launched a scathing attack on Mr M S Knox during judgment in an appeal by 10 Zweletemba, Worcester, residents against their conviction and sentence on a charge of public violence.

They were William Ntingashe, Themba Khonco, Meisie Khonco, Nomfanelo Kengxe, Mande Mroxisa, Tytye Matuko, Mkedisi Ntshanga, Thabiso Phadi, Timothy Romaji and Mlungise Buza.

The court found that the magistrate's approach had "vitiated" the assessment of evidence before him and that the state's case was "peppered with contradictions and inconsistencies".

The court was unable to conclude that the state's evidence was of the required quality and the convictions and sentences of the appellants were set aside.

Some of the remarks made by Mr Knox and read by Mr Justice Howie were:

● "Blacks will tell the whole truth but when you begin to pressurise them the problems begin and the honest witness changes into a liar."

● "Time and distance mean nothing to blacks. They only know two times and that is that the sun will rise and that the sun will set. With regard to distance it is just a matter that if I

begin to walk I will reach a certain place before dark."

● "Experience has taught that the blacks' field of vision and power of observation is limited. They can only concentrate on one aspect of a case at a time."

● "To the person who does not know blacks it would sound like a Babylonian confusion and he would throw his hands in the air and think he has to do with a downright liar."

Mr Justice Howie said Mr Knox's approach, as a reading of the evidence showed, tended to "brand them (black people) as unreliable and dishonest".

A trial court was entitled and bound to make value assessments of witnesses but apparent shortcomings had to be viewed with some qualification.

Mr Knox's remarks were "presented as authoritative statements of universal application" "They are of a sweeping gratuitously general tenor and therefore they are not only inappropriate and unwarranted but they are at the same time severely insulting," Mr Justice Howie said.

"It needs to be made clear that the magistrate's statement in respect of blacks and black witnesses on which he relied in his pro-prosecution conclusion was tactless and insensitive."

Investigation

"Discouragement of a kind and indeed any kind is needed against statements which are damaging not only to the administration of justice but to the country."

● Last year the Department of Justice launched an investigation when during a child-abuse case Mr Knox said to an Indian man that he had "listened to you people in Natal for 20 years, and you all try to jump around (when you tell a story)".

Mr Siraj Desai, assisted by Mr Steven Majiet and instructed by Mr Ebrahim Mohammed of E Moosa and Associates, appeared for the appellants. Mr D J Brand appeared for the state.



Judges rap 'tactless' senior magistrate

Am 6/11
6/2/90
252

By LINDA GALLOWAY
Supreme Court Reporter

TWO Supreme Court judges have slammed a senior magistrate for remarks he made about black witnesses.

Mr Justice C T Howie and Mr Justice A M van Niekerk branded the comments as "tactless and insensitive"

In convicting and sentencing 10 residents of Zwelethemba township in Worcester in 1987 on charges of public violence, magistrate Mr M S Knox said that in his experience black witnesses would "say anything" when pressed

"To the black, time and distance mean nothing. They know only two times and that is that the sun rises and the sun sets," Mr Knox said in a trial arising out of clashes between witdoeke and comrades in August 1987

In citing reasons for accepting the evidence of a witness who seemed to have contradicted himself and other wit-

nesses, Mr Knox said that a black person would tell the truth "but when he is pressed there are problems and an honest witness turns into a liar"

His experience had shown that black people's vision and perception were limited

"They can only concentrate on one aspect at a time"

Genuine endeavour

Overturning all 10 convictions yesterday, Mr Justice Howie, with Mr Justice Van Niekerk concurring, said the magistrate's statements were "a tactless, insensitive disparagement of a kind not only damaging to the administration of justice but to the country"

He did not know how Mr Knox had not realised this

These remarks "presented as authoritative statements of universal application were of a sweeping, gratuitous nature" which were not only inappropriate and unwarranted but also severely insulting

Reading Mr Knox's judgment and additional reasons cited for the convictions, Judge Howie said it would seem that the remarks had been made "in a genuine endeavour" to persuade the reader of his in-depth analysis of the evidence in the trial

If that was what a judicial officer intended to do, then his findings had to be related to the individuals or the specifics of the trial before him, which had not been the case.

Judicial officers were often required to make in-depth assessments of people "from highest to lowest" but one could not dispose of a witness's shortcomings on the basis of generalisations.

Last year Mr M S Knox told an Indian businessman in court that he had "listened to you people in Natal for 20 years and you all try to jump around (when you tell a story)"

Mr Knox was later reported to have "deeply regretted" the remark

252

'Apartheid court' ignored

STAR 6/2/90

A Soweto man was convicted yesterday in the Johannesburg Magistrate's Court of being a member of the ANC and of possession of weaponry, including a Makarov pistol, hand grenades and ammunition.

Simon Modise (25), who was a "commander" of the ANC, refused to take part in the trial, saying that as a black man he did not believe he would be given a fair trial in an "apartheid court".

Defence counsel, Ms Caroline Nichols, said she hoped the sentence would reflect the current political developments. — Sapa.



Judges rap 'tactless' senior magistrate

Art 64
6/2/90
252

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Mr Knox was later reported to have "deeply regretted" the remark

Hanging inquiry begins

By Karen Stander

The Goldstone Commission of Inquiry into the death in detention of Mr Clayton Sizwe Sithole began in Johannesburg yesterday.

(252)
Mr Sithole, the boyfriend of Miss Zinzi Mandela, daughter of Mr Nelson Mandela, was allegedly found hanging in a cell in John Vorster Square police headquarters.

Shortly after the inquiry was opened by Mr Justice R J Goldstone yesterday morning, formal proceedings were adjourned until Friday for witnesses to be consulted and documents studied.

An inspection *in loco* will be held at the Protea police station in Soweto and John Vorster Square on Friday before the inquiry resumes in the mayoress's parlour in the City Hall.

Mr Justice Goldstone said he had been appointed as chairman and sole member of the commission.

Star 7/2/90
He was to report on the factual circumstances surrounding Mr Sithole's death, the cause of death and whether any act of omission on behalf of any person constituted an offence.

The judge said he had decided that the hearing would be in public and that evidence would be led under oath.

Mr E le Roux SC, who is appearing for the Minister of Law and Order and the SAP, said his clients would co-operate fully in the inquiry.

Growing pleas for outside investigators for inquiry

Spew 7/2/90

252

Support is growing for recommendations that independent investigators be appointed to assist Mr Justice L Harms in the judicial commission of inquiry into alleged police death squads and politically motivated violence and murder.

The expertise of independent experts, including forensic scientists, investigative criminal lawyers and other specialists, should be enlisted, say liberal lawyers and opposition politicians.

The Democratic Party called for such a team to be formed last week after President de Klerk, in a surprise turnabout, decided to appoint a judicial commission.

After the announcement on Thursday, Mr Tian van der Merwe, DP deputy spokesman on law and order, called on Mr de Klerk to give Mr Justice Harms an adequate budget and the authority to appoint an independent team of investigators.

He said such a move was justified because it was unreasonable to expect policemen to investigate their colleagues.

Commissions are usually assisted by investigators from the SAP.

Mr Peter Harris, a member of and legal advisor to the Independent Board of Inquiry into Informal Repression, supported the idea of an independent investigation team.

He said documentary evidence, such as postmortem examination and forensic reports, policemen's pocket books and weapons registers placed before the one-man commission should be made available to investigators acting for families of victims of alleged death squads.

There was no doubt that all policemen alleged to be involved in death squads, including those who had left South Africa, would be called to give evidence to the commission and face cross-examination.

Steve McQuillan and Kiff Katzin look at the issues surrounding calls for a team of independent investigators to be appointed to help the one-man commission of inquiry into allegations of police death squads, and that evidence be made available to the families of suspected victims

Mr Justice Harms, who has been asked to report on which institutions or organisations "cause or instruct" murders to be committed and establish who is financing the acts, has declined to comment on suggestions he should appoint an independent team of investigators.

A spokesman for the Webster Trust, set up after the death of Johannesburg academic Dr David Webster on May 1 last year, endorsed Mr Harris's views and called for an assurance that all evidence would be heard in public.

Until now, police have refused to say what progress has been made in the case involving Dr Webster, who was gunned down outside his Troyeville home.

"We would expect that the investigating officer would be asked to place before the commission full details of the investigation so far and that legal representatives would be in a position to question the investigating officer," the Webster Trust spokesman said.

"The Trust would reject any attempt to have this evidence heard in camera."

The whole purpose of the Trust calling for a judicial commission was that the matter be dealt with in the open.

Lawyers say a commission has the discretion to order that parts of the inquiry be heard in camera, but it would first be

up to the police to explain why such a move was necessary.

It is therefore possible that details of a secret new right-wing organisation, said to be responsible for murdering Dr Webster and former Swapo advocate Mr Anton Lubowski, could unfold in evidence.

The chief investigating officer of the SAP probe into the Webster assassination, Brigadier Floris Mostert, has up to now refused to disclose what he has called "extremely secret and sensitive" information relating to the inquiry.

Legal experts and political observers are still evaluating other implications of the commission's appointment.

For instance, it places a question mark over the trial of Death Row prisoner Butana Almond Nofomela, who triggered the present death squad issue with allegations of police involvement.

Although his trial is expected to begin soon, his lawyers may apply for a postponement on the grounds that he could be incriminated if evidence about his activities were given to the Harms inquiry.

Lawyers for Human Rights (LHR) is to monitor the commission and request that certain people be subpoenaed in the light of evidence already available.

"I am prepared to dedicate the rest of this year to the commission," said LHR national director Mr Brian Currin. LHR will also monitor certain inquiries, involving allegations of SAP death squads, which are to be re-opened by attorneys-general.

Lawyers acting for runaway former police captain Mr Dirk Coetzee, who is unlikely to return to SA because he believes he will not be given a fair trial, will also submit evidence to the commission.

Officer's wife tells of bomb blast

MARITZBURG — The wife of an army officer told the Maritzburg Supreme Court yesterday she had suffered back and skull injuries as a result of a bomb explosion at Natal Command in Durban last year. (252) (10)

Mrs S B van Niekerk was giving evidence at the trial of Mr Muhammed-Rafiq Rohan (35) for the blast which occurred at about 10 pm outside the officers' club on March 10 (844)

Mr Rohan, the news editor of *Post Natal*, pleaded not guilty to 22 charges put to him, including four of attempted murder and terrorism. Star 7/2/90

Another witness, Commandant P J Loots, told the court that glass and shrapnel had to be removed from his head and shoulder and he also lost the use of his left eye.

It is alleged that the accused was instructed by the ANC in Zimbabwe to place a car bomb at Natal Command to cause as many casualties as possible for which he would be paid R15 000.

Mr Rohan, however, allegedly placed two mini limpet mines and four demolition charges outside the club, leading to 16 people being injured and damage estimated at R90 000. — Sapa

Coetsee defends Mandela 252

CAPE TOWN — Justice Minister Kobie Coetsee leapt to the defence of ANC leader Nelson Mandela yesterday, saying that when the history of the present period was written it would be shown Mandela had made a significant and positive contribution to the development of a new SA.

Coetsee was responding to CP spokesmen who described Mandela as a "communist" during the debate on President F W de Klerk's opening speech to Parliament.

He said Mandela was not a communist and had broken up Communist Party meetings in his youth. *10am 8/2/90*

The unbanning of the ANC and other organisations had been made possible by a change in their attitude towards a negotiated settlement.

While the ANC was still issuing a variety of statements it was clear there was a preference for political solutions.

MIKE ROBERTSON

But this had not yet been made clear enough and he looked forward to the organisation clearly committing itself to a peaceful resolution of SA's problems.

Coetsee said while in the past the ANC and other organisations had called for the scrapping of all apartheid laws before negotiations could take place, it had recently revised its position.

Responding to calls for the scrapping of security laws, Coetsee said they were necessary in a period of transition. But this could be discussed at the negotiating table.

Government held that only exiles who had not committed offences would not be liable for prosecution in SA. But the freeing of political prisoners could be further investigated and become the subject of negotiations.

Leave to appeal refused

8/21/90
HENDRIK Albertus Grobbelaar, of Kempton Park, has been refused leave by the Appeal Court in Bloemfontein to appeal against his convictions and sentences on eight counts of assault with intent to seriously injure.

Grobbelaar, who was a police constable, had been ordered to do duty on a passenger train of black commuters on April 1, 1987. Riotousness was expected.

As the train left Kaalfontein station teargas was thrown into a coach and people jumped from the train to get away from the gas.

Assault

Grobbelaar was convicted in the Kempton Park regional court on September 16, 1988 and sentenced to five years (two years conditionally suspended) for the death of Mr Segopo Johannes Senong and to two years (to run concurrently) for the eight assault counts.

His appeal to the Transvaal Supreme Court on March 7, 1989 was upheld on the count of Senong's death, but was dismissed on the assault counts.

Inquiry into sexual deviancy appointed

MIKE ROBERTSON

8/27/90
JUSTICE Minister Kobie Coetsee announced last night that a commission of inquiry into sexual deviancy was to be appointed (252)

Coetsee told Parliament the Cabinet had decided yesterday morning that attention should be given to crimes of violence against children by sexual deviants

The commission would be asked to examine the sentences imposed on offenders, when they should be released and even their possible continued detention after expiry of sentence.

In addition, the commission would investigate whether psychopathy should be included as a certifiable disease in terms of the Mental Health Act, and would make recommendations on the further handling of this kind of person

Coetsee also gave more details of government's new policy regarding the death penalty

He said in future a superior court would only be able to impose the death penalty if, after taking into account all factors that could be regarded as extenuating or aggravating circumstances, it found it to be an appropriate sentence

If Parliament approved changes to the law, in future all people sentenced to death would have an automatic right of appeal

Because murder was to be treated in the

□ To Page 2

Inquiry

11/04
8/27/90

(252)

□ From Page 1

same manner as other crimes for which a death sentence might be imposed, and because of the increasing workload of the Supreme Court, regional courts would in future be able to try murder cases.

Regional courts would not be able to impose a death penalty but might be able to order terms of imprisonment not ex-

ceeding 15 years for cases of murder

Coetsee said that in terms of the envisaged changes to the judicial process, the state would be granted the right to appeal against the imposition of particular sentences

A body of experts would be appointed to investigate the case of every person now on death row

Death-sentence reform proposed by Coetsee

PROPOSALS for legislative reform on the death sentence, including an automatic right of appeal for a condemned person, have been announced by the Minister of Justice, Mr Kobie Coetsee

He said in the debate on the State President's vote yesterday that he intended to submit to parliament proposals supported by the Chief Justice, who in his turn had consulted the Bench

The proposals included giving Regional Courts the power to try murder cases, but not to impose the death sentence, and giving attorneys-general the right to appeal against sentences

"The reform proposals also aim to provide that matters in which the death sentence is possible, and which have not been finalised, be handled in terms of the new dispensation

"The position of condemned

persons who are presently in the death cell is also affected by the reform proposals

"An advisory body consisting of experts will be appointed to evaluate in terms of the new guidelines the sentences of every condemned person who is in the death cells at the time the proposals come into operation

"If the body finds that the death sentence, in the light of the new dispensation, is still a suitable sentence, the matter will be referred to the Appellate Division, which will judge the matter against the background of the new criteria"

Where a court found that the death sentence was not a suitable sentence, but where the crime still required a heavy sentence, it was necessary that realistic arrangements be made for alternative sentences.

With this in mind the proposals contained a mechanism which would ensure that a sentence of life imprisonment

would really mean life imprisonment

The court had the discretion to impose death for high treason, kidnapping, robbery or housebreaking with intent to commit an offence and where aggravating circumstances were present

"It is envisaged that the relevant provisions will be amended to the extent that a superior court will be able to impose the death sentence only if the court, having regard to all the factors which serve as extenuating or aggravating, finds it to be the appropriate sentence."

Furthermore, an accused who had been convicted in the Supreme Court of a crime had no automatic right of appeal. However, in the light of the seriousness with which the government treated the death sentence, the reform proposals contained provisions which gave a condemned person an automatic right of appeal — Sapa

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Commission to inquire into sexual deviancy

CAPL TINK
8/2/90

Political Staff

JUSTICE Minister Mr Kobie Coetsee last night announced the appointment of a commission of inquiry into sexual deviancy

Mr Coetsee told Parliament the cabinet had decided yesterday morning that attention should be given to crimes of violence against children by sexual deviants

The commission would be asked to examine the sentences imposed on offenders, when they should be released and even their possible continued detention after expiry of sentence

In addition the commission would investigate whether psychopathy should be included as a certifiable disease in terms of the Mental Health Act, and would make recommendations on the further handling of this kind of person.

Mr Coetsee also gave more details on government's new policy regarding the death penalty.

He said that in future a superior court would be able to impose the death penalty only if, after taking into account all factors that could be regarded as extenuating or aggravating circumstances, it found it to be an appropriate sentence

If Parliament approved changes to the law, in future all people sen-

tenced to death would have an automatic right of appeal

Because murder was to be treated in the same manner as other crimes for which a death sentence might be imposed, and because of the increasing work load of the Supreme Court, regional courts would in future be able to try murder cases

Regional courts would not be able to impose a death penalty but might be able to order terms of imprisonment not exceeding 15 years for cases of murder.

Mr Coetsee said also that in terms of the envisaged changes to the judicial process, the state would be granted the right to appeal against the imposition of particular sentences.

He said a body of experts would be appointed to investigate every case of a person now on death row. If the body found that even under the new dispensation the death penalty was still an appropriate sentence, the matter would be passed on to the Appellate Division which would also investigate the case in the light of the new criteria.

Where a court found that a death sentence was not appropriate but still regarded an offence as serious, new realistic sentences would be imposed. This would include a mechanism which would ensure that a life sentence meant exactly that

Police statements 'wild', magistrate's court told

252
Sowetan 8/2/90

A defence counsel criticised police statements as "wild and unsubstantiated allegations" about the arrest of a 17-year-old youth who appeared in the Johannesburg Magistrate's Court yesterday.

Advocate P Shapiro made the criticism before the magistrate, Mr H Ver-

By **MANDLA
NDLAZI**

hoef, ruled that the proceedings should be heard in camera. Shapiro blamed the police for having inflamed the matter in a "highly inflammatory situation". The statements, he said, were made on SABC TV and to the Press.

The magistrate then informed the prosecutor Mr JT Britz to refer the matter to the investigating officer who was not present in court.

Shapiro said the youth had been assaulted in detention and requested the magistrate that the boy be moved from the Moroka Police Station to the Johannesburg Prison

cells. The court accepted the request.

The court's public gallery including the Press was cleared when the boy's mother was called to testify on his age. The charge sheet was blank and the matter was postponed to February 14.

The boy is still in custody.

RECORDED
(8/2/90)

'It would make life easier'

Common-crimes amnesty possible, says Minister

STAT 9/12/90

(252)

An amnesty for political prisoners convicted of common-law crimes could be negotiated which would "make life easier for all of us", Law and Order Minister Mr Adriaan Vlok said yesterday.

This follows statements by two other Cabinet Ministers, Dr Gerrit Viljoen, (Constitutional Development) and Dr Stoffel van der Merwe (Education and Development Aid), that this point of dispute between the previously banned organisations and the Government was up for discussion.

Crimes

President de Klerk has said such prisoners were not affected by the unbanning of the ANC, PAC and SACP.

And General Johan van der Merwe, Commissioner of Police, has said returning exiles could also face prosecution if they had committed crimes.

Mr Vlok replied "yes" yesterday when asked at an international press conference in Cape Town if an amnesty was a possibility. He said an amnesty could be negotiated.

He also said the Government was busy discussing with Mr Nelson Mandela the question of his security after his release.

Asked if police would guard Mr Mandela, Mr Vlok said

"We have to discuss it with him. We do not want to enforce our presence on him. We want him to get out of that prison and walk the streets of our country as a free man, and alive."

Mr Vlok said police were aware through their security network of threats to Mr Mandela's life from the ranks of the ANC, black communities and from right-wing sources.

15/2/90

Society for the Abolition of the Death Penalty in South Africa

STATEMENT

The Society for the Abolition of the Death Penalty in South Africa congratulates President F W de Klerk on his foresight and compassion in addressing the question of Capital Punishment and all its implications.

We are pleased that the administration of the Death Penalty is to be reformed but we believe it is essential to abolish Capital Punishment. We hope that President de Klerk and Parliament will come to this conclusion as they deliberate on this issue.

*Beva Runciman
National Secretary
Society for the Abolition of the
Death Penalty*

Sowetan 9/2/90

Advice on appeals

LAWYERS for Human Rights said yesterday it was forming a body to assist Death Row prisoners in making fresh submissions to the official advisory board or the Appellate Division. (252)

The Minister of Justice, Mr Kobic Coetsee told Parliament this week an advisory board would evaluate the sentences of every condemned prisoner.

The National Director of Lawyers for Human Rights, Mr Brian Currin, said in Pretoria yesterday the LHR's advisers would be local and foreign lawyers, with expertise not only in the South African capital system, but also in the application of capital systems internationally.

Currin said he welcomed the reform measures announced by Coetsee. - Sapa.

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NO DEPOSIT

S3805

Court hears SMK 9/2/90 (252) accused had arsenal in his home

Own Correspondent

DURBAN — Journalist and alleged bomber of four sites in the city last year, Mr Muhammad-Rafiq Rohan (35) had an arsenal including firearms, 70 hand grenades, mines and other items used in explosions in his smart Sydenham home, it was alleged in the Supreme Court here yesterday.

Security Branch Detective Sergeant Andre Alberts said that on April 8 last year, following the arrest of Mr Rohan after the bombing of the CR Swart Square single quarters on the previous night, the double-storey house was entered.

Among the items found were two AK-47 machine rifles and eight loaded magazines, 11 mini limpet mines, seven tins of hand grenade detonators, and a Makarov pistol.

Also found was a letter which read: "Dear M, hope you are well and in great spirits. Fortunately, I have been able to organise a few things for you. I hope all is well on your side and that everything is on schedule."

Mr Rohan, a bachelor, lived alone at 52 Spearman Road, his landlord, Mr R P Gulsten said.

Detective Sergeant Alberts said that among papers found were instructions on how to operate a radio-controlled explosive device from a safe distance. Parts read: "Purpose of the set. To set off a charge at a specific time, e.g. a moving target from a safe distance."

"Please do not reveal or spend more time than necessary with the person bringing you the stuff."

State counsel Mr Christo van Schalkwyk applied for a statement made before a magistrate to be ruled as admissible in the trial, saying it conformed to all the legal requirements.

Defence team leader Mr Kessie Naidu opposed the application, saying that there was a doubt that the statement was freely and voluntarily made.

Mr Justice Law will rule on Monday on whether the State or the defence has the onus of proving its contention.

Mr Rohan faces four charges of attempted murder arising out of the bombings and 18 other charges. He has pleaded not guilty to all.

Controversy over 'last' prisoner hanged in SA

By Helen Grange

STAR 9/2/90 (252)

The man who may go down in history as the last prisoner to be executed in South Africa, was hanged under a cloud of controversy over whether all his legal remedies had been exhausted.

Four days before Mr Solomon Ngobeni was executed on November 14 last year, his lawyers brought an urgent application for a stay of execution to the Transvaal Provincial Division.

"The application, heard on a Friday afternoon, was dismissed on the grounds that it was not a matter of urgency. With no time to prepare a petition to the State President, Ngobeni was executed the next Tuesday," said a Lawyers for Human Rights spokesman.

The spokesman said the application was the second one in a month — after Lawyers for Human Rights had taken the case over from Ngobeni's pro deo lawyer, who had not applied for this last right. The first application was made on November

8, as the firm was under the impression that Ngobeni was to be executed on November 9. The application was postponed to November 10 when it transpired that the execution date was November 14.

"The whole affair was unfortunate, because we made the applications well before the 11th hour, which, according to the judges, is not usually the case," he said.

The Department of Justice has denied that Ngobeni went to the gallows without his last right.

"Ngobeni exhausted all his remedies. He had applied to the trial court twice and the Chief Justice for leave to appeal," said a spokesman for the department. All applications had failed. The spokesman said Ngobeni had petitioned the State President for clemency, and this too had been unsuccessful.

Ngobeni was sentenced to death in the Tzaneen Circuit Court for the murder of Mr Mackson Kubayi, who was killed in an armed robbery.

Ex-director loses bid to halt detention

same 9/2/90 By Cathy Stagg (252)

Mr Edward Dutton, former director of Inter-board, yesterday lost his urgent application in the Rand Supreme Court to overturn a magistrate's decision to order his further detention.

Handing down judgment, Mr Justice R van Schalkwyk said he regarded Mr Dutton's appearance in the Germiston Magistrate's Court on January 17 to be his first appearance, no matter what had gone before.

The court heard that Mr Dutton was first arrested on December 29 last year at his Sandton home, and appeared in court the next day when the matter was postponed until January 15. On that day, the case was postponed until January 16, when Mr Dutton successfully challenged the validity of the charge sheet and was released.

He was rearrested the next day.

FRESH WARRANT

Mr Justice van Schalkwyk said the appearance on January 17 was in respect of a fresh warrant, so this was the first appearance and the detention could not be seen as a continuation of the previous detention.

When Mr Dutton appeared the second time, there was only one word describing the charge — "fraud" — and it was argued that he was entitled to an outline of what he was alleged to have done.

The judge agreed that one word was inadequate but said the State prosecutor had told the magistrate that there were four charges totalling about R130 million, and that details were on the back of the warrant of arrest. An annexure set out the period from 1981 to 1989.

Under the circumstances, Mr Justice van Schalkwyk said, Mr Dutton had been given sufficient description of the charges to justify his further detention. Mr Justice H J Preiss concurred.

Joy after laundry workers win case against dismissal

STAR 1/19/90
By Cathy Stagg (252)

A large group of women sang and danced outside the Rand Supreme Court yesterday after a judge ruled that their dismissal from a laundry run by the Department of Hospital Services was unlawful.

Mr Justice de Klerk arranged for his judgment to be translated for the 100 or so people who attended the case.

The basis of the case, said the judge, was whether Mrs M Thusi — who represented the workers as the only appellant — had been given an opportunity to argue why she should not be dismissed prior to her discharge.

Both sides agreed that she should have had that opportunity. It was also agreed that recognition be given to a union which Mrs Thusi and other workers had set up. This recognition had previously been refused by the administrator of the department.

An illegal strike had taken place on May 25 1988 to demand

recognition.
The court heard that Mr R Olivier, acting on behalf of the administrator, had told a delegation that workers had to end the strike immediately and go back to work — or explain the following day their personal involvement in the work stoppage.

The judge found there was a difference between an interview to explain one's degree of participation in a strike and an interview at which one could argue why one should not be fired.

Mr Olivier had told workers that those who did not wish to take part in the strike need not fear intimidation because all workers would be questioned privately. The judge mentioned the concept of "innocent" and "guilty" and said the invitation was not seen as an unqualified invitation to give reasons why they should not be fired.

He ordered the administrator to pay the costs, including the costs of two counsel.

Leave to appeal to the Appellate Division was granted

Growing number opposes

hanging

Survey shows a changing mood

DAVID CAPEL

A SURVEY by the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) has shown that the gap between those in favour of hanging and those against is closing significantly.

Nicro's nationwide survey of people in urban areas — conducted by Market and Media Research — said 42 percent of respondents thought the death penalty should be retained. Those against were 38 percent. Twenty percent were uncertain.

Those most in favour of abolition were blacks (65 percent), and Asians and coloureds (55 percent). The survey showed that 62 percent of whites — 80 percent Afrikaners and 56 percent English-speakers — want the death penalty retained.

In a previous survey by Unisa in 1986, it was found that 85 percent of 650 respondents were in favour of the death penalty.

So Nicro's statistics show a marked shift in public thinking.

President de Klerk's announcement that there would be a moratorium on all hangings while Parliament debated the issue was welcomed by Nicro and others, who for years have been calling for capital punishment to be scrapped.

President de Klerk also announced that Government thinking on the death penalty was that in future all those sentenced to death should have an automatic right of appeal, and that judges should be able to use their own discretion in imposing it or not. Previously, judges were obliged to impose the ultimate sentence in cases of murder where no extenuating circumstances existed.

Last at gallows

The Society for the Abolition of the Death Penalty, reconstituted in November 1988 after being moribund since the mid-1970s, also welcomed Mr de Klerk's moves, but reaffirmed its determination to continue pushing for capital punishment to be scrapped entirely.

The last person to go to the gallows in South Africa was S Ngobeni, who was hanged on November 14.

At one stage, South Africa was hanging so many people that abolitionists said the country was gaining a reputation for bloodthirstiness.

For instance, in 1988, 117 people were hanged and 47 had their sentences commuted. Last year, with the society at full strength again, the number of hangings dropped to 53 and for the first time, and more people, 65, had death sentences dropped.

The year 1987 stands out as the year in which South Africa's execution rate was at its highest. No less than 164 people — almost one every two days — were hanged. That figure was second only to Iran, not a country often held up as an example of democracy.

South Africa also found itself in the company of such countries of Afghanistan, Albania, Chad, Chile and China, who still practise the death penalty. Countries that have abolished it in the past few decades include Australia (1985), Austria (1968), Denmark (1978), Finland (1972), France (1981), Netherlands (1982) and Portugal (1976).

Venezuela abolished the death penalty in 1863. From the moment he took over as President, it was clear that under Mr de Klerk the winds of change would blow through South Africa's capital punishment system. He used his inauguration address to announce the commutation of seven death sentences, and abolitionists felt he was a man they could talk to about their cause.

At present there are more than 300 people on Death Row in Pretoria.

SPAC 10 2496

(252)

Afcol workers jailed for murder

252
FOUR Afcol workers who pleaded guilty to murdering non-striking employees during an industrial dispute in 1988 were sentenced to terms of imprisonment ranging from five to 11 years in the Rand Supreme Court on Friday.

Mr Justice B O'Donovan, sitting with two assessors, accepted that extenuating circumstances were present in the case of the four men — all of whom were first offenders.

8/Dec 12/2/90
Elias Phasha, 40, Bongani Mazibuko, 34, Michael Thabiso Machepe, 25, and Jerry Rantekoa, 44, were among groups of strikers which took part in attacks on non-striking colleagues during the bitter and protracted industrial dispute which left five men dead.

Mr Justice O'Donovan said the factors taken into consideration in relation to the

SUSAN RUSSELL

ISSUE of extenuation also applied to the question of mitigation of sentence.

All five were not normally of a violent disposition and until the offences now under consideration had had stable work records and no clashes with the law, Mr Justice O'Donovan said.

On the other hand, he said, the court could not disregard the seriousness of the offences for which they had been convicted.

"They were committed on innocent and defenceless fellow employees by those mobs. The victims, probably in some cases, were members of a non-striking union."

"The assaults were of a most serious nature and perpetrated following decisions previously taken at meetings," he said.

ARMS 'WERE MARKED'

252 WILSON ZWANE

THE death of Clayton Sizwe Sithole was consistent with hanging, state pathologist Dr Denis Kemp and Johannesburg consultant pathologist Dr Jonathan Gluckman said in testimony before the Goldstone Commission of Inquiry in Johannesburg on Friday.

Sithole died while in detention on January 30 in John Vorster Square. It is understood that Sithole was the boyfriend of a daughter of Nelson Mandela, Zinzi Mandela.

Kemp said Sithole apparently died from a combination of interference with blood circulation and the cutting off of his air supply.

While concurring with Kemp, Gluckman said he saw the interference with circulation as a possible cause for Sithole's death.

Both doctors ruled out the possibility of any manual strangulation by any other person.

"But the death is consistent with hanging," said Gluckman.

The Sithole family's legal representative, Advocate Chris Laxton, showed both Kemp and Gluckman a police photo-album which had photographs of the deceased and the cell in which he was found dead on January 30. He asked them if they, during their examination of the body on February 1, had noted the marks on the upper arms of the deceased. B/D 12/2/90

They answered they had not, with Kemp suggesting that the marks were normal on people who wore arm rings (amulets) or belts.

Johannesburg district surgeon Kraus testified that when he examined Sithole while the deceased was still a detainee, he had not seen the marks on the arms which the police photographs showed.

"I would have noticed them," Magistrate Christiaan Johannes Botha said.

Botha read a statement in which the deceased signed himself as Sizwe Twala and confessed to various acts of terrorism.

The hearing continues.

□ Thabo Ndumela reports that more than 2 000 youths, mostly Soweto Youth Congress (Soyco) members, attended Sithole's funeral on Saturday.

He was buried with ANC colours, and freedom songs were sung throughout the funeral.

'Stompie' case on ⁽²⁵²⁾

Sowetan
Sowetan Correspondent 13/2/90

MR Jerry Vusi Richardson (41) of Orlando West, Soweto, who is accused of murdering James Moeketsi, "Stompie" Sepei (14), appeared briefly in the Rand Supreme Court yesterday.

Richardson was not asked to plead and Mr Justice Irving Steyn postponed the case until Thursday when defence counsel would be available.

In addition to the murder charge, Richardson also faces a count of attempted murder, four counts of kidnapping and five counts of assault with intent to commit grievous bodily harm.

According to the indictment, in December 1988 Richardson and a group of other people arrived at the home of the Rev. Paul Verryn, removed four young men and took them to Mrs Winnie Mandela's home at 585 Diepkloof Extension.

The young men were assaulted. Stompie's body was found on January 6 last year.

Claims against Winnie - ban on publication

STAAL 13/2/90 (252) (1)

By Karen Stander

The publication of "serious allegations of criminal conduct" on the part of Mrs Winnie Mandela and her daughter, Zini, has been prohibited by the Goldstone Commission of Inquiry.

The commission was appointed to inquire into the death in police detention of Mr Clayton Sizwe Sithole, who was found hanged in a shower room in John Vorster Square police station on January 30.

Mr Sithole was the father of Miss Mandela's child and had a close relationship with her at the time of his arrest and death, the commission heard.

During proceedings yesterday, Mr Justice R J Goldstone, chairman and sole member of the commission, referred to "serious allegations of criminal conduct" on the part of Mrs Mandela and Miss Mandela allegedly made by Mr Sithole and contained in notes

taken by a police officer who interrogated Mr Sithole on the day of his death.

The judge said the parties had agreed that these untested allegations would not be made public and he made this an order of the commission.

FURTHER EVIDENCE

Immediately afterwards, the officer who had made the notes, Sergeant Jan Augustine, was recalled to give further evidence.

He said he had not discussed the allegations made by Mr Sithole against the Mandelas with anyone "because I did not think it necessary".

He agreed that it was important information, but said Mr Sithole was not the first person to allege, under interrogation, the "same sort of thing".

He had not noticed any signs of depression or anxiety in Mr Sithole after he made the allegations.

cil concluded its consideration of the report on 17 November 1989 and its comments have recently been received and I have requested the National Energy Council to evaluate all comments during its meeting of 13 February 1990 and to make recommendations to me as soon as possible for consideration and submission to the Cabinet

(2) No The report contains classified information in terms of the Petroleum Products Act, 1977 (Act 120 of 1977) which makes general distribution impossible After the report has been considered by Cabinet, the decisions will be implemented and naturally announced A full summary of the report which will not contain classified information will also be released

Hansard 13/2/90

Presidential Guard in the Comoros: financing

*10 Mr C W EGLIN asked the Minister of Foreign Affairs

Whether any funds of the South African Government were used to finance the so-called Presidential Guard in the Comoros, if so, in respect of such funds, (a) over what period of time were they used, (b) what did they amount to in total, (c) to whom were they paid, (d) what conditions were attached to the payment thereof and (e) what control did the South African Government have over their disbursement?

B11E

B11E

The MINISTER OF FOREIGN AFFAIRS

All funds that were placed at the disposal of the Comoros by the Department of Foreign Affairs, were at the request of the late President Abdullah and as far as the Department of Foreign Affairs is concerned, account was given of such funds If the Honourable Member should require more information I am prepared to provide this to him At this stage, however, I do not consider it in the interest of relations between South Africa and the Comoros to reply to this question more fully in public

Black townships: public swimming pools

*11 Mr K M ANDREW asked the Minister of Planning and Provincial Affairs

Hansard 13/2/90

HOUSE OF ASSEMBLY

(1) Whether there are any public swimming pools in Black townships in the Cape Peninsula, if not, why not, if so, (a) how many and (b) in which townships,

(2) whether these swimming pools were open throughout the summer months of the past three years, if so, what total number of persons used these swimming pools, if not, (a) why not, (b) when were they closed and (c) what is being done to ensure that these swimming pools remain open?

B12E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

(1) (a) Yes, 3

(b) Langa 1

Guguletu 2

(2) (a) and (b) Yes, the three swimming pools were open throughout the seven summer months, except the Langa swimming pool which was closed during February 1989, and one of the pools in Guguletu which was closed for two weeks during December 1989 for reparations

The total number of persons who used these swimming pools in the past three years is 806 000

(c) No problems are experienced in keeping the swimming pools open

Black schoolchildren: expenditure

*12 Mr K M ANDREW asked the Minister of Education

What was the expenditure per capita on Black schoolchildren at State schools in the 1988-89 financial year (a) including and (b) excluding expenditure of a capital nature?

Hansard 13/2/90

B13E

The MINISTER OF EDUCATION

(a) R764,73

(b) R655,96

McNally Committee: recommendations

*13. Dr D J WORRALL asked the Minister of Justice

Hansard 13/2/90

252

Whether the McNally Committee recommended the appointment of a judicial commission to investigate allegations regarding the activities of so-called death squads in South Africa, if so, with what result?

Hansard 13/2/90

B16E

The MINISTER OF JUSTICE

252

No The Honourable Member is, however, aware that the State President has appointed a Commission of Inquiry on 2 February 1990 to investigate and report on, *inter alia*, the alleged incidence of murders and other unlawful acts of violence committed in the Republic of South Africa (including the self-governing territories) in order to achieve, effect or promote constitutional or political aims in the Republic of South Africa The full terms of reference was published in the *Government Gazette* (No 12286) of 2 February 1990 The Honourable Member is also referred to my speech during the Joint Meeting on Wednesday 7 February 1990

McNally Committee: report

*14 Dr D J WORRALL asked the Minister of Justice:

Whether the report and recommendations of the McNally Committee will be made public, if so, (a) when and (b) by whom, if not, why not?

B17E

The MINISTER OF JUSTICE

No, not at this stage The findings of the report may form part of evidence on which a court of law will have to make a judicial decision The Attorneys-General concerned have informed me that it would therefore not be in the interest of justice to subject the report to public scrutiny I share this view and any responsible person who wants the administration of justice to follow its course, will endorse this view

McNally Committee: SAP contact with publication

*15 Mr S S VAN DER MERWE asked the Minister of Law and Order

Whether a lieutenant-general in the South African Police, in his capacity as a member of the McNally Committee, made any contact with editorial staff members of a certain publication, the name of which has been furnished to the Police for the purpose of the Minister's reply, if so, (a) with whom, (b) when, (c) for what purpose, (d) with what result and (e) what is the name of this publication, if not, why not?

Hansard 13/2/90

B18E

The MINISTER OF LAW AND ORDER

No

(a) to (e) Fall away

The committee was instructed to investigate the allegations of a condemned prisoner and not the allegations which later appeared in the publication concerned

Military service: cuts

*16 Mr D J DALLING asked the Minister of Defence

How will the cuts in military service announced by him affect (a) conscientious objectors, (b) religious objectors and (c) persons placed in alternative service who are (i) currently serving and (ii) due to begin their service in February 1990?

Hansard 13/2/90

B19E

The MINISTER OF DEFENCE

(a) (i) and (ii)

The sentence for all persons refusing to render military service, remains unchanged The Minister of Justice has, however, acceded to a request to amend the Prison Service's release policy for these persons in order that they can, as other prisoners, be considered for remission of their sentence on grounds of good conduct

(b) (i) and (ii)

Religious objectors who, on 1 February 1990, have already completed half the total number of days community service which they were obliged to render, were exempted from the remaining period Religious objectors who, after 1 February 1990, complete 50% of their service, will be exempted with effect from the date on which the half-way mark has been reached The period of community service is continuously considered in relation to the period of national service

Stompie: coach in court

BR 10/13/90

SUSAN RUSSELL

252

FORMER Mandela United soccer club coach Jerry Vusi Richardson, who is on trial for the murder of the teenage activist "Stompie" Seipei, appeared briefly in the Rand Supreme Court yesterday.

Counsel for the State informed Mr Justice Irving Steyn that Richardson's legal representative was not available and the judge postponed the case until Thursday.

Richardson, who is in custody, was not asked to plead. The State alleges he murdered Stompie after assaulting him at Winnie Mandela's Soweto home in December 1988.

Richardson's other charges include four counts of abduction and five counts of assault.



COLD WATER
DIEDENEDC

WIS
RA
CO

Goldstone Commission ends its public hearings

Wilson Zwane (252)

THE Goldstone Commission of Inquiry into the death of Clayton Sizwe Sithole ended its public hearings yesterday.

Sithole was found hanged in a shower at John Vorster Square police station on January 30.

Mr Justice R J Goldstone, the chairman and sole member of the commission, said the findings would be made public as soon as possible.

The commission was appointed by President F W de Klerk to explore the cause or the possible cause of death of Sithole, who is understood to have been Zinzi Mandela's boyfriend.

In their closing arguments advocate Chris Loxton and Law and Order Ministry counsel Etienne du Toit concurred that Sithole had died by hanging himself.

But Loxton said all possible steps had not been taken to prevent Sithole from committing suicide. He drew attention to the absence of evidence to show how shoelaces and a belt — items with which Sithole had hanged himself — had been returned to Sithole after having been removed.

In his closing argument Du Toit said, although he conceded that the constables guarding Sithole were inexperienced, it was probable that even experienced policemen could not have prevented Sithole from hanging himself.

He also suggested that, even if Sithole did not have shoelaces and a belt, he could have used other items to commit suicide.

Accused claims assault

Strefan
14/2/90

252

A MAN accused of the murder of a Mandela United Football club member told a Rand Supreme Court yesterday he screamed when he was assaulted by a policeman who forced him to make a statement.

Mr Isaac Mazibuko (24) said this during cross-examination by the prosecutor, Mr ZJ Van Zyl, in a trial-within-a-trial. Mazibuko is appearing with six others, among them Mr Dudu Chili, a member of the Federation of Transvaal Women, and a youth.

The state alleges the accused murdered Mr

By MANDLA
NDLAZI

Maxwell Sanele Madondo at or near Orlando West on February 13 last year. They have all pleaded not guilty before Mr Justice RA Solomon and two assessors.

Kicked

Mazibuko said he was punched, kicked and slapped by a Sergeant van Zyl who forced him to make a statement before a magistrate. He said he did not tell the magistrate that he had been assaulted because Van Zyl had warned him not to.

(Proceeding)

Suicide arose from 'trauma'

Inquiry into Sithole's death to report

OWN CORRESPONDENT

THE trauma of having made serious allegations against Mrs Winnie Mandela and her daughter Zinzi probably contributed to the suicide of Mr Clayton Sizwe Sithole, the Goldstone Commission of Inquiry heard.

The commission, the first into a death in detention, closed proceedings yesterday and Mr Justice RJ Goldstone, chairman and sole member, said he would report to the State President as soon as possible.

The commission was appointed to inquire into the death of Sithole on January 30. He was found hanged

by shoelaces and a belt in a shower room at John Vorster Square police station. Sithole was the father of Miss Mandela's child and had a close relationship with her at the time of his death.

In his summation Mr Chris Loxton, counsel for the family, said it was common cause that death was by hanging and there was no evidence to suggest that Sithole had not taken his own life. Mr Etienne du Toit, for the Minister of Law and Order and the SA Police, said Sithole's suicide was probably a combination of two factors. His relationship

me so that I can die"

There was no evidence to suggest that anything happened on the 27th, 28th or 29th to change his state of mind.

On the 30th he was fetched from John Vorster Square about 9am and was taken to the Protea police station in Soweto for interrogation. He was booked back in at John Vorster Square at 2.46pm and locked in his cell where he remained until 4pm when he was locked inside the shower room. His body was found an hour later.

It was clear that something must have happened on the 30th, Du Toit said.

In the car returning from interrogation, Sithole had expressed anger "and I would suggest sorrow" saying that the "people of Orlando West" had given false information about him to the police.

When he was locked into his cell Sithole was "still laughing and joking" with the police officers. This was strange, but probably due to false bravado"

Evidence was that when he was taken to the shower he was wearing his belt but no shoelaces, which must have been hidden on his person or in his toilet bag, Du Toit said

with the people he had 'implicated' was important and this must have been traumatic

In addition, it was apparent he was under the impression that he had been "betrayed" by his own people, whom he believed had

given false information about him to the police. Sithole believed that this information would result in him being detained for a long time.

Du Toit said it was probably a combination of these factors which led to the decision to take his own life. It was clear from the

evidence that Sithole had been in good spirits at least until the morning of the day he died.

On the 28th, he had been self-assertive and "even arrogant", telling Major Paul Smuts: "I am proud of what I did. If I get out I'll do the same again. The best thing is to hang

State withdraws Rohan statement

THE State yesterday withdrew its application for a statement made by Durban journalist Muhammad-Rafiq Rohan to be admissible as evidence against him.

Rohan is charged with four counts of attempted murder arising out of explosions in Durban, as well as 18 other charges. He has pleaded not guilty to all.

The Durban Supreme Court started a trial-within-a-trial when the application was made.

Defence counsel Mr Kessie Naidu opposed the application, saying there was doubt that the statement had been voluntarily made.

*Sowetan
14/1/90*

Car crash

252

He said Mr JH Booysen, the Durban magistrate who took the statement from Rohan, should have questioned him more closely, as he was recovering in hospital from an operation to a leg broken during a car crash at the time.

Lieutenant-Colonel HJ Fourie of the Pietermaritzburg CID said that in April last year he was asked to take Rohan on a trip so that he could point certain things out.

Rohan instructed him to drive to his home in Spearman Road, Albert Park and to the scenes of four explosions at Bulwer Park, Ridge Road police workshops, CR Swart Square police single quarters and the Natal Command headquarters of the Defence Force.

The case continues today.

Bus drivers on trial

Sowetan
14/2/90 By RUSSEL MOLEFE

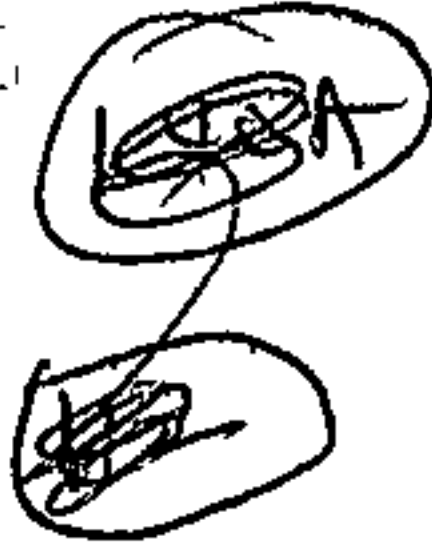
OVER 400 Lebowa bus drivers were turned away from the Pietersburg regional court by police when the trial of two members of the Transport and Allied Workers Union resumed yesterday.

Chaos nearly erupted when police blocked all entrances to the court buildings where Mr Abraham Malatjie (40) of Ga-Mamabolo and Mr Daniel Sekele (39) of Doornfontein are facing charges of instigating and participating in an unlawful strike.

The accused are appearing before Mr AGH Boucher, whom they had earlier asked to step down, alleging that he was unfair. They pleaded not guilty to all charges.

The charges arise from work stoppages at all Lebowa Transport depots in the northern Transvaal between June and July, 1987.

Judgment will be passed on March 21.



SMX 15/2/90 (2500) (24)

Alleged robber is a Kliptown policeman

By Craig Kotze and Louise Burgers

A Soweto policeman who allegedly tried to rob a pedestrian of R40 was shot and wounded by robbery reaction unit detectives in central Johannesburg yesterday.

Witwatersrand police liaison officer, Captain Eugene Opperman, confirmed the wounded robber was a policeman from Kliptown.

The man was shot in the shoulder as he tried to race away in a getaway car in Fox Street.

Constables Daniel Nokeri and Mashella Ledwaba chased three knife-wielding robbers from the corner of Pritchard and Troye streets where they had held up a pedestrian, Mr Frank Seako.

Mr Seako said he had just deposited R900 in a bank in Pritchard Street shortly before 10 30 am when he was confronted by three men.

"I had R40 in change with me when I was surrounded by the tsotsis. Two of them held knives to my neck and the other told me not to talk or else he would shoot me."

The constables saw the incident and gave chase. The robbers fled to Fox Street where their getaway car was parked. They were apparently getting into the car when the policemen caught up with them.

The other two suspects escaped.

denied. Sovietan Correspondent

hon, demanded better salaries in a march. patiently outside his home

Hit list found in Mandela home

BY MANDLA NDLAZI

A 'hit list' was found in Mrs Winnie Mandela's home by police who searched the place, a Rand Supreme Court judge heard yesterday. This was disclosed by Sergeant JD van Zyl, investigating officer in the murder of Mr Maxwell Sande Madondo, a member of the Mandela United Football Club.

Van Zyl said he was given the list by his colleagues who found it in Mandela's home on February 19 last year. The list, exhibited in court, contained the names of some of the men accused of Madondo's murder, and those of Elot Sishu and Siphiso Sishu. Van Zyl said the other name in the list, Boni, was that of a person who had been killed.

Van Zyl said this when he was cross-examined by Mr Norman Kades, Mrs Dudu Chili (47) a member of the Federation of Transvaal Women, and a 17-year-old youth. Appearing before Mr Justice P.A. Solomson and two assessors, the seven accused have pleaded not guilty to the murder of Madondo on February 13 last year.

The proceedings have been plunged into a trial within-a-trial following a dispute between the state and the defence over the admissibility of a statement allegedly made by one of the accused, Mr Isaac Mazibuko. Earlier, sergeant Van Zyl denied he had forced Mazibuko to make a statement to a magistrate. He also denied he assailed him. Van Zyl said he did not know whether Madondo was a member of the Mandela Football Club. He did not ascertain this in his investigation.

WINNIE MANDELA



Source: 15/2/70

ANC willing to see Strydom set free

Executive seeks reprieve for all political offenders

LUSAKA — The ANC is so committed to the pardon of political offenders and to the abolition of the death sentence that it is prepared to see "Wit Wolf" Barend Strydom go free.

Thus emerged yesterday from lobby discussions with officials attending the three-day meeting of the organisation's national executive committee.

The meeting of the ANC, at which a response to President de Klerk's reform initiative is being formulated, was into its second day yesterday.

Leaders of the ANC remain tight-lipped about the discussions, which are taking place behind closed doors, but there are indications that important announcements will be made at the end of the meeting.

ANC leaders are also not indicating when, or whether, Nelson Mandela will visit Lusaka.

Divisions

They have said they are in touch by telephone with Mr Mandela and other internal leaders.

The ANC leadership is making light of suggestions that there are deep divisions over the approach to be taken to the Government's initiative.

In an interview this week, SA Communist Party leader Mr Joe Slovo adopted a hard-line "no

By Ken Vernon of The Star's Africa News Service and Sapa

concessions" stance, but there are indications that the "negotiations" faction has prevailed, and that some concessions designed to keep the climate of reconciliation alive are likely.

In discussions with officials on Wednesday night it became apparent that the ANC is totally committed to the abolition of the death sentence and that it is unlikely to compromise on the issue of political offenders.

It is generally believed that the run-up to real negotiation and a return of exiles could take up to 18 months.

But it is possible that within the next fortnight large numbers of ANC supporters within SA, many of them in prominent positions, might reveal themselves and start with the internal restructuring of the ANC.

● See Pages 5, 6 and 12.

STATE 16/2/90 (252)

MR. JERRY Vusi Musi Richardson (41) of Soweto, who is accused of murdering child activist Stompie Seipei, was granted bail of R5 000 in the Rand Supreme Court

Richardson's case was postponed to May 2 and bail was granted by consent between the parties

He appeared briefly before Mr Justice L le Grange and was not asked to plead to one count of murder, one of attempted murder, four counts of kidnapping, and five charges of assault

According to the indictment, Richardson and other people arrived at the home of Methodist minister, the Rev Paul Verryn in Orlando on December 29 1988, kidnapped four men, and took them to Mrs Winnie Mandela's

Accused in Stompie case out on bail

252
16/2/90

house at 585 Diepkloof Extension

The four men Stompie (14) Mr Kenneth Kgase (30), Mr Barend Thabiso Mono (20) and Mr Gabriel Pelo Mekgwe (21), were allegedly kept in rooms on the premises where they were assaulted

Body

Richardson took Stompie from a room on the night of January 1 or 2 last year and Stompie was not seen alive again, the indictment alleges

His body was found on January 6 last year in an open veld between New Canada and Noordgesig

Stompie had been stabbed in the necked

It is also alleged Richardson stabbed Mr Lerotodi Andrew Ikaneng with the blade of a pair of

garden-shears on January 3 last year and left him for dead. However, Ikaneng recovered after treatment at Baragwanath hospital

Richardson's bail conditions are that he should report to the Orlando police station twice a week, not leave the magisterial district of Johannesburg without informing the investigating officer and not communicate with State witnesses

Mr C van Vuuren appeared for the State. Mr H Joubert appeared for Richardson instructed by Ms Kathleen Satchwell

Stompie murder: Team coach out on R5 000 bail (257)

W/Mant 16/2-22/2/90

By CASSANDRA MOODLEY

JERRY RICHARDSON, coach of Winnie Mandela's soccer team, was granted R5 000 bail yesterday in the Rand Supreme Court. He is appearing on 11 charges including the murder of teenage activist Stompie Moeketsi Seipei.

The case was postponed to May 2, and Deputy Judge President Mr Justice L le Grange said Richardson would be granted bail on condition he agreed to appear in court on that date.

Certain conditions were imposed. Richardson may not leave the magisterial district of Johannesburg and has to report to Captain Frederick Dempsey at the Orlando East police station every week day between 8am and 6pm. He is also not allowed to contact state witnesses.

Other charges against Richardson include four counts of abduction, five of assault with intent to cause grievous bodily harm, and one charge of attempted murder.

The charge of murder relates to the killing of Seipei in January last year. According to the indictment in December 1988 the 14-year-old Seipei, along with three other people, was allegedly forced by Richardson and others to go with them to the home of Winnie Mandela in Dipekloof, Soweto.

At the time the four were residing at the home of a Methodist church minister in Orlando West. The four were allegedly assaulted in an outside room on the property.

The state alleges that on the evening of January 1 or 2 Richardson removed Seipei from the outside room at the Methodist minister's home. Seipei was not seen alive again.

His body was found on January 6 1989 in an open field near Soweto. The cause of death was "penetrating incised wounds of neck".

Advocate L van Vuuren appeared for the state and H Joubert for Richardson.

●See also PAGE 12

Death Row prisoners embark on food strike

Star 16/2/90 (252)

SHEHNAAZ BULBULIA

ABOUT 300 death row prisoners, 80 of whom are political, are said to have embarked on a hunger strike at Pretoria Central Prison in protest against "poor prison conditions".

This was claimed on Thursday by a spokesman for the Detainees Aid Centre (Dac) and a mother of one of the prisoners, who said the prisoners embarked on the hunger strike on Sunday and vowed to continue with it until their demands for better conditions were met.

In a separate incident, 20 political prisoners awaiting trial at the Johannesburg Prison entered the 13th day of a hunger strike today. The hunger strike was called in support of two fellow-activists who were placed with common-law prisoners, a spokesman for the DAC said.

The Prisons Department has confirmed the two hunger strikes but disputes the number of prisoners involved.

Demands

According to the Dac spokesman, the 298 prisoners held in Pretoria have listed their demands to prison authorities. These include the right

- To sufficient clothing, to study and have greater access to literature
- To have access to their children, and specifically that the age restriction on children who may visit them be dropped. Only children over the age of 17 are currently allowed visits.

Prisoners are also demanding that family visits be allowed without prior application.

Mrs Thandeni Joyce Masina, the mother of death row prisoner Mr Jabu Masina, said her son had informed her during a visit on Wednesday of the hunger strike.

She said "Jabu told me all the Death Row prisoners had been on a hunger strike since Sunday because they were very upset at the prison authorities, who refused to allow them to study.

"Some of the prisoners, including Jabu, were upset because they were not allowed to see their children."

Mrs Masina said her son had last seen his daughter, Nobuhlalo (6), and son, Nethu (3), before he was sentenced 10 months ago.

"I have never seen Jabu so upset. He said he longed to see the children. The prison authorities say they only allow children over the age of 17 to visit prisoners," she said.

Prisoners had vowed to call off their protest once their demands were met, Mrs Masina said.

"I know what they doing is right but I am afraid that they will all get sick

'300 fasting in protest against bad conditions'

How can I eat when my son is hungry?" she asked.

In a statement yesterday, the South African Prisons Service said the claim that 298 prisoners were on a hunger strike at Pretoria Central Prison was untrue.

A total of 66 prisoners at the prison were presently not taking their meals.

In cases where prisoners refused to eat, the service said, they were warned of the adverse effects and treated strictly in accordance with the internationally accepted guidelines relating to the handling of such prisoners.

The service said all requests or complaints brought to the attention of the prison authorities through the proper channels received due and prompt attention and were dealt with in a responsible manner within the ambit of prevailing policy.

"It is therefore unnecessary for prisoners to resort to undisciplined behaviour in order to get their requests attended to," it said.

It added that all prisoners in South African prisons received suitable and sufficient clothing. Most prisoners were allowed to study and have access to the prison library, and were allowed to buy newspapers and magazines.

Contact

The service said visits to prisoners by family and friends were regarded as an important factor which contributed to the prisoner's general wellbeing. "The Prison Service therefore endeavours to promote contact between prisoners and their relatives."

It added "The new arrangements at Pretoria Maximum Prison have been instituted to organise visits more effectively. This new procedure was intended to facilitate and improve arrangements for visits. Regarding visits to prisoners by their children, it can be stated that this issue has been under consideration for some time and has been recently approved."

The service confirmed that 19 people awaiting trial on ordinary criminal offences in Johannesburg were not taking meals served to them in prison. "They do, however, have foodstuffs in their possession."

Death sentence for killer

By Cathy Stagg ^{STAG} 16/2/90

A Rand Supreme Court judge yesterday imposed the death sentence on a man convicted of murder without extenuating circumstances and said he would have done so even if the death sentence had not been mandatory.

Mr Justice F Sutej, sitting with two assessors, presided over the trial of Norman Benjamin Molefe (27).

Molefe was convicted of murdering Mrs Hendriette Potgieter in her home in Southcrest, Alberton, on March 9 last year.

The judge rejected the argument advanced by Molefe's defence counsel — that a moratorium had been called on all death sentences after the speech by the State President, Mr F W de Klerk, on February 2.

The judge said the onus to prove extenuating circumstances rested on the accused, and Molefe, who did not return to the witness box, had not done so.

Molefe also robbed Mrs Potgieter of a video recorder, TV set, jewellery, clothing and a BMW car.

He was sentenced to 18 years' jail on the count of robbery with aggravating circumstances.

The State had urged the judge to use his discretion in imposing the death sentence on this count as well.

Mr Justice Sutej referred to Molefe's previous convictions, including three for crimes of violence and five for crimes of dishonesty.

He said that Molefe had had a "bad career of crime".

Cop in court: black man died when he 'cleaned up town'

By DAN DHLAMINI

EIGHT whites, including a traffic cop, will appear before a Klerksdorp magistrate's court tomorrow following the death of a black man.

Adriaan Nichol Steyn, 29, a Klerksdorp traffic officer, Jacob Benjamin van Heerden, 27, Reith Craig Siebert, 18, Wilhem Harmsen, 37, Dion Craftford, 20, Adriaan Roets, 21, Jacob du Plooy, 22 and Nico Wessells, 20, all of Klerksdorp, are alleged to have gone on a mission to "clean up the town" hours after State President FW de Klerk's historic speech unbanning the ANC, PAC and the SACP.

The men, travelling in four cars and a bakkie, are alleged to have rounded up at least 11 blacks in town that night, driving them to the Ysterspruit road where they allegedly assaulted them.

The body of Jonas Makhethla, 32, was discovered on the Ysterspruit road on the morning of February 3.

No charges were read to them and they were granted R500 bail each.

Ysterspruit is an isolated spot outside Klerksdorp where Jouberton beautician Ginny Goitsione was roasted alive in the boot of her boyfriend's car by four

white men in February 1985.

Meanwhile, a soldier, who allegedly shot dead a woman and two men in Klerksdorp, has requested to be admitted to a mental institution.

Pieter John van der Merwe, 19, of Leeudoringstad who was based at Potchefstroom military base asked Klerksdorp Magistrate Dirk Redelinghuis to refer him for mental observation because he had a problem.

Asked what his problem was, Van der Merwe said: "When I did it, I had no feelings I did not know what I was doing."

He was referring to the alleged brutal murder of Jouberton taxi driver Petrus Seengo, Jacob Morake and Pauline Seakhela whose bodies were found with bullet wounds in their heads on the Ventersdorp-Klerksdorp road on January 31.

Morake's and Seakhela's bodies were naked when found by police.

Scores of domestic workers interviewed after his first court appearance said that he was pretending to be mad and could help solve the mystery surrounding the deaths of two domestics six months ago, whose bodies were found with head injuries in Klerksdorp.

Death Row prisoners freed

Bail for Mandela Football Club coach

By MARTIN NTSOELNGOE

252

FORMER coach of the disbanded Mandela Football Club Jerry Vusi Richardson was this week granted bail with a warning not to communicate with State witnesses.

After a brief appearance at the Rand Supreme Court on a charge of murdering activist James "Stompie" Seipei, Richardson was released on R5 000 bail. He was not asked to plead before Judge Louis le Grange.

Richardson is charged with murder, attempted murder, four counts of kidnapping and five of assault. His case was postponed to May 2

DESPITE the positive events of the last fortnight, we still live in a divided and troubled society: divided by differences and troubled by our failure to reconcile them.

It is therefore of the utmost importance that we seize the initiative given by the Government's acceptance of a Bill of Rights. A Bill properly enacted and justiciable by an independent court could be a bridge over the troubled waters raging in our land — a bridge over the conflicting ambitions for absolute power.

Simply put, a Bill of Rights will ensure the individual is free, because the State is restrained

● It will limit power and the abuse of it.

● It will be the constitutional holy grail which will shape the very basis of relations between the State and its citizens.

● It will be a neutral arbiter in whose favour each side, the majority and the minority, could safely relinquish the claim to absolute power since the Bill would embody a set of even-handed rights, impartial as to whether the government of the day was the ANC or the AWB, or any other party.

● It would restore to their rightful place the majestic empire of Roman Dutch Law and its English Common Law adjunct which have been eroded by unbridled parliamentary sovereignty.

As Mr Justice Diddcott noted "We have mutilated and crippled the body of Roman Dutch Law... but our politicians appear not to have learnt the lesson of history that, just as liberty is indivisible so is the protection of the law"

"Weaken it today when it protects others against you and it will be weak tomorrow when you may require and want it to protect you

Bill of Rights vital to peaceful future

STimes 16/2/70



Tony Leon

MP for Houghton, says a Bill of Rights could be the bridge over South Africa's troubled waters

against them"

A Bill of Rights requires a real commitment by Parliament and politicians that the people have certain rights against both them and Parliament. It would guarantee that for as long as constitutional government survived so would the rule of law.

A Bill of Rights in South Africa would establish a 'rechtsstaat' which would restrain not just unlawfulness which any policeman or prosecutor can combat, but lawlessness too, ie. the exercise of state power unconstrained by any limits or by any control by an independent system of judicial power. It has been said that lawlessness paves the road to tyranny

Repugnant

Legitimacy is an essential precondition for a Bill of Rights. The Oliver report of the Law Commission recognises this aspect when it says, in sum, that things being what they are, the South African constitution cannot currently accommodate a Bill of Rights properly so-called. Its introduction would require the wholesale purg-

ing of racial and security statutes which would be repugnant to it.

Given that much of the aforementioned legislation will be the subject of the sensitive negotiation phase we are soon to enter, it is unlikely that a Bill of Rights can be speedily enacted

However, what Government and all politicians inside and outside parliament can create is a culture of rights in a climate of liberty

Perhaps the most obvious reason for discarded Bills of Rights littering the pathways of post-colonial Africa was the absence of this culture.

But Parliament stands historically poised to nurture a Rights Culture. Twenty years ago the Minister of Foreign Affairs, in his maiden speech on August 20 1970, said: "I would like to make the plea that South Africa should, to a greater extent, identify itself with the (Universal) Declaration of Human Rights today."

We squandered a golden opportunity when we declined to heed the Minister's call to affirmatively acknowledge the declaration, which would have created an impetus for the reception in our coun-

try of an indigenous Bill of Rights. Government can today go much further. South Africa can, by a simple act of the executive, accede to very important international conventions which it declined to sign at the time of their enactment. This would send a powerful signal abroad and foster the right climate at home

We should work towards the day when we can be a party to the International Convention on the Elimination of All Forms of Racial Discrimination (1965)

This convention is based on the premise that there is no justification for racial discrimination in theory or in practice. Article 5 obliges all parties to the convention to prohibit and eliminate racial discrimination and to guarantee equality before the law in respect of some 25 basic rights.

Equality

By my calculation, all South Africans currently enjoy 18 of the rights. There are three critical rights which still have to be accorded equal justice before the law, political rights based on universal and equal suffrage, the right of freedom of residence anywhere in the country

When these rights are accorded we will have established the brave new republic of which Vaclav Havel, President of a free Czechoslovakia, spoke only last month.

"I dream of a Republic, independent, free and democratic; of a Republic economically prosperous and yet socially just. In short, of a humane Republic which serves the individual and which therefore holds the hope that the individual will serve it in turn"

● *Extracted from Mr Leon's maiden speech in Parliament, this week.*

Sowetan 19/2/90

Murder Judge (25) frees 3

A PROMINENT member of the Federation of Transvaal Women, Mrs Dudu Chili (47), her son, Mpika (22) and a youth, Moses Nhlanhla Blanket (18), have been acquitted in the Rand Supreme Court of the murder of a Mandela United Football Club member.

Mr Justice R A Solomon sitting with two assessors, found there was no evidence against them to prove that they were involved or took part in the murder of Mr Maxwell Sanele Mandondo on February 13 last year near Orlando West.

Mr Madondo was stoned and hacked to death with an assortment of weapons. The acquittal came shortly after Mr Norman Kades, counsel for the defence had made an application for their discharge on grounds that there was no evidence against them.

There were sighs of relief from spectators in the court's public gallery on Friday when the three were acquitted. Some spectators wore T-shirts with the colours of the African National Congress.

"I have suffered and worried a lot since my arrest about a year ago," said Mrs Chili, adding "But how can I rejoice when one of my sons is still behind bars facing the same charge of murder that brought me nightmares?"

The other accused, Mr Leritodi, Andrew Ikaeneng (22), Mr Isaac Mazibuko (23), Mr Sandile Blanket (22) and Mr Sibusiso Chili (25) were remanded. The case resumes today.

Mrs Chili and her two sons were arrested on February 22 last year. Later that day their house was bombed and her 13-year-old niece, Pinky Msomi died. She had been shot in the head with an AK47 rifle.

Group Areas (252) cases delayed

By Celeste Louw *STAR 20/2/49*

Two separate cases of contravention of the Group Areas Act, were yesterday postponed to February 26 by a Johannesburg magistrate.

Mr Petrus Knop, Mr Mohamed Mongera and Fortruf (Pty) Ltd, are charged with allowing "non-whites" to live in Mayfair West

Mr Clive Keppler, Mr Ismail Mayet and the company 115 Properties are charged with a similar offence.

None of the accused were asked to plead.

The court heard that more alleged offenders will be brought to court this week. All cases will be postponed to February 26

Asvat's killer's appeal fails



ASVAT

ZAKHELE Nhllekisana Cyril Mbatsha of Soweto, who was convicted of the murder of Dr Abu-Baker Asvat in Rockville Soweto, on January 27, 1989, has been refused leave by the Appeal Court in Bloemfontein to appeal against the finding that there was no extenuation for the murder. *Sowetan 2/2/90*

Mbatsha was convicted with Thulam Dlamini by Mr Acting Justice Solomon in the Witwatersrand Local Supreme Court on November 2, 1989, for the murder and two counts of robbery. *(252)*

Mbatsha was also found guilty of the unlicensed possession of a firearm and ammunition.

Both men were sentenced to death for the murder and effectively imprisoned for 12 years on the other charges. - Sapa

Give details of R800 000 claim, Mrs Pillay told ^{Star 21/2/90} (252)

Rand Supreme Court yesterday, Mr P M Carter, a director of the firm of attorneys representing Van der Merwe, said he had served a notice for further particulars on Mrs Pillay's attorneys in September 1988 but no reply had been received. The trial date in the civil action had been set down for March 9 1990.

Documents in the file before Mr Justice G Leveson indicate that the Minister and the two men would defend the action. The documents were also filed before the outcome of the criminal trial

The Minister pleaded that if it was found that Mr Pillay was shot

by Van der Merwe under La Grange's orders, then such instructions were not authorised in terms of any law or statute.

La Grange denied that the shooting had taken place in his presence or on his instructions.

This was his defence at the criminal trial, and was rejected by Mr Justice Irving Steyn and two assessors.

Van der Merwe's plea contains the admission that Mr Pillay was killed as a result of Van der Merwe's shot, acting on the instruction of his superior officer, and that the shooting was unlawful.

All three defendants challenge

Mrs Pillay's claim to be compensated for loss of income on the grounds that her husband's income was derived from unlawful activities.

Mrs Pillay gave her husband's income as R300 000 a year before tax.

The Minister pleaded that in the event that Mr Pillay had any income at the time of his death (which was denied), then such income was "derived from the dealing in a prohibited dependence-producing drug and/or dealing in stolen motor vehicles and other stolen property while knowing they were stolen".

During the criminal trial, the court heard that Mr Pillay ran a taxi service. There were also allegations he was a Mandrax dealer.

Part of Van der Merwe's defence was that he had been recruited as part of a secret organisation and that he believed the men he had shot at, including Mr Pillay, were ANC members and drug dealers.



Squatter tells of kangaroo court beating

Staff Reporter

Cape Times 2/12/90
252

A PHILIPPI squatter has told police he was strapped to a pole and beaten for three hours by eight sjambok-wielding members of a kangaroo court.

Mr Mveliso Sitokisi, 22, who lives in a section of Brown's Farm known as Snake Park, said he was accused of having stolen R480 and a tape recorder in the camp on Sunday.

"A group of people came to my house and said I must appear before the court. They took me and I was tied to a pole with a coat hanger that was unwound, and then about 20 to 30 men interrogated me," he said.

"Eight of them took turns to beat and question me, then they would talk with the others, then return to beat me," Mr Sitokisi said from the home of relatives in Guguletu.

Mr Sitokisi said the kangaroo courts were well known in the squatter camp and he knew exactly who his interrogators had been, but nothing could be done to stop them.

He showed the Cape Times deep cuts on the back of his legs and shoulders, caused by the beating.

He said he was returned to his shack, which his assailants searched, and was left there when no evidence of the stolen goods could be found.

Family members then took him to Philippi police station where he laid a complaint of assault.

Police liaison officer Major Jan Calitz said police were investigating a case of grievous bodily harm. There were no arrests as yet, he said.

HORROR 'TRIAL'

Philippi squatter Mr Mveliso Sitokisi shows the wounds caused by three hours of continual beating by eight members of a "kangaroo court" in Brown's Farm. Mr Sitokisi has laid a complaint of assault.

Picture OBED ZILWA

Slang van Zyl's wife to press for his release

Sto 21/290 Staff Reporter (252) (2/2)

Mrs Brenda van Zyl, wife of ex-policeman Mr Abraham "Slang" van Zyl, held in connection with the assassinations of Mr Anton Lubowski and Dr David Webster, is to continue trying to secure his release

She has instructed her lawyer, Mr Pieter du Plessis, to bring an urgent application for leave to appeal against a Rand Supreme Court judgment on Friday rejecting an application by her for the immediate release of her husband

Mr Justice H C J Flemming rejected her application against the Minister of Law and Order and the Commissioner of Police for the immediate release of her husband, and declaring the detention of her husband by the Brixton Murder and Robbery Squad unlawful.

Mr Justice Flemming said in his judgment that the urgency of the matter did not give him enough time to give detailed reasons for the turning down of the application. Full reasons would be given later.

3 claim to have heard screams 'as youth was tortured to death'

Star 22/1/90 (252) (S.B.)

By Shehnaaz Bulbulia

Three people have claimed in statements to lawyers that they heard a youth's screams as he was allegedly tortured to death by policemen. The three say they were also tortured.

Police have admitted that the youth, Nixon Phiri (16), died during "interrogation" at a police station near Carletonville.

The three witnesses have made statements to the law firm, Vally, Waters and Mthembu.

They detail allegations about the "torture" of Mr Phiri and themselves.

The names of the three have not been released. Lawyers say they fear for their lives.

Captain R Bloomberg of police headquarters in Pretoria said yesterday "The death of Nixon Mbuyiselo Phiri is being investigated by the SA Police.

"We are still awaiting the final post-mortem report in order to ascertain the cause of death. We have nothing further to add to our news media statement issued on January 17 regarding the youth's death."

Captain Bloomberg, quoting the January 17 statement, said a youth died during interrogation at Welverdiend Police Station, near Carletonville.

Circumstances surrounding his death were being investigated.

A post-mortem report on Nixon Phiri's death has been obtained by The Star.

It finds he died on January 16, with the cause of death being cerebral haemorrhage associated with external injuries, which contributed to shock.

Lawyers acting for the Phiri family

told The Star that one of the witnesses said in a statement that a group, including Nixon Phiri, was approached by three plainclothes policemen — one white and three black — after visiting a friend in Khutsong.

Nixon Phiri lived in the nearby Sonderwater squatter camp.

According to the statement, the police rounded the group up and tried without success to force them into the boot of a red Ford Sierra.

At the same time, a police van approached the group. The group was shoved into the van and then brutally assaulted by three special constables, it is alleged.

"We were forced into the van and I noticed that there were two other men that had swollen faces. Three special constables got into the van and started assaulting us with the butts of their shotguns.

DIFFERENT ROOMS

"They kicked us, punched us, slapped and swore at us. They forced us to sing freedom songs. We just cried, we did not sing," it is claimed in the statement.

The group was then allegedly taken to the Welverdiend Police Station, which is a converted house.

They were asked to line up in the kitchen and one by one were taken into different rooms where they were allegedly tortured by police.

The statement continues "I heard screams from the other rooms and a Security Branch white policeman took me into a room. He was joined by three other black policemen.

● To Page 2.

P.T.O.

A-G withdraws murder charge

Sowetan 22/2/90

252

TO ENABLE Death Row prisoner Butana Almond Nofomela to testify before the Harms Commission the Attorney-General has withdrawn the Griffiths Mxenge murder charge against him

Nofomela a former security policeman confessed to the murder of Mxenge at the Umlazi sports grounds in November 1981 when he appeared in the magistrate's court in Maritzburg on

December 14 Nofomela was earlier sentenced to death for the murder of a Brits farmer Attorney-General Mike Imber, SC said yesterday that notwithstanding Nofomela's plea of guilty to the Mxenge murder at this stage, he was withdrawing the charge so that Nofomela could testify before the Harms Commission

Imber said. "It is clear that Nofomela's allegations will be of considerable relevance to the com-

mission's deliberations and continuing the prosecution at this stage could impair the investigations

A criminal trial on a plea of guilty is unlikely to lead to a full investigation of the broader issues involved

"Nofomela's legal advisers have indicated that they are not in a position to proceed with the trial before May or June"

Nofomela appeared in court in December and told the magistrate he had been in a special assas-

NOFOMELA

sination squad under Captain Dirk Coetzee and he and three colleagues had killed Mxenge after being instructed to do so

- Budd
- Chemical
- clothing
- Food liquor
- Furniture
- Iron
- Leather
- Motor

HOUSE OF ASSEMBLY

QUESTIONS

Indicates translated version
For written reply
General Affairs

Old Crossroads, permission to stage protest march

2 Mr J VANECK asked the Minister of Justice

- (1) Whether any individuals or groups of individuals from Old Crossroads approached the Wynberg magistrate during November and December 1989 for permission to stage a protest march in and around Old Crossroads in connection with the activities of the mayor of Old Crossroads, if so,
- (2) whether such permission was granted, if not, why not,
- (3) whether the (a) South African Police at Crossroads and (b) members of the Crossroads Town Committee were requested to submit recommendations in this regard, if so, what were their recommendations, if not, why not?

The MINISTER OF JUSTICE

B24E

- (1) Yes
- (2) Permission was refused because the applicants failed to prove to the magistrate that the Crossroads Town Committee gave permission under regulation 25(1) of the regulations published under Government Notice No R 2606 of 2 December 1983 for the protest march to take place
- (3) (a) Yes The South African Police was not in favour of the protest march, but their recommendation was not taken into account by the magistrate because of the fact that the permission referred to in (2) could not be submitted
- (b) No The applicants were informed by the magistrate that they should apply to the Crossroads Town Committee for the permission referred to in (2)

HOUSE OF ASSEMBLY

above The applicants refused to lodge such application

Nurses resigning from employment

20 Mr M J ELLIS asked the Minister of National Health and Population Development

- Whether any (a) White, (b) Coloured, (c) Indian and (d) Black qualified nurses resigned in 1989 from employment in hospitals falling under the provincial administrations, if so, how many in each case?

Answer 22/2/90

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

- 3 528 Registered nurses resigned from employment of hospitals falling under the provincial administrations during 1989. Records are not kept for different population groups,
- (a) to (d) fall away

Nurses' applications

21 Mr M J ELLIS asked the Minister of National Health and Population Development

- (1) How many (a) applications to train as nurses were (i) received and (ii) accepted from, and (b) vacancies existed at institutions for the training of nurses for, (aa) Whites, (bb) Coloureds, (cc) Indians and (dd) Blacks in 1988,
- (2) How many nurses of each of these race groups completed their training in that year?

B49E

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

- (1) (a) Applications to train as nurses, 1988
- (i) Received
- (aa) 2 635
- (bb) and (cc) 9 113
- (dd) 30 127
- Total 41 875
- (ii) Accepted
- * Total 2 729
- (b) Vacancies, 1988
- * Total 2 511

(2) Completion of training, 1988

(aa)	683
* (bb) and (cc)	280
(dd)	616
Total	1 579

* Records are not kept according to population groups

Corporal punishment: sentences

32 Mr A J LEON asked the Minister of Justice

- (1) How many persons of each race group (a) under the age of 18 years, (b) aged 18 to 21 years and (c) aged 21 years and over were sentenced to corporal punishment over the latest specified period of five years for which information is available,
- (2) how many such sentences were handed down by (a) magistrates' courts and (b) the Supreme Court?

Answer 22/2/90

252 B68E

The MINISTER OF JUSTICE

The information is not readily available in the Department in an effort to be of assistance to the Honourable Member, the following information was obtained from the Central Statistical Services

Race	Corporal punishment coupled with imprisonment	Corporal punishment not coupled with other sentences
Whites	51	1 527
Coloureds	450	13 391
Indians	5	630
Blacks	1 310	23 330
1/7/84-30/6/85		
Whites	164	1 730
Coloureds	648	14 016
Indians	8	656
Blacks	1 553	23 886
1/7/85-30/6/86		
Whites	110	1 566
Coloureds	724	13 875
Indians	5	468
Blacks	1 508	22 389
1/7/86-30/6/87		
Whites	259	1 086

Death sentences

33 Mr D J DALLING asked the Minister of Justice

- (a) How many persons were sentenced to death in 1989 and (b) in respect of the persons so sentenced, (i) how many were refused leave to appeal, (ii) how many sentences were altered or reduced by the Appellate Division, (iii) how many convictions were reversed by the Appellate Division, (iv) how many sentences were commuted by the State President, (v) how many were executed and (vi) how many were defended by *pro Deo* counsel at trial or appeal?

252 Answer 22/2/90

The MINISTER OF JUSTICE

- (a) 170 in South Africa and 4 in South West Africa
- (b) (i) 47
- (ii) 1
- (iii) None
- (iv) None
- (v) 1
- (vi) The information is not readily available. To obtain the information all the court records pertaining to such trials will have to be examined, which is not economically feasible

Group areas legislation: prosecutions in PE

48 Mr E W TRENT asked the Minister of Justice
Whether any persons residing in the Port Elizabeth municipal area were prosecuted under group areas legislation during the latest specified period of five years for which information is available, if so, (a) how many, (b) under what statutory provisions, (c) when, and (d) what was the outcome, in each case?

Answer 22/2/90

B70E

HOUSE OF ASSEMBLY

THE MINISTER OF JUSTICE

The required information is not readily available. In an effort to be of assistance to the Honourable Member it may be mentioned that during the period 1/1/88-31/12/89 no prosecution has been instituted in the area concerned.

Sexual Offences Act offences

57 Mr A J LEON asked the Minister of Justice

How many persons were (a) prosecuted and (b) convicted of (i) offences under section 14 of the Sexual Offences Act, No 23 of 1957, and (ii) incest during the latest specified period of five years for which statistics are available?

252

B145E

THE MINISTER OF JUSTICE

The information is not readily available in the Department. In an effort to be of assistance to the Honourable Member, the following information was obtained from the Central Statistical Services.

Answered 22/2/90

Statistics for prosecutions and convictions under sections 14 and 15 of the Sexual Offences Act, 1957 (Act 23 of 1957), are kept jointly Section 14 and 15 of the Act

Period	Prosecuted	Convicted
1983-1984	400	330

THE MINISTER OF EDUCATION AND CULTURE

Answered 22/2/90

B84E

2 Mr R M BURROWS asked the Minister of Education and Culture

How many (a) White, (b) Coloured, (c) Asian, (d) Black and (e) other students were registered in 1989 at each university falling under the control of his Department?

UNIVERSITY	(a)	(b)	(c)	(d)	(e)
Orange Free State	8 819	186	—	73	—
Natal	8 143	275	2 147	1 593	—
Rhodes	2 922	149	165	443	—
Rand Afrikaans	8 052	377	11	129	—
Witwatersrand	13 962	289	1 422	2 250	—
Port Elizabeth	4 209	385	30	74	—
Potchefstroom	8 361	102	14	240	—
Pretoria	21 654	82	23	116	—
Cape Town	9 960	1 841	425	1 096	—
Stellenbosch	13 269	507	11	40	—
South Africa	56 537	5 319	9 903	41 445	—

The above provisional statistics were obtained from SAPSE table 2 7 and include both undergraduate and postgraduate students

HOUSE OF DELEGATES

INTERPELLATIONS

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

General Affairs

Aids: available statistics

Mr M RAJAB asked the Minister of National Health and Population Development

Whether there was an increase in the incidence of Aids during the latest specified period of 12 months for which statistics are available, if so, what steps does the Government intend taking in this regard?

D21E INT

THE MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT Mr Chairman, 135 Aids cases were diagnosed in 1989, compared to 87 cases during 1988. Up to the end of 1987, Aids occurred predominantly amongst White homosexual men. Since 1988, however, an increase in the number of Black cases has come to our attention, and in 1989 22.7% of cases were Blacks, the main modes of transmission being heterosexual and mother-to-child. Only 12 Coloured and 2 Asian Aids cases have been identified.

Due to the long latent incubation period of the human immuno-deficiency virus, we know that the cases presenting now merely reflect the pattern of exposure approximately ten years ago—in other words, during the late seventies and early eighties.

This means that an increasing number of cases will occur in the next decade, even should no further spread of the virus occur as from now.

Two broad avenues of intervention are possible. The first is that the blood transfusion services are to render blood and blood products as safe as possible—this is being done at a cost of approximately R10 million per year. The second avenue is the education of the population aimed at safer practices.

The two main risk practices are multiple sexual partners, be it homosexual or heterosexual, and the intravenous use of drugs. These practices are

not medical problems but forms of social behaviour which cannot successfully be controlled by legislation but rather by education. Therefore, the responsibility for 90% of the transmission rests with the community and not with a single State department, the State or the private sector alone.

The State is not shying away from its responsibility, but cannot succeed on its own. Therefore the only reasonable chance of success would be if the problem could be addressed by the community itself. Community involvement in the educational programme is a prerequisite to success. The department has launched awareness campaigns and has disseminated knowledge through the media, brochures to the general public and professional groups, such as medical and dental practitioners, as well as the nursing profession. The latter came off the press last week and is in the process of being mailed to all nurses.

However, motivation towards safer practices cannot be achieved only through mass campaigns. A small-group or individual approach is needed. The department has established Aids training and information centres—which are called attics—to facilitate training of individuals from the community to achieve this. Other aspects may also be addressed and the State has established an Aids Advisory Group [Time expired].

Mr M RAJAB Mr Chairman, at the outset, allow me to welcome the hon the Minister to this House. I believe this is the first opportunity she has had to visit us since she was appointed. I am sorry that a matter such as Aids had to be the first item on the agenda, as it were.

I listened very attentively to the hon the Minister and I want to say that the projected position is quite frightening. We know that an independent survey done very recently has found that by next year 18% of all Blacks in South Africa between the ages of 15 and 60 will be infected with the HIV positive Aids virus. It is frightening that this survey has also established that within eight years, half of these people will be dead.

As far as we are concerned, as bad as the problem may be, obviously we who come from Natal are more alarmed than most because the pattern appears to be that Natal and KwaZulu would be the areas where this growth—if I may use that word—will be taking place. Although

Directors in R14-m trial

By Celeste Louw

Four directors of National Acceptance Limited, which was liquidated last year, pleaded not guilty to fraud charges involving R14 million before a Johannesburg Regional Magistrate yesterday.

Mr William Balzdon (42) of Sandton, Mr Alan Wentzel (50) of Bryanston, Mr William Vipond (54) of Boksburg and Mr James Anderson of Bryanston face 365 charges before Mr T la Grange.

The charges against them include reckless trading, 255 alleged contraventions of the Companies Act (involving alleged loans and the provision of sureties), fraud and failing to keep proper accounting records.

According to the charge sheet, the company incurred debts by way of endorsements of promissary notes on behalf of National Acceptance to such an extent that the company's liabilities exceeded its assets. The hearing continues.

(252)

56-22/2/90

Resident wins case against Alex council

By Cathy Stagg

Residents of Alexandra sang and toy-toyed outside the Rand Supreme Court yesterday after a judge overruled a decision by the Alexandra City Council in what amounted to a victory for squatters.

Mr Samuel Mothoa approached the Rand Supreme Court for assistance after he had spent "at least R12 000" improving his rented home only to have it "sold from under his feet" to someone who intended increasing the rent by 700 percent.

Mr Mothoa, who lives at 28, 3rd Avenue, brought an application against the City Council of Alexandra and Mrs Patricia Jass

By consent between the parties, Mr Justice L F Weyers granted an order which states the City Council's decision to sell Erf 62 situated at 28 Third Avenue, is set aside, the deed of sale entered into between the council and Mrs Jass is null and void, Mr Mothoa is entitled to occupy the erf and pay R21,50 a month rent to the council and does not have to pay rent or service charges to Mrs Jass.

According to Mr Mothoa's affidavit, he was born in Alexandra and has lived there all his life. In 1978 he was allocated a room and a garage and granted a resident's permit, which has never been cancelled.

Mrs Jass and her family also rented a home from the council on the same stand.

In 1983 Mr Mothoa was granted permission to improve his home.

In March 1988 he was told the council was going to sell the land in its area to the people living there. He completed an application form and later visited several officials. In December 1988 his wife, Mrs Onica Mothoa, was told to bring the deposit on January 9 but when she returned on that date she was told the property had been sold three days previously. A request to see the documents was refused by council official Mr Leslie Magoro.

In April last year Mrs Jass told Mrs Mothoa the rent would be R180 a month. When Mrs Mothoa pointed out the improvements had been made at their own expense, Mrs Jass said rent would be R150. Mr Mothoa refused to pay it.

Deaths in Natal violence:
kwaZulu Minister in court

sta 22/2/90 (252)
DURBAN — Mr Samuel Jamile (61), deputy Minister of the Interior in the kwaZulu Government and high-ranking member of Inkatha, appeared in the Pinetown Magistrate's Court on Tuesday in connection with four counts of murder and one of attempted murder.

The charges arise from incidents of unrest in the area.

He was not asked to plead and was remanded to the Pinetown police cells to March 6, pending a decision by the Attorney-General on an application for his release on bail.

The appearance of Mr Jamile, who is from Clermont, Pinetown, is linked to the appearance in court on Monday of a 17-year-old youth in connection with the same charges.

The teenager's case was postponed to March 19. There has been no application for bail on his behalf. — Sapa.

Nofomela's Mxenge murder charge withdrawn

Own Correspondent

MARITZBURG — To enable Death Row prisoner Butana Almond Nofomela to testify before the Harms Commission, the Attorney-General of Natal has withdrawn Griffiths Mxenge murder charge against him.

Nofomela, a former security policeman, confessed to the murder of Mr Mxenge at the Umlazi sportsgrounds in November 1981 when he appeared in the Maritzburg Magistrate's Court on December 14. Nofomela was earlier sentenced to death for the murder of a Brits farmer.

Attorney-General Mr Mike Imber, SC, said yesterday that notwithstanding Nofomela's plea of guilty to the Mxenge murder, at this stage he was withdrawing the charge so that Nofomela could testify before the Harms Commission forthwith.

The words "at this stage" imply that the charge can be reinstated.

Mr Imber said. "It is clear that Nofomela's allegations will be of considerable relevance to the commission's deliberations and continuing the prosecution at this stage could impair the investigations

LEG IRONS

"A criminal trial on a plea of guilty is unlikely to lead to a full investigation of the broader issues involved.

"Nofomela's legal advisers have indicated that they are not in a position to proceed with the trial before May or June."

Nofomela appeared in court in Maritzburg in December wearing green prison garb and leg irons. Magistrate Mr G.L.S. Holland allowed pictures to be taken in court.

Nofomela told Mr Holland he had been in a special assassination squad, under Captain Dirk Coetzee and he and three colleagues had killed Mr Mxenge after being ordered to do so.

He said that in late 1981 he had been instructed with three colleagues — Brian Justice Nqulunga, David Tshikalanga and Joseph Mamaselela — to travel to Durban to eliminate Mr Mxenge.

"We forcibly apprehended Mr Mxenge, drove him to Umlazi stadium and assaulted him by kicking and punching him and we stabbed him to kill him."

Nofomela was due to appear in the Maritzburg Magistrate's Court next week.

ACTS OF VIOLENCE

The Harms Judicial Commission is to inquire into and report on alleged murders and other unlawful acts of violence to further any constitutional or political aim in South Africa, in respect of which the judicial process has been completed or which has not been solved, or in cases which are not progressing for lack of evidence.

If it is found that such murders and acts of violence were committed, the commission is to report on who or what bodies committed or caused such murders or violence to be committed, who financed any such person or body, and it must also inquire into and report on any other matter relevant to these.

Star 22/490

~~(252)~~ (252)

Fraud suspect Moringer makes third bid for bail

By Celeste Louw

The managing director of Ciskei Aircraft Industries, Mr Rainer Moringer, made a third bail application before a Johannesburg magistrate yesterday since his arrest on fraud allegations in August last year.

Mr Moringer, an Austrian citizen, was arrested following investigations by the Harms Commission on two fraud charges involving R47 million.

Mr Moringer suffered from extremely high blood pressure which could affect all his organs, Dr Michael Setzer told the court.

INADEQUATE TREATMENT

It was put to the court that Mr Moringer needed to see private specialists as he had received inadequate treatment in jail.

Advocate Mr Mike Hannon for the defence told the court that it was thought that Mr Moringer's Supreme Court trial would start in March. The defence had now been informed that the trial would only start in August. By that time Mr Moringer would have been in custody for a year.

Advocate Mr Dave Gordon for the State asked for the hearing to be postponed. He has to consult a medical expert before cross-examining Dr Setzer.

The magistrate, Mr T Prinsloo, postponed the hearing to February 26.

Staff Reporter

BROWN'S FARM squatter leader Mr Christopher Toise — who performed as the praise-singer at Mr Nelson Mandela's release from prison — yesterday condemned a "kangaroo court" beating which took place in his area.

Mr Mveliso Sitokisi, 22, had been tied up with wire and severely beaten with sjamboks after being "convicted and sentenced" for an alleged theft.

"I called a meeting last night and asked who was responsible — nobody owned up," Mr Toise said.

"I am very sorry about what happened to the boy. We will try to stop people from doing that. I and my executive committee knew nothing about it."

"What was done to that boy was wrong. It is not acceptable to assault people like that."

Leader

CAF 7/10/90
slates *23/2/90*
(252)
beating

Police can deny access, court told

SUSAN RUSSELL

The Commissioner of Police was entitled to refuse to give a section 29 detainee a memo from her lawyers on the grounds that it constituted access to her, the Rand Supreme Court yesterday heard.

This submission was made by counsel for the police, B Berman SC in an application brought against Law and Order Minister, Adriaan Vlok and Commissioner of Police Johan van der Merwe.

The application was brought by Collert Stofile, the husband of Margaret, detained in terms of section 29 of the Internal Security Act in August last year.

Berman argued the court had to have regard to the particular circumstances of the detainee which the Commissioner had in mind when he refused to allow her to have the memo.

Argument continues today.

10 MINUTES

POLITICS

SA sentenced 170 people to death in 1989 — Coetsee

B.10 Dec 23/2/90

(252)

SA. COURTS sentenced 170 people to death and four people were sentenced to death in Namibia last year, Justice Minister Kobie Coetsee said yesterday.

In 47 of these cases leave to appeal was refused, and one sentence was altered by the Appellate Division. The division reversed no convictions.

Replying to a question tabled by David Dalling (DP, Sandton), Coetsee said none of the convicted people had their

Political Staff

sentences commuted by the State President. One was executed.

Asked how many of these people had been defended by pro deo counsel, Coetsee replied "The information is not readily available."

"To obtain the information all the court records pertaining to such trials will have to be examined, which is not economically feasible."

Coetsee said an average of more than 40 000 people were sentenced to whipping over the past five years for which figures were available.

His own department did not have detailed figures readily available, but he provided information obtained by the Central Statistical Service.

Replying to a question by Tony Leon (DP, Houghton), Coetsee said 40 724 people were sentenced to corporal punishment, while 1 816 people received in ad-

dition sentences of imprisonment between July 1983 and June 1984.

In the following four years, the totals ranged from 39 308 to 42 601.

In the last 12 months for which figures were available, July 1987 to June 1988, 40 933 people were sentenced to corporal punishment, 5 529 of them also receiving prison sentences.

In all five years, the majority of those who were caned were black — in the 1987/8 year 25 983 were black

Harms may call Ministers

8/10/91 23/2/90
EVIDENCE which death row prisoner Butana Almond Nofomela is expected to give to the Harms Commission could result in the appearance of Law and Order Minister Afriaan Vlok before the commission

Commission secretary Chris Erasmus said yesterday Nofomela would be called before the commission when it begins sitting on March 7, when his allegations would be tested.

Depending on Nofomela's evidence, a number of witnesses could be called. The commission would go as high as necessary "to get to the bottom of this".

Nofomela claimed in an affidavit a day before he was due to hang for the murder of a farmer that he was a member of a Pretoria security branch assassination

(252)
EDYTH BULBRING, ANDREW GILL and DAN FELDMAM

squad led by Captain Dirk Coetzee. Nofomela and three others were paid R1 000 each by Coetzee to assassinate Durban lawyer Griffiths Mzenge, he claimed. Nofomela claimed he was briefed by Coetzee and security branch station commander Brigadier Willem Schoon.

Although the commission cannot sit outside SA, arrangements would be made to receive evidence from Coetzee, Erasmus said.

The commission would hear evidence regarding the Civil Co-operation Bureau after dealing with the Nofomela case,

□ To Page 2

Harms inquiry

Erasmus said This could result in the appearance before the commission of Defence Minister Magnus Malan.

The Commission is instructed to ascertain the funding of any person or organisation that was responsible for the death of any person for political gain

DP member of the President's Council James Selfe said Malan was ultimately responsible for the CCB "The formation, funding and composition of the bureau seems to have been organised by the SADF" 8/10/91 23/2/90

He said the money for the CCB operation must have come from the Special Defence Account which is not open to scrutiny. A total of R220m was allocated to Special Services last year.

Selfe said the State Security Council (SSC), under former President P W Botha

(252) □ From Page 1
could have prompted the formation of the CCB

"Direct blame cannot be laid on the SSC but one must question their political responsibility"

Head of the committee was P W Botha, but also represented on the executive were Defence Minister Magnus Malan, Vlok, Justice Minister Kobie Coetzee and Foreign Minister Pik Botha.

Brixton Murder and Robbery Squad head Brigadier Floris Mostert said yesterday he believed CCB members Staal Burger and Chappie Maree were still in SA, and that his force had received some leads concerning their whereabouts

"Other than that, I'm keeping my cards close to my chest," he said.

He said he did not know where alleged CCB commanding officer Colonel Johan Verster was

In this

252

month of

reform, six

people die

in custody

W/Mar 23/2-1/3/90

By PHILIPPA GARSON

SIX people have died in police custody in the last month, and lawyers and human rights activists are now calling for judicial enquiries.

A seventh person, Albert Simelane, died shortly after being briefly detained by police in Tembisa in November last year.

Four of the seven — Nixon Phuri (16), Michael Zungu (20), Simon Tshabalala (22), and Simelane (30) — died in "suspicious circumstances" where allegations of police violence have been made.

Post mortem results revealed that Phuri, the Khuisong youth who died on January 16 while being interrogated by police, suffered a brain haemorrhage caused by external injuries and shock.

Three friends in custody with Phuri at Welverdiend police station allege they were beaten, slapped, punched, given electric shocks and forced to sign statements saying they were guilty of arson.

"I heard Nixon screaming in the same way as I did when I was being shocked, then everything went silent," said one youth. Another claimed he saw Phuri being taken outside and then brought back to a room with his face wet.

Lawyers for his family have written to the state president requesting a judicial enquiry into Phuri's death.

An official post mortem said Zungu — a school pupil at Mtubatuba, Natal — had died by strangulation. His family denied the police version.

TO PAGE 3

SIX deaths in custody

W/Mar 23/2-1/3/90

that he had strangled himself with his shoelace after being taken off in a police van on January 29 to Mtubatuba police station. Witnesses said in sworn statements that Zungu (after a dispute about school fees) was beaten by police before his death and then thrown unconscious and barefoot into the back of a police van. This was the last they saw of him.

Friends of Simelane say he was brought to his home in Tembisa by 21 policemen on November 20 having been badly assaulted.

A friend who visited him in hospital, Jane Ntuli, said in a sworn affidavit: "Alfred said the police had beaten him up ... sprayed a substance on his face which inflamed his skin ... and put a sack over his face while a policeman stood on his face and others kicked him."

Tshabalala died last week after being held as a possible robbery suspect at Grootvlei police station on the East Rand.

According to police representative Captain Eugene Opperman, Tshabalala allegedly resisted arrest last Tuesday and "force had to be used by police, who found stolen property in his possession".

Another death occurred the same day at Hillbrow police station. When Lys Namane, 35, who was held for possession of dagga, complained of breathing problems, police allegedly alerted the ambulance service. However, he died before the ambulance arrived.

Other reports of deaths in police custody include two people who were found

From PAGE 1

hanged in their cells.

The first was 20-year-old Sizwe Sithole, allegedly the father of Zinzi Mandela's child. Zinzi is the daughter of African National Congress leader Nelson Mandela.

A commission of inquiry was opened almost immediately after his death on January 30 at John Vorster Square police station, and the report, compiled by Justice R Goldstone, will be submitted to State President F.W. de Klerk next week. Earlier this week Mandela Manana, 27, was found dead in a Kempton Park police cell, hanging from a piece of cloth attached to the inner security door.

Manana was being held on charges of armed robbery and attempted murder.

A representative of the Detainees Aid Centre, Audrey Coleman, said the organisation condemned the alarming escalation of deaths in police custody: "We call for the same judicial enquiries into these incidents as occurred with Sithole."

Police representative Opperman said the fact that so many people had died in police custody over such a short space of time was "co-incidence".

The official police reply is as follows: "The deaths referred to are being investigated and upon completion the case dockets will be forwarded to the relevant judicial authority for decision.

"Deaths in police custody are of course also regretted by the SA Police and we do everything in our power to prevent this. We give the assurance that all these cases are being thoroughly investigated."

Officer 'right to refuse note'

Sta 23/2/90
By Cathy Stagg (252)

When section 29 of the Internal Security Act says "access" to the detainee is not allowed, that word covers the sending of a memorandum, it was submitted in the Rand Supreme Court yesterday.

Mr Bruce Burman, SC, was arguing before Mr Justice L F Weyers in reply to a proposition put to the court on Wednesday by Mr Ismail Mahomed, SC.

The challenge to section 29 is proceeding even though the particular detainee, Mrs Margaret Stofile, has been released from detention.

Last week she was charged with the unlawful possession of weapons.

Mr Burman submitted that the Commissioner of Police had

correctly exercised his discretion when he refused to allow Mrs Stofile's attorney to send her a memorandum.

Mrs Stofile was detained because the police believed she was harbouring terrorists in her house and that the terrorists were launching attacks, predominantly on the police.

Weapons were allegedly found in her house on a number of occasions and she had wilfully refrained from answering questions or supplying information.

Mr Burman said the commissioner's refusal, on the grounds that the memo could contain a coded message, was not so improbable

"We don't live in that world," he told the judge.

CAT 715/15 24/2/190 (252)

170 sentenced to death in SA last year

SOUTH AFRICAN courts last year sentenced 170 people to death — one of whom was executed, according to Justice Minister Mr Kobie Coetsee.

In 47 of these cases, permission to appeal was refused. One sentence was altered by the Appellate Division but no convictions were reversed.

Mr Coetsee, replying to a question tabled by Mr David Dalling (DP, Sandton), said none of those convicted had their sentences commuted by the State

President and that one was executed. An average of more than 40 000 people had been sentenced to whipping in South Africa in the past five years, according to figures from the Central Statistical Services.

Replying to a question tabled by Mr Tony Leon (DP, Houghton), Mr Coetsee said 40 724 people were sentenced to corporal punishment and 1 816 also received jail sentences between July 1983 and June 1984.

New MP speaks

PARLIAMENT — South Africa should be looking for an economic system that worked, no matter how ideologically impure it was, Mrs Dene Smuts (DP, Groote Schuur) said in her maiden speech yesterday.

Sapa

R553 000 for constable and informer

A POLICE constable and an informer, who were on the back of an open truck when a minibus crashed into it, were awarded compensation of R364 473 and R189 237 respectively this week

Handing down judgment in the Rand Supreme Court, Mr Acting Justice Levy summed up the evidence of the civil trial held last year

Both men suffered permanent paralysis of both legs. One is confined to a wheelchair, the other is able to use crutches but his condition will deteriorate later so that he too will have to use a wheelchair.

Red lights

The collision, caused by the minibus, happened in February 1985 when the van, driven by a police sergeant, was turning off the Soweto highway into Valley Road. The judge found the oncoming minibus went through a set of red traffic lights

The constable, Mr Phineus Baloyi, was 26 years of age at the time of the accident

Among items awarded by the court were

- A wheelchair with wide wheels to cope with the rough terrain of Gazankulu
- A wheelchair which enables him to stand upright
- Alterations to a house including an

CATHY STAGG

extended bathroom.

- Future medical expenses.
- Loss of earnings and prospective earnings and general damages

The judge took into account that he has already received a workmen's compensation award of R97 022.

"The evidence has shown Mr Baloyi has suffered severe discomfort and pain and been deprived largely of most of the amenities of life," the judge said, referring to Mr Baloyi's enforced dependence on others. Mr Baloyi had not suffered intellectual impairment and was fully aware of his fate, the judge said.

The informer earned R14 791 over five years but the judge said it was not correct to calculate his loss of earnings by any mathematical calculation based on his past record. He took into account the man's comparative youth and the diminishing value of money and awarded R60 000. Future medical expenses amounted to R65 127 and the judge took into account R12 000 paid by the Motor Vehicle Insurance Act. Because of the large award for loss of earnings, the judge granted a smaller amount for general damages than he would otherwise have done.

The respondents, the Minister of Law and Order and the insurer of the minibus Santam Insurance, were ordered to pay the cost of the trial

Putting death beyond the reach of the law

ARGUS 20/2/90

President De Klerk has announced that executions have been suspended pending a review. Here Cape Town criminologist FANNY GROSS to examine the issue

252

MR Chris Barnard, South Africa's retired executioner of 24 years standing, recently stated that after executing more than 1 000 condemned prisoners on Pretoria's Death Row, he had no regrets, he loved his job and would do it all again

REFORM

On the other hand, Albert Pierrepoint, who served as an executioner in the United Kingdom for 25 years and finally resigned from his post, is on record as having said "I sincerely hope that no man is ever called upon to carry out another execution in my country

"I have come to the conclusion that executions solve nothing, and are only an antiquated relic of a

primitive desire for revenge which takes the easy way and hands over the responsibility for revenge to other people.

"Capital punishment is said to be a deterrent," he continued "I cannot agree. There have been murders since the beginning of time and we shall go on looking for deterrents until the end of time

"If death were a deterrent I might be expected to know All the men and women I have faced at the final moment convince me in what I have done I have not prevented a single murder

"Capital punishment in my view achieved nothing except revenge"

When a judge condemns an accused person to death, he sets in motion a statutory killing which is deemed to be legal and justified

The main object of taking a condemned person's life (where there are no extenuating circumstances) was and is intended to act as a deterrent. But is it?

Barnard does not argue about the efficacy of the death penalty which his colleague, Pierrepoint, so vigorously contests

Purpose

Since it cannot be claimed that legal killing, which has prevailed since time immemorial, has served the purpose of reducing capital crime, to answer murder with the death sentence deliberately imposed and officially carried out by the State, violates the humanitarian instincts in man and conflicts with the general regard that is felt for the sacredness of life

In the pertinent words of the late William Temple, one time Archbishop of Canterbury "I believe that



the example of the State taking life, even when it only does so for a life already taken, does more to lower the value of human life in the minds of its citizens than the deterrent influence of this penalty can do to protect the lives of the citizens"

Capital punishment is a false solution to the problem of crime, which can only be addressed by taking the root causes of crime and removing them timeously, rather than compounding man's inhumanity to man by being a party to judicial killing

Murder rates are not basically affected by the penalties meted out to the offenders but rather oscillate according to complex social, political and personal factors that dominate each individual case

Moreover, any civilised society that justly con-

demns the murder of a fellow human being is not justified in sanctioning the deliberate taking of life as punishment and brings those responsible down to the level of barbarity of the criminal himself

Indeed, swift detection and sure punishment are recognised to be of greater deterrent value than the severity of the penalty meted out and the death penalty should, therefore, be relegated to the limbo of the inhuman and atavistic horrors of a bygone age

Crusade

The Universal Declaration of Human Rights, which proclaimed the right to life and respect of the human person, has stimulated the crusade against the death penalty and has encouraged the humanist aspirations of those men who are deeply concerned with social morality and justice and have the interests of their fellow men at heart

The State, after all, is expected to set an example where enlightened moral values are concerned and is thus expected to demonstrate its adherence to the Universal Declaration of Human Rights.

Albert Camus summed the position up succinctly when he said "Neither in the hearts of individuals nor in the mores of societies, shall there be any lasting peace, as long as death is not beyond the reach of the law"

Numsa to continue legal battle

str 26/2/90 By Drew Forrest (252) (14/11/16/16)

The legal battle between the National Union of Metalworkers and Barlows Manufacturing Company, already the subject of industrial and Supreme Court action, continues

Numsa announced last week that it is to appeal against a recent Supreme Court ruling in the case with vital implications for union rights in strikes.

The case originated in Numsa moves to mount strike action at BMC as part of the 1988 national metalworkers' strike.

Arguing that the dispute was between Numsa and the employer body Seifsa, of which it was not a member, the firm successfully applied for an interim restraining order from the Industrial Court.

The court later refused to confirm the order. But in a setback for the union, this was overruled by the Supreme Court last December.

Mr Justice R J Goldstone, with two judges concurring, confirmed that an industry strike can be legal. But Numsa is alarmed by another finding that a union cannot strike lawfully unless it has a reasonable chance of winning its demands.

In the latest edition of the influential *Labour Law Briefs*, experts argued that the judgment "loads the odds against the union" by imposing an unreasonable new requirement.

CCB and that Mr Curren would not have been the next target of the CCB's activities?

†ADV C D DE JAGER Mr Speaker, further arising out of the hon the Deputy Minister's reply, can he inform us when he became aware of the existence of this organisation?

†THE DEPUTY MINISTER. Mr Speaker, I have nothing to add to the answer that I have already given.

Mr S S VAN DER MERWE Mr Speaker, further arising out of the hon the Deputy Minister's reply and in view of the statement of the hon the Minister of Defence that Mr Anton Lubowski was a SA Defence Force agent and would therefore not have been murdered by the CCB, can he tell this House why he withheld this crucial piece of evidence from the Supreme Court action on 14 February which could well have led to the release of another member of the CCB, Mr "Slang" van Zyl?

†Mr J H VAN DER MERWE Mr Speaker, further arising out of the reply.

†THE SPEAKER Order! I have already allowed five supplementary questions and I am not allowing any further questions [Interjections] Order!

Limitation on lead in petrol

*5 Mr R J LORIMER asked the Minister of Mineral and Energy Affairs and Public Enterprises Hansard 27/2/90

(1) Whether a further limitation of the quantity of lead in petrol is contemplated, if so, what limitation, if not, why not,

(2) whether he will make a statement on the matter? B218E

†THE MINISTER OF MINERAL AND ENERGY AFFAIRS AND PUBLIC ENTERPRISES

(1) No, not at this stage. The lead content in petrol has been reduced by more than 50 per cent since 1986, and is now at a maximum of 0.4 g/l. This maximum is in line with many other countries. The National Energy Council is, nevertheless, co-ordinating a study to determine the technical and economic implications of the possible future introduction of unleaded petrol. B218E

(2) No. Since the lead levels in petrol were reduced in two stages from the former maximum of 0.813 g/l, several announcements had already been made.

Mr R J LORIMER Mr Speaker, arising from the reply given by the hon the Minister, could he tell the House when it is expected this study which has been instituted will result in a report? Hansard 27/2/90

The MINISTER Mr Speaker, as soon as possible. Certainly before the end of this year.

Estcourt area: burning of industrial/domestic waste

*6 Mr R J LORIMER asked the Minister of National Health and Population Development

Whether her Department has taken any action regarding the alleged large-scale burning of industrial and domestic waste on a farm in the Estcourt area owned by a certain person, whose name has been furnished to the Minister's Department for the purpose of her reply, if so, (a) what action and (b) what is the name of this person, if not, why not? B219E

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT.

Yes,

(a) as soon as this problem was brought to the Department's attention, a notice was served on the owner of the relevant farm on 12 January 1990 in terms of the Health Act, 1977, to cease the burning of waste,

(b) Mr Tim Ralfe

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament.

†S 2 Certain persons, sentences

7. Mr L FUCHS asked the Minister of Justice Hansard 27/2/90
Whether the sentences currently being served by two persons, whose names have been furnished to the Minister's Department for the purpose of his reply, have been in any way affected by the announcements made by the (a) Minister of Defence regarding the reduction in military service and/or (b) State President in February 1990, if so, (i) in what ways in each case and (ii) what are the names of the persons concerned, if not, why not? B220E

The MINISTER OF JUSTICE

(a) Yes

(1) The State President has granted remission of sentence in terms of Section 69(1) of the Prisons Act, 1959 (Act No 8 of 1959) to all prisoners who have been sentenced in terms of Section 126(A)(1)(a) of the Defence Act, 1957 (Act No 44 of 1957), to the effect that their sentences in terms of the afore-mentioned section, are reduced by half.

(ii) The same as furnished by the Honourable Member.

(b) No

(i) and (ii) Fall away

Environment Conservation Act: regulations

*8 Mr R R HULLEY asked the Minister of Environment Affairs

Whether the regulations arising from the Environment Conservation Act, No 73 of 1989, have been finalised, if so, when will they be promulgated, if not, why not? Hansard 27/2/90 B221E

The MINISTER OF ENVIRONMENT AFFAIRS

No, in view of the fact that consultation has to take place with many other bodies, for instance local authorities, other departments, et cetera before regulations can be promulgated, and also in view of the fact that considerable legal technical problems are being experienced with the promulgation of regulations. I refer the hon member to Sections 24 to 28 of the Act. It is envisaged to publish noise control regulations in terms of the Act shortly in the Government Gazette for information.

East London area: certain security guard charged

*9 Mr D J DALLING asked the Minister of Justice

(1) Whether a certain security guard working in the East London area, whose name has been furnished to the Minister's Department for the purpose of his reply, has ever been charged with any offences, if so, (a) with what offences, (b) with what result and (c) what is the name of this person.

(2) whether he has been subject to any inquiry regarding the deaths of any persons, if so, (a) how many persons were involved and (b) what were the circumstances of these deaths? B222E

The MINISTER OF JUSTICE

(1) and (2)

The incidents, in which Mr Sybrand Louis van Schoor is allegedly involved, are currently subject to a police investigation. I have requested the Attorney-General concerned to supervise the investigation personally. Apart from the above there were also a number of *post mortem* inquests in which the name of Mr van Schoor had figured.

Cape Town City Council: permit

*10 Mr S S VAN DER MERWE asked the Minister of Water Affairs

(1) Whether his Department issued a permit to the Cape Town City Council on 15 September 1978, if so, what is the nature of this permit,

(2) whether the said City Council is currently complying with clause 8.1 of the permit, if not, Hansard 27/2/90

(3) whether he has taken any action in this regard, if so, what action, if not, why not,

(4) whether he will issue this City Council with a long-term permit of this nature, if so, (a) when and (b) subject to what conditions, if not, why not? B224E

The MINISTER OF WATER AFFAIRS

(1) Yes, a permit was issued in terms of section 21(4)(a) of the Water Act, 1956 (Act 54 of 1956) to discharge screened, macerated, raw sewage by means of a pipeline into the sea near the Green Point Lighthouse in Mouille Point, Cape Town.

(2) No, the pipeline was recently damaged in a severe storm resulting in it being shortened from 1 700m to only 280m. This occurrence considerably reduced the dilution capability of the sea-water on the effluent, which in return resulted in aesthetically unacceptable conditions and an increased health risk, associated with swimming and collection of filter feeders, PFO →

OZZ on steady growth path

CAF-TGTS 25/2/90
282

JOHANNESBURG — The restructured Ozz Limited is on course towards achieving its forecast earnings growth for the current financial year, posting a 16,6% improvement in earnings at the 30 September 1989 half way mark.

Seven months ago, Ozz chairman Gary Zulberg took control of Lucem to give Ozz an almost 57% stake in Lucem.

Since then, Ozz has merged Lucem's substantial engineering operations — Eclipse Engineering, Kimberley Eclipse, West Rand Engineering and Natpump — with Ozz's property development, including the Bruma Lake project and construction interests, all under the Ozz banner.

Businesses seen as non-core, including the motor spares dealerships, plastics and brickworks and gasworks have been sold or are targeted for disposal.

The restructuring culminated in February 1990 in the establishment of Lucem as a cash shell and its delisting prior to the probable sale or voluntary liquidation of the company. Some R24,4m of its cash resources were consolidated into Ozz. The Ozz listing was transferred from the property to the industrial holdings board.

The transmuted listing statement, which accompanied this transfer, forecast earnings for the current financial year ending 31 March, 1990 of 9,3c — 13,4% up on the previous year's

8,2c — from which a 36% higher dividend of 3,4c is expected.

Earnings apart, the results for the half year are not comparable with previous figures and have in any event been largely overtaken by subsequent events.

Turnover, incorporating the previous Lucem companies has leaped from R3,77m to R24,4m and operating profit from R509 000 to R3,1m.

Interest is substantially higher in line with the increase in borrowings with the debt/equity ratio at 30 September 1989 standing at 139% from which it is since calculated to have dropped to around 87,5% based on the realisation of some non-core investments.

The net assets value per share has strengthened significantly, being a 40,5% higher 71c at 30 September 1989. This incorporates a revaluation of the company's 50% stake in Bruma Lake from R3,1m to R6,4m based on market value.

The interim report notes that Fishermans' Village, the speciality shopping centre at Bruma Lake is complete and fully let and that further developments there are being evaluated.

Ozz shares are currently listed at about 46c at which level the 9,3c earnings forecast for the year ending 31 March 1990 would yield 20,2% and the 3,4c dividend would yield 7,4% — Sapa

Objectors appeal against sentences

BLOEMFONTEIN — The appeals of two conscientious objectors against their imprisonment for refusal to do military service were presented to the Appeal Court in Bloemfontein yesterday.

Argument is continuing

Ivan Peter Toms, a Mowbray, Cape Town, doctor, refused to render military service when called up at Three Medical Battalion in November 1987

He was imprisoned for 630 days by a Wynberg regional magistrate on March 3 1988, but this was changed to 18 months when he appealed to the Cape Supreme Court on November 17 1988

Johannesburg resident David Bruce's imprisonment for six years was confirmed by the Witwatersrand Local Supreme Court on March 3 1989

Discretion

At issue in the appeals is whether the courts that sentenced the men were correct to find that the sentence was mandatory or prescribed, that no other or lesser sentence could be imposed and that no portion of the sentence could be suspended

Mr DP de Villiers, QC, with Mr E Cameron, for Toms, submitted that the ordinary and natural meaning of the words, in their context, "shall be liable on conviction to imprisonment for a period of " in the relevant statute, was such as to leave the court with a discretion as to sentence

Mr de Villiers submitted that, in any event, part of the sentence, whether mandatory or not, might be suspended

He said where Parliament intended to create a compulsory minimum sentence, it expressed itself clearly

It was possible and likely that there would be cases where a person refused to render not "any or all service" in the SADF, but only "such service" as he had been called up for on a specific occasion

If a person refused to render service for a specific 30-day camp or one-day call-up and the prescribed sentence was compulsory, such person must be sentenced to a compulsory sentence of one-and-a-half times as long as the aggregate of the maximum remaining

Interpretation of Defence Act debated in court

possible periods of service in which he could still have been called up.

Mr de Villiers said that could amount to a compulsory period of imprisonment of up to six years. This was an unreasonable and inflexible result

It was submitted that the nine-months Toms had already served would be a fitting sentence

Alternatively, if the Appeal Court imposed a sentence of longer than nine months, it was submitted that the portion that exceeded that period should be suspended on appropriate terms

These could relate to the continuation by Toms of the community work he was engaged in before his conviction

For Bruce, Mr Cameron submitted that the lower court's reasoning, that the sentence was mandatory and that no part of it could be cut or suspended, was not persuasive and should not prevail on appeal

Mr WC Viljoen, for the State in the Toms' appeal, said the legislator in this section, where he used the words "whichever is the longest", clearly conveyed the intention he did not intend to grant a discretion

To suspend a sentence in a case like this did not make sense. Sentences were suspended subject to a condition that the same sort of offence was not repeated.

Clear language

Such a condition could not be imposed here

It was submitted that the idea an offender could merely receive a suspended sentence, instead of rendering military service, was completely in conflict with the spirit and intent of the Act

Mr JSM Henning, for the State in the Bruce appeal, submitted that the legislator's intention to prescribe a compulsory sentence appeared from the unequivocal and clear language of section 126A (1)(a) of the Defence Act

— Sapa

'Trojan' trial: ^{SM-1} 28/2/90 charge ²⁵² dropped ²⁵²

Own Correspondent

CAPE TOWN — A second charge of murder against 13 security force members, which arose out of the "Trojan Horse" incident, has been withdrawn in the Cape Town Supreme Court.

The men were acquitted on a charge of murdering Shaun Magmoed (16) in October 1985 after they opened fire on a stone-throwing crowd in Thornton Road, Athlone.

The case was the first private prosecution for murder in South Africa, brought after the Attorney General refused to prosecute.

The second charge, of murdering Michael Miranda (11) was withdrawn in court yesterday by Mr Les Rose-Innes, for the private prosecutors

Fuchs queries assault verdict

28/2/90 By Peter Fabricius, (252)
Political Correspondent

CAPE TOWN — Hillbrow MP Mr Lester Fuchs has asked a series of probing questions in Parliament about the court case in which a Piet Retief farmer was given a R100 fine for assaulting a crippled labourer who later died.

Mr Fuchs said yesterday that the Democratic Party was shocked by the death of partly paralysed farm labourer Mr Ekath Xaba, who died after being beaten by his employer, Mr Wilhelm Rabe of Piet Retief.

Mr Rabe was fined in the Piet Retief

Regional Court on February 12 this year.

Mr Fuchs said "The tragic death of Mr Xaba and the circumstances which surround the assault on him by his employer raise certain questions

● "Why were witnesses who were present at the time of the vicious assault not called to testify on behalf of the State?"

● "Why did the court find that there was no link between the assault on Mr Xaba and the cause of death?"

● "Why was Mr Rabe, who was convicted of assault, fined only R100?"

Civil rights activist's appeal is rejected

Own Correspondent

MARITZBURG — Durban civil rights activist Morris Fynn yesterday lost an appeal in the Maritzburg Supreme Court against his conviction following his cutting down of apartheid beach signs on Christmas Day 1988

Fynn was convicted of malicious injury to property in June last year by Durban magistrate, Mr P J du Plessis, and fined R200 or 20 days imprisonment.

Mr du Plessis said one might have all the sympathy for Fynn's views and feelings, but that did not give him the right to damage things belonging to others

Rejecting his appeal, Mr Justice Squires said that however valued his moral principles might have been, putting them into effect resulted in unlawful conduct

He said it had been established Fynn's actions had been unlawful and he upheld the conviction and sentence. Mr Justice Thirion concurred

Star 28/2/90

25-2

PUBLIC SECTOR GOVT. JUSTICE

1990

MARCH -

THURSDAY, 1 MARCH 1990

this country, and they are looking at every opportunity and avenue whereby to embark on a career. On the one hand we have the scenario that there is a shortage of nurses in this country, and on the other, the scenario that those who want to join the nursing profession not for the mere sake of earning a salary but because they have the aptitude, love and desire to become nurses, cannot enter these training institutions I want to recommend to the hon the Minister the dictum that charity begins at home. There are certain institutions that give us the impression [Time expired]

Mr Y I SEEDAT Mr Chairman, listening to the previous speakers, it is quite obvious that fewer nurses are entering the profession. The basic reason is—I was told this only recently—that fewer White women are entering the profession. This in turn is because salaries are not in keeping with their standards

When I say "standards", one must remember that when someone gets ill, the doctor is the first to attend to that patient. However, it is a nurse who tends that person and brings him back to health. Nurses play a part that is sometimes very much underestimated, and I would like to say that it is to the credit of our nurses that despite the blatant discrimination that they are subjected to in all walks of life—and on top of that salt is rubbed into the wound in that they are denied fellowship in the training and formative years of that profession—they still go through life with dignity and maintain and uphold the spirit of Florence Nightingale and excel in their chosen profession

It is also a sore point that discrimination abounds in the residential quarters of nurses. The LEADER OF THE OFFICIAL OPPOSITION: Yes, such as in St Augustines

Mr Y I SEEDAT We have had an example in Johannesburg, where 150 Black nurses attached to the Hillbrow Hospital were made homeless. How was action taken? How did it come about? It was because of the nurses and outside forces that stood up to the authorities. Why should it be necessary for these nurses and others on the outside to confront authorities to get their fair share in the stakes? I believe accommodation should be made available to nurses [Time expired]

THURSDAY, 1 MARCH 1990

Mr M RAJAB Mr Chairman, the hon member for Durban Bay quoted some figures relating to the number of trained nurses we had in 1988. I would just like to correct his figures. According to the information provided by the hon the Minister the other day, 1 579 nurses graduated in 1988. What is important from the information presented by the hon the Minister is that in 1988 there were 30 127 Black applicants who wished to be trained as nurses, while a grand total of only 2 729 nurses of all race groups were accepted for training. Knowing the kind of shortage that we have generally, and knowing that there is a mass exodus of people from the nursing profession, I would have thought that the nursing would in fact have ensured that we had as large an intake as possible

However, that is not all. According to these same statistics, in 1988 there were 2 511 vacancies [Time expired]

*The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT Mr Chairman, listening to hon members it is clear that this is a very important question that needs urgent attention. I would like to say once again that it is the policy of the Government to provide the greatest measure of accessibility and the optimal utilisation of facilities. To make this possible there are a few practical problems that have to be done away with, for example some of the training institutions in Afrikaans

*Mr Y M MAKDA Mr Chairman, is it possible for us to get an interpreter?

*The CHAIRMAN OF THE HOUSE Order! The hon the Minister may proceed

*The MINISTER One of the problems is that these training institutions train in Afrikaans. We therefore have a language problem before entrance to these institutions is made possible

I would also like to point out to hon members that it seems that these days everything is being blamed on the problem of fragmentation, as though, if we got rid of fragmentation, we would have all the money in the world to solve the problems in health care. That is not the case

The LEADER OF THE OFFICIAL OPPOSITION But that would be a start!

The MINISTER I can prove this by quoting figures

continue

THURSDAY, 1 MARCH 1990

I would also like to stress the fact that we are at this moment looking into the problems of structural changes within the nursing profession to make it as attractive as possible for nurses to move back into the profession. These structural changes can only be made after we have done the survey which we are engaged in at this stage. We hope to involve the SA Nursing Association as well as the SA Nursing Council in doing so

With regard to the remark about the SA Nursing Association as representative of the nurses in the country, I think hon members will appreciate the fact that the Government can only talk to the body that represents the nurses [Time expired]

The CHAIRMAN OF THE HOUSE Order! In response to the request by the hon member for North Western Transvaal, I want to make it very clear that the Rules provide that any hon member may speak in either of the two official languages. *Hausced 11/3/90*

*Mrs R EBRAHIM Hear, hear!

The CHAIRMAN OF THE HOUSE Order! It might perhaps be a good idea that every now and then the other language is used a little so that we can all start to understand it

QUESTIONS

†Indicates translated version

For oral reply

General Affairs *252*

Cape Town magistrate: racist remarks *Hausced 11/3/90*

- *1 Mr M Rajab asked the Minister of Justice
 - (1) Whether any complaints were received by his Department regarding racist remarks allegedly made by a Cape Town magistrate recently, if so, (a) from whom were the complaints received and (b) what was the reaction of his Department thereto,
 - (2) whether members of the judiciary commented on these remarks,
 - (3) whether he will make a statement on the matter?

D19E

The DEPUTY MINISTER OF JUSTICE

- (1), (2) and (3)

THURSDAY, 1 MARCH 1990

It will be a sad day if magistrates are called to account from outside the legal hierarchy. It will be in conflict with the Hoexter report in which the independence of our judicial officers was explicitly emphasized

The media fulfils, in addition to the legal hierarchy, an important role in interpreting the sense of justice. There are a considerable number of examples hereof, *inter alia*, reports in the *Sunday Times* of 14 June 1987 ("How just is our justice?"), the *Cape Times* of 15 June 1987 ("Jailed 7's sentence uneven") and the matter under consideration

The point of view which I have repeatedly adopted, is that lower courts are under the supervision of the higher courts and that the higher courts perform the role of overseer over the lower courts. Mr Justice C T Howie and Mr Justice A M van Niekerk did just that by expressing strong criticism about certain remarks made by the magistrate concerned. It would be just as inappropriate for politicians to interfere with judicial officers as it would be inappropriate for the courts to express themselves regarding utterances by politicians.

The LEADER OF THE OFFICIAL OPPOSITION Mr Chairman, I have a question arising out of the hon the Deputy Minister's answer. However, before I ask my question I want to say that it is nonsensical for an hon Deputy Minister to say to hon members in this House that we do not have the right to query a racist remark. The hon the Deputy Minister must answer the question because he is accountable to Parliament for his official *Hausced 11/3/90*

The DEPUTY MINISTER Mr Chairman, the hon the Leader of the Official Opposition should know that the independence of the judiciary is a very proud tradition of our Constitution [Interjections] Magistrates, if I am allowed to reply *252*

The CHAIRMAN OF THE HOUSE Order! The hon the Leader of the Official Opposition will be entitled to a further question. The hon the Deputy Minister may proceed

The DEPUTY MINISTER Magistrates fall under the authority and auspices of the Supreme Court. Judges of the Supreme Court have criticised the magistrate, and that is just what the hon the Minister said in his reply *P 70*

Mr M RAJAB Mr Chairman, further arising out of the reply of the hon the Deputy Minister, can he deny that there is no place for bigots or racism on the Bench and in the judiciary and if it does exist that it damages the image of justice in this country?

The DEPUTY MINISTER Mr Chairman, I cannot deny that suggestion at all

The LEADER OF THE OFFICIAL OPPOSITION Mr Chairman, further arising out of the

answer given, will the hon the Deputy Minister agree that hon members of Parliament act responsibly in that they cannot rely on newspaper reports?

The DEPUTY MINISTER Mr Chairman, I would submit that that does not arise out of the questions [Interjections]

The LEADER OF THE OFFICIAL OPPOSITION Yes, but you do not protect racists in your department

252

HOUSE OF ASSEMBLY

QUESTIONS

Indicates translated version

For written reply

General Affairs

transcribed 2/3/90
252
Executions

64 Mr D J DALLING asked the Minister of Justice

(a) How many (i) males and (ii) females of each race group were executed in the Republic in 1989 and (b) for what crime or crimes had each death sentence been imposed?

B73E

The MINISTER OF JUSTICE

- (a) (i) and (ii) 2 White Males
- 8 Coloured Males
- 1 Coloured Female
- 42 Black Males
- 53

- (b) 47 Murder
- 4 Murder and robbery with aggravating circumstances
- 2 Robbery with aggravating circumstances
- 53

Films on Sundays

61. Mr A J LEON asked the Minister of Justice

- (1) How many applications were received by his Department in 1989 for permission to exhibit films on Sundays, *transcribed*
- (2) whether any of these applications were by local authorities, if so, which local authorities requested such permission, *2/3/90*
- (3) how many of these applications were for permission to exhibit films (a) on a permanent basis, (b) in a particular case and (c) of a particular nature,
- (4) (a) how many of the applications in each category were (i) granted and (ii) refused

continue p 274

and (b) what were the reasons for the refusal in each case? *B157E transcribed 2/3/90*

The MINISTER OF JUSTICE

- (1) 12
- (2) No
- (3) (a) 9
- (b) 3
- (c) 0
- (4) (a)

Category (a) Category (b) Category (c)

- (i) 7 2 0
- (ii) 0 1 0

Two applications indicated in (3)(a) above are under consideration

(b) The application under category (b) was refused because it was intended to exhibit films on a Sunday in commercial theatres country-wide

National servicemen: alternative service

67 Lt-Gen R H D ROGERS asked the Minister of Manpower *transcribed 2/3/90*

Whether any national servicemen who were granted the status of religious objectors have had to wait to be placed in alternative service, if so, how many such religious objectors were not placed in alternative service for (a) 12 months, (b) 9 months, (c) 6 months and (d) 3 months in 1989?

B163E

The MINISTER OF MANPOWER

Yes

- (a) 0
- (b) 1
- (c) 1
- (d) 4

National servicemen: placed outside SADF *B163E*

68 Lt-Gen R H D ROGERS asked the Minister of Defence

(1) How many national servicemen in the (a) February 1989 and (b) August 1989 intakes were placed in organisations or *p 70*

'Rope' murderer loses his appeal

Pretoria Correspondent

The Pretoria Supreme Court yesterday dismissed an appeal against the conviction of a Boksburg farmer who had prayed after murdering a suspected chicken thief.

In the Witbank Circuit Court last year, John Augustine Perreira (59) was sentenced to 15 years' jail for murdering Mr Molefe Nzima by tying a rope around his neck and dragging him behind his bakkie for 2 km.

In mitigation of sentence, the circuit court found that Perreira had intended to take Mr Nzima to the police and had "prayed for Mr Nzima's life after he realised what he had done".

Mr Justice Curlewis, Mr Justice Kirk-Cohen and Mr Justice Strydom dismissed the appeal with costs.

252
Star 1/3/90

Star 1/3/90 (252)

I was tortured - car-bomb accused

By Therese Anders, Highveld Bureau

MIDDELBURG — One of two men, both school-teachers, facing multiple murder charges following the 1988 Witbank car bomb explosion, says he only made a confession statement after being tortured by security policemen.

Mr Joseph Mandlenkosi Vilakazi (26), of Vosloorus, yesterday told the Supreme Court sitting in Middelburg that he had been assaulted and tortured for three days at the Germiston security police offices.

He said a security policeman had then dictated much of the confession statement to him.

WET BLANKET

He was giving evidence at a trial within a trial to test the admissibility of confessions allegedly made by the two accused.

Counsel for the accused have challenged the validity of the confessions, which they claim were not freely and voluntarily made.

Mr Vilakazi and Mr Ramoepi Stephen Maboja (26), also of Vosloorus, have pleaded not guilty to three counts of murder, 14 counts of attempted murder, 50 counts of malicious damage to property and one charge of theft.

The charges arise from the massive car bomb explosion on October 24, 1988, outside a Witbank

office block housing Witbank CID and security police personnel.

The three Witbank residents who died in the explosion were Mrs Dina Elizabeth Moela, Mr Elias Masina and Mr Jacob Samuel Masuku.

According to the charge sheet 11 police vehicles were either destroyed or damaged in the blast.

Mr Vilakazi has told the court that he was arrested by security police on November 14, 1988. During the next three days he was interrogated at Germiston.

He told the court a policeman repeatedly assaulted him, held a firearm to his head, threatened to kill him, rolled him in a wet blanket and then beat him with a hose or a sjambok. During this time he was deprived of food and water.

Finally, on November 16, he agreed to write a confession after he had been handcuffed for about six hours to a table which had then been placed on his head. He had been unable to move or sleep during that time for fear that the table would fall on him.

The State has claimed that the two accused and other persons involved in the bomb explosion had belonged to an ANC cell in Vosloorus.

The accused had been trained in weaponry near Vosloorus by Mr Samuel Monyake, also known as MK Valdez or Thabang, who was a member of Umkhonto we Sizwe.

Late lunch for prisoners

MIDDELBURG — Men fighting for their lives could not do so on an empty stomach, said Mr Justice MC de Klerk yesterday after lunch had failed to arrive for the accused in the Witbank car bomb case.

The judge stopped court proceedings during the afternoon session so that the two men, who face multiple murder charges, could go to the cells for their meal. Defence counsel Mr Graham Gertsch said the accused, Mr Joseph Mandlenkosi Vilakazi and Mr Ramoepi Stephen Maboja, were feeling faint as they had not had anything to eat since consuming a slice of bread at dawn. — Highveld Bureau.

Star 1/3/90

Whites want 'right to govern themselves'

By Helen Grange

Conservative Party leader Dr Andries Treurnicht last night told a 3 000-strong audience he would "rather negotiate a small country for whites than a large country for blacks".

Speaking to an audience which crammed every entrance to the Roodepoort City Hall, Dr Treurnicht said conservative whites would demand, in ever increasing numbers, their own land and the right to govern themselves.

This was a demand the

Council paid for car repairs

Star 4/3/90
By Monica Nicolson

252

The Midrand Town Council had footed the bill for the town clerk, Mr Philip Botha's rent and paid over R12 000 for his car repairs, the commission of inquiry into alleged illegal activities of Mr Botha and various other council members heard yesterday.

It was revealed that rather than claiming from insurance, Mr Botha arranged for the council to pay the R12 789 car repair bill.

Mr Piet Strydom, appearing for the State, argued that Mr Botha was not entitled to

live rent-free as he did not qualify according to council regulations.

Mr Rudi Snyder, a traffic officer, reported an illegal hunting trip he went on with Mr Botha and other colleagues. When it was reported to the police, Mr Botha suggested Mr Snyder should "take the rap" as he (Mr Botha) had been subject to too much bad publicity. Mr Botha paid the R150 fine.

Mr Strydom also asked why the council paid hospital bills for a senior councillor when he fell ill during a conference.

Three death row prisoners' convictions set aside

THE Appeal Court in Bloemfontein this week set aside the convictions and death sentences of three prisoners, Lawyers for Human Rights (LHR) said in a statement yesterday.

The prisoners on death row are Bookie Mahlangu, Johannes Molefe and Thomas Malahlela.

The judgment setting aside the convictions and death sentences was handed down by the Appeal Court on Tuesday.

The three were sentenced to death in the Witwaters-

WILSON ZWANE

rand Local Division of the Supreme Court on November 24 1987 and leave to appeal was refused.

However, according to the LHR, the Chief Justice granted leave to appeal in July 1988.

The appeal was heard on February 15 this year and the judgment was handed down 13 days later. The three had already spent 815 days on the death row, the LHR said.



Bid to avenge prison murder

A FORMER convict has written a letter to the Human Rights Commission in Geneva requesting it to intervene in the alleged murder of a prisoner at Sonderwater Prison in 1982.

Mr Andrew Matlatsi of Ndimande Street in KwaThema claims he was present when a fellow prisoner, Mr Jacob Bernard Masango, was attacked by four prison warders who throttled him and pulled him by his private parts until he died.

The Attorney-General, to whom the case was referred, subsequently declined to prosecute.

Matlatsi, who was sentenced to seven years for robbery in 1980, said in an interview this week that the way the case was handled got him hot under the collar. He said immediately he was released from prison in 1986, he decided to pursue the

matter with the ultimate aim of "seeing justice being done".

He said he wrote several letters to, among others, the then State President P W Botha, the Department of Justice, the Department of Health and National Population Development and the incumbent head of State Mr FW de Klerk.

"I went through a lot of red tape to see that justice is done, but all my efforts were in vain. I can promise you that I will not rest until the culprits are brought to book," he said.

Matlatsi said in reply to his letter, the Department of Justice said the inquest magistrate found that the cause of Masango's death was "not brought by any act or omission involving or amounting to an offence on the part of any person".



252

252

confusion

red one

*of course
I will
be
in
the
end*

Judges slammed city magistrate

CAPL TMS 2/3/90
Political Staff (252)

TWO judges had "strongly criticised" remarks by Wynberg magistrate Mr M S Knox about an Indian witness in a child molestation case, Justice Minister Mr Kobie Coetsee said yesterday.

Replying to questions by Mr Mahmoud Rajab, Democratic Party MP for Springfield, he said, however, it would be a "sad day" if magistrates were called to account from "outside the legal hierarchy".

Mr Rajab had wanted to know if Mr Coetsee's department had received complaints about "racist remarks" allegedly made by the magistrate, who was reported to have said "I have listened to you people in Natal for 20 years and you all try to jump around".

INTERPELLATIONS UNDER NAME OF MEMBER

Institutions outside the South African Defence Force in terms of section 16 of the Defence Act, No 44 of 1957;

University of Stellenbosch
(Bureau for Mechanical Engineering)
Randse Afrikaanse Universiteit
Munk
Rural Foundation
Lowveld Escarpment Regional Service
Kangwane Government

(2) how many such servicemen in the (a) February 1989 and (b) August 1989 intakes were placed in (i) the Office of the Receiver of Revenue, (ii) Intoplan, (iii) the Small Business Development Corporation and (iv) other specified organisations or institutions,

(b) (i) 0
(ii) 0
(iii) 1

The MINISTER OF DEFENCE

(1) (a) 85
(b) 22

(iv) Department of Agriculture and Water Supply
Department of Agriculture, Economics and Marketing
Department of National Health and Population Development
Department of Health Services and Welfare
Department of Justice
Natal Provincial Administration
OFS Education Department
Auditor-General
Cape Town City Council
University of Stellenbosch (Bureau for Mechanical Engineering)
Commission for Administration
Kenon

(2) (a) (i) 0
(ii) 0
(iii) 0

Department of Agriculture and Water Supply
Department of National Health and Population Development
Department of Justice
Department of Trade and Industry and Tourism
Department of Development Planning
Transvaal Provincial Administration
Transvaal Provincial Administration (Hospital Services)
Cape Provincial Administration
Cape Provincial Administration (Hospital Services)
Provincial Administration of the OFS
Transvaal Education Department
Cape Education Department
Natal Education Department
Bureau for Information
Cape Town City Council
Armscor
Kenon
Lytleton Engineering Works
Atlas
ESD
Teklogie

(3) what criteria are applied in determining where such servicemen are placed?

(b) (i) 0
(ii) 0
(iii) 1

(3) The Honourable Member is referred to paragraph 3 of my reply in this House to written question number 13 of 1989.

Death sentences commuted

70 Mr D J DALLING asked the Minister of Justice how many death sentences in each race group were commuted in 1989?

The MINISTER OF JUSTICE:

252

3 White Males
9 Coloured Males
1 Black Female
50 Black Males + 1 Black Male from SWA
Subtotal 63 + 1 from SWA
Total 64

Andrew, Mr K M—

Landers, Mr L T—

General Affairs

General Affairs

Education, 61

Law and Order, 119

Own Affairs

Education and Culture, 90

Leon, Mr A J—

Coetzee, Mr H J—

General Affairs

Own Affairs

Planning and Provincial Affairs, 164

Health Services, Welfare and Housing, 196

De Jager, Adv C D—

Rabie, Mr J A—

General Affairs

General Affairs

Justice, 1

Planning and Provincial Affairs, 123

Law and Order, 157

Ellis, Mr M J—

Rajab, Mr M—

General Affairs

General Affairs

National Health and Population Development, 7

National Health and Population Development, 133, 263

Gerber, Mr A—

Own Affairs

Own Affairs

Education and Culture, 105

Education and Culture, 32

Housing, 43

Herandien, Mr C B—

Van der Merwe, Mr H D K—

Own Affairs

General Affairs

Housing, 213

Home Affairs, 55

Local Government and Agriculture, 218

Light sentence for MK boss

W/Mout 2/3-18/3/90
THE Natal chief of Umkhonto we Sizwe, the armed wing of the African National Congress, received a surprisingly lenient sentence this week in the Durban regional court.

Medical student Lulamile Xate was convicted for undergoing military training outside the country, possession of arms and ammunition, and attempted murder after a bomb explosion at Grosvenor Girls' High School in Durban.

He was sentenced to an effective five years imprisonment, to run concurrently with a jail term he is already serving.

Magistrate H S van der Walt said Xate was clearly an intellectual and a leader. He said all Xate's offences were politi-

cally motivated and he expected they would not have been committed "these days", given the new climate of reconciliation.

He could find no excuse in law for Xate's actions, but bearing in mind the "frustrations and valid grievances of black people" he believed Xate could argue he was "very angry".

Giving evidence in mitigation, Xate said he was a man of peace. "I really have no wish to fight my fellow South Africans. But if I am denied all peaceful avenues to achieve my freedom, then, and only then, do I feel that I am entitled to fight by all means available to me."

Star 2/3/90

Midrand town clerk denies he received profits

By Monica Nicolson

The town clerk of Midrand, Mr Philip Botha, received half the profits from a developer who did work for the council, it was heard during the commission of inquiry into alleged illegal actions of the clerk and other officials yesterday.

The presiding judge, Mr H T van Reenen, heard how Mr Anton Lourens, a close friend of Mr Botha's, was contracted to build a taxi rank for the Midrand council. Mr Lourens made R85 000 in the deal and he gave Mr Botha half of the money.

Mr Botha told the hearing that the money had been a loan to help him out of financial difficulties and was not a present. He said he gave Mr Lourens a receipt for R43 000 and that he intended to pay the loan back.

Replying to an accusation that the council footed the R12 000 bill for repairs to his car, Mr Botha said he had thought the insurance company of the other party involved in the accident would pay the bill.

The hearing continues.

The PRINCIPLE OF PROBERS

IN THE public furore surrounding hit squads, Mr Justice Louis Harms has acquired the aura of a white knight set to solve a sordid mystery once and for all.

But in an interview with the Sunday Times he cautioned "The expectations raised about my commission are unreasonable. I'll solve certain things, but you can only solve things when you have witnesses."

And the "Commissioner Supremo" divulged that amid all the hoo-ha about alleged killer squads of the SAP and the SADF's sinister Civil Co-operation Bureau (CCB), not a "single" voluntary statement had so far been submitted to his commission.

"Except for the police investigation and information we gathered on our own, everybody is silent. Maybe possible witnesses think they don't have the proof."

"We might be able to supply it, but can't do it if they don't come forward."

"You can have a thousand hunches and suspicions, but that is not something you can write in black on a wall."

Between September 1988 and May last year, dapper Mr Justice Harms established his reputation for relentlessly homing in on internal malpractices.

He opened a Pandora's Box while chairing three commissions of inquiry, starting off with a probe into alleged cross-border irregularities in the Transkei and Ciskei.

In his exposés — including the Transkeian gambling rights saga, the Palazzola-De Pontes Affair, and the wheeling and dealing of Pretoria millionaire Albert Vermaas

But don't expect miracles says the hit-squad judge

By HERMAN JANSEN

252
4/3/90

— Judge Harms's reputation grew.

His fearlessness and incisiveness are said to have given him the most daunting task of his career a probe at the State President's request into alleged politically inspired murders and violence inside the borders of South Africa.

"I did not tender for the job," he told the Sunday Times with a wry smile.

"Work is handed out. I had an infrastructure — I think that was the main reason for getting the job."

Agent

About the additional brief, Justice Harms said "It will not disrupt my schedule. We'll fit it in somewhere."

"The Lubowski probe will form a very small portion of our work — I must only establish whether he was an SADF agent or not. The pos-

sibility of government involvement in his death does not form part of my brief."

Tomorrow the eagerly awaited — as the judge jokingly terms them — "Harms 4" (politically inspired murders and violence) and "Harms 5" (the Lubowski claims), start "rolling" in the Ned Geret Church Synod centre in Pretoria.

But the unflappable judge said laconically "This is work, and I have never become excited over work."

"I get excited when it is not rarrning on my farm near Thabazimbi — that's my level of excitement."

Mr Justice Harms said "unreasonable expectations" had been raised about his commission.

"My brief is what is written in the Government Gazette — not what appears in newspapers."

"I get uncomfortable when reading leading articles or when I hear politicians saying my commission is going to do this or that. I will solve some of the puzzles, but can only do so when I have evidence before me."

"And evidence is the problem. It does not fall like manna from heaven."

In a wide-ranging interview Mr Justice Harms revealed.

More than nine legal teams, representing about 15

interested parties, have presented themselves to the commission.

Until Friday his commission had not received "a single" voluntary statement from anyone. That included all alleged victims' families or representatives.

Some of the proceedings would be held in camera.

"This is inevitable. I will have to handle some matters in such a way as not to harm the judicial process."

Violence

About possible quizzing of Mr Coetzee, Judge Harms said "That is still in the balance. Let's get his affidavit first, then we'll see."

Because of cross-examination and the possible problem of key witnesses not being available — "maybe because they are in Germany, or because they disappeared off the face of the earth" — it was impossible to give an estimate of when his first report would be ready.

Judge Harms said "Give us a break. At the moment it is impossible to handle more than the CCB, Almond Nofomela (the self-confessed member of an alleged SAP death squad) and the Lubowski affair."

"I have to establish patterns, to get a balanced pic-

ture about political violence in the country.

"I'm first going to finish what is in front of me. I'm not going to plan ahead."

"The violence in Natal has claimed about 2 000 lives. I'm not going to investigate 2 000 or 3 000 cases.

"You only live once."

FEARLESS: Judge Harms, who's gained an awesome reputation

Picture: PIERRE OOSTHUYSEN

Lawyers start new probe into death on farm

252

STimes
4/13/90

THE case of a farmer who was fined R100 for assaulting a farmworker who later died is being re-investigated.

By DAVE LOURENS

Lawyers for Human Rights have begun an investigation into instituting a civil action against Mr Wilhelm Rabe on behalf of farmworker Mr Ekati Xaba's wife and six children.

Magistrate JD Jacquire found Mr Xaba's death from

a ruptured spleen and a subdural haemorrhage of the brain could not have been caused by the assault.

Prosecutor Erwin Jonker did not call Mr Xaba's daughter, Lisbet, 16, who claimed to have witnessed the assault

Mr Rabe rejected allegations made out of court by Miss Xaba.

"Of course she wasn't called as a witness — she wasn't anywhere near at the time of the incident.

"The farm on which the Xabas were staying had been sold and was in the process of changing hands," said Mr Rabe.

"While the transfer was taking place I allowed the labourers to remain on the farm free for a period of about two months

Happy

"When I went to check up, the other workers complained to me about Mr Xaba. They said he was always drunk and refused to do any work

"The court found me innocent and I am happy in my own mind that hitting him five blows with an electric cord could not possibly have killed him."

Lawyers for Human Rights spokesman Mr Ahmed Motala said the organisation was "investigating the matter"

"At this stage we definitely intend to institute a civil action, but obviously it depends on the findings of our investigation"

Death Row comic is seen as a test for F W

A BRITISH comic depicting in brutal detail the lives of black prisoners awaiting execution in South Africa, and how they are hanged, will soon be on sale in South Africa.

Published by newspaper tycoon Robert Maxwell with Amnesty International, it will be on local shelves within seven weeks.

The publishers see the comic, called Crisis, as a test of President F W de Klerk's moves to lift media restrictions in SA.

Designed to be read by young adults, it has devoted a section to the trial of the

By JEREMY BROOKS
London

Uppington 14 and the controversial "common purpose" doctrine under which they were sentenced to death for the murder of a policeman.

"Many may not have been at the scene of the murder or taken part in the actual killing but were still on trial because they showed common purpose with those directly responsible for his

(the policeman's) death," says a picture caption.

"The judge concluded the stone throwers were aware he would be killed and were therefore equally responsible. Among them were an elderly couple in their 60s."

Crisis pictures, in dark sombre colours, the day-to-day life of the men awaiting the hangman's noose.

Wake-up alarms, showers, exercise time, the food and emotional meetings with parents on either side of a

plate-glass window are all documented. The pictures have largely been drawn from descriptions by the Black Sash in their Death Factory report on Pretoria Central Prison.

There are drawings of prisoners being weighed, and having their neck and body measurements taken.

"At the last moment some prisoners fight back. In 1981 teargas was used to 'calm down' four condemned men who resisted.

"But most go quietly, calling out to those still in the pot (the condemned cell).

"A low murmuring song of the other prisoners accompanies the condemned hymns like Abide With Me and We Are Marching To Heaven."

Accuracy

Amnesty campaigns director Dan Jones said his organisation was strict about factual and historical accuracy.

"We take extreme care in the dialogue we use, and whenever possible use the original language," he said.

"Amnesty, by tradition, imposes strict limitations on its publications to avoid them being labelled propaganda."

Printing of the "comic" had to be suddenly halted on Friday, February 2 — the day that President De Klerk made his famous speech in Cape Town.

The presses were halted for last-minute additions when the moratorium on executions was announced.

(3) (a) Yes

(b) J S Slabber—Services temporarily utilized at Area Office
L Redelinguys—Transferred to Good Hope College
G M W Visser—Services utilized at the Umzingisi Special School
P H de Wet—Transferred to Head Office
C S Kelly—On sick leave pending application for early retirement due to ill health
J J Schutte—Transferred to Head Office
H S J Coetzee—Services temporarily utilized at Area Office.
W Siabbert—Services temporarily utilized at Area Office
C W van der Vyver—Services temporarily utilized at Area Office

Harms Commission: investigators

*13 Mr D J DALLING asked the Minister of Justice *Hansard 6/5/90*

Whether, with reference to his statement on 7 February 1990, a team of investigators to be put at the disposal of the Harms Commission has been appointed, if so, (a) what are the names of the persons involved, (b) what are their qualifications and (c) by whom are they employed at present? *252* B338E

The MINISTER OF JUSTICE

Yes.

(a) (i) Advocate T P McNally, SC.

(ii) Advocate L J Roberts, SC

(iii) Major-General R N van der Westhuizen

(iv) Lieutenant-Colonel J P Wright

(b) (i) Advocate McNally is the Attorney-General of the Orange Free State and has been enrolled as an advocate of the Supreme Court of South Africa

(ii) Advocate Roberts is a Deputy Attorney-General of Natal and has been enrolled as an advocate of the Supreme Court of South Africa

(iii) Major-General Van der Westhuizen is a member of the Detective Branch at the Head Office of the South African Police. *252*

(iv) Lieutenant-Colonel Wright is a member of the Detective Branch at the Head Office of the South African Police *Hansard 6/3/90*

(c) Advocates McNally and Roberts are employed by the Department of Justice while Major-General Van der Westhuizen and Lieutenant-Colonel Wright are employed by the South African Police

Lead concentration exceeded *Hansard 6/3/90*

*14 Mr R F HASWELL asked the Minister of National Health and Population Development

Whether the maximum allowable concentration of lead in the atmosphere, as specified in the reply to Question No 506 on 26 May 1989, was exceeded in Cape Town on any day in 1989, if so, on how many days? B339E

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

No, the concentration was never exceeded during 1989

Hout Bay: development of harbour area

*15 Mr C W EGLIN asked the Minister of Planning and Provincial Affairs *Hansard 6/3/90*

(1) Whether any progress has been made with the plans for the development of the harbour area at Hout Bay; if not, why not, if so, when will the plans be finalized,

(2) whether, in considering these plans, his Department or the Cape Provincial Administration has commissioned an environmental impact study relating to such development, if so who undertook the study,

(3) whether this environmental impact study will be made public; if not, why not, if so, when,

(4) whether his Department or the Administration has discussed the plans for the proposed development with representatives of the local community, if not, why not, if so, (a) with what representatives and (b) when? B340E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS *Hansard 6/3/90*

(1) Major developers were asked to submit sketch plans for the development of part of the harbour at Hout Bay for purposes of tourism. Two groups of developers came to the fore, and the preliminary plans of these two groups are at present with the Provincial Executive Committee for a decision and the appointment of one of them. Subsequently the successful developer will be asked to submit full architectural plans, which, if necessary, will be subjected to an environmental impact study

(2) Falls away

(3) Falls away

(4) No, because there are as yet no final plans which can be discussed with the local community. The final plans will be open to inspection by interested parties

Mr C W EGLIN Mr Speaker, arising out of the hon the Minister's reply, may I take it that although they are called "final", the plans will not actually be finally formalised until an impact study has been done and approved and until the local residents have been consulted and have made their input?

The MINISTER Mr Speaker, what is happening at the moment is that two different plans are being evaluated. One of these developers will then be asked to present architectural plans, as they are rather expensive items. Once they have been received, those plans will be submitted to the local community for their input and comment.

*16 Mr J VAN ECK asked the Minister of Planning and Provincial Affairs

(1) How many persons will Brown's Farm be able to accommodate after it has been developed, *Hansard 6/3/90*

(2) whether any other land has been allocated for those persons who were forced to leave the Crossroads area in 1986 and cannot be accommodated on Brown's Farm, if not, why not, if so, what land? B341E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

(1) The assumption is made that the 248 ha development area at Philippi is at question. A total of 5 036 even is to be developed, and at a family size of 6 the estimated number of people is in the order of 30 000

(2) No. Current indications are that the development area will be sufficient for people *via* the particular category of people

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Cape Town railway station: certain police officer present *Hansard 6/3/90*

*17 Mr J VAN ECK asked the Minister of Law and Order

(1) Whether a certain police officer, whose name has been furnished to the South African Police for the purpose of the Minister's reply, was present on the third-class concourse of the Cape Town railway station on the afternoon of 31 January 1990, if so, why,

(2) whether this officer or any policemen under his control took any action there, if so, what action,

(3) whether he will make a statement on the matter? B342E

The MINISTER OF LAW AND ORDER

(1) Yes. The officer was in charge of a group of policemen who were performing duty on the station

(2) No

(3) No

*18 Mr M J ELLIS asked the Minister of National Health and Population Development

Whether her Department has received any representations regarding the use of tartrazine in foodstuffs during the past five years, if so, (a) from whom, (b) when, and (c) what was the (i) purport of and (ii) response to these representations, in each case? B343E

THE MINISTER OF TRANSPORT.

(B) No *Hansard 6/3/90*

- (a) and (b) Fall away
- (1) The investigation is not yet completed, and
- (ii) Towards June 1990.

(2) No

(3) The Federal Aviation Administration issued an Airworthiness Directive to amend and improve the preceding certification requirements for class "B" (main deck-cargo) compartments

(4) According to my colleague the hon the Minister of Mineral and Energy Affairs and Public Enterprises the majority of claims by dependants have been disposed of. Only 8 claims are outstanding. Almost all freight charges have been settled. It can also be mentioned that some of the claimants are possibly awaiting the publication of the report of the Margo Commission

For the hon member's information, the Chief Directorate of Civil Aviation has unofficially received a draft report from the Margo Commission Inquiry. A copy of the relevant report has also been made available to the National Transport Safety Board (NTSB) of the USA, who represent the state of manufacture. In accordance with the Chicago Convention, this authority has the privilege of studying the report and, if considered necessary, can make comments based on facts to the board of inquiry.

When received—we expect to receive the comments by 15 March this year—they will be carefully studied and considered for adoption by the commission. If the commission is in agreement with the comments obtained from the NTSB, the commission will amend its report accordingly before its release. If, however, the commission is not in agreement with the NTSB, the reason for the rejection of its comments must be furnished and appended, with the NTSB comments, to the commission's original report before it can be released.

Corporal punishment: representations

*9 Mr A J LEON asked the Minister of Justice

- (1) Whether, over the past five years, he has received any representations regarding

HOUSE OF ASSEMBLY

corporal punishment as a judicial sentence, if so, (a) from whom in each case and (b) what was (1) the purpose of and (ii) his response to each such representation.

- (2) whether he has given any consideration to the abolition of corporal punishment as a judicial sentence, if not, why not, if so,
- (3) whether he will make a statement on the matter?

Hansard 6/3/90 252 B331E

THE DEPUTY MINISTER OF JUSTICE

- (1) As far as could be established no representations have been received. Cognizance has, however, been taken of viewpoints expressed in case law and articles in journals.
- (2) Yes. During the promotion of the Criminal Procedure Amendment Act, 1986 (Act 33 of 1986), the question as to the retention of corporal punishment or not was considered carefully and all three Houses supported the retention thereof.

(3) A statement is not necessary.

Mr A J LEON Mr Speaker, arising out of the hon the Deputy Minister's reply, may I ask whether he would be prepared to comment on the fact that every Western jurisdiction with which South Africa is associated with regard to human rights—or should be—has now abolished corporal punishment, particularly the countries of the European Convention, the United Kingdom and the United States? Should this matter not be looked at afresh?

The DEPUTY MINISTER Mr Speaker, I invite the hon member for Houghton to argue the merits of this matter during the discussion of the Justice Vote.

Jailed conscientious objectors: treatment

*10 Mr A J LEON asked the Minister of Justice

- (1) Whether he has given any consideration to treating jailed conscientious objectors as political prisoners, if so,
- (2) whether he will make a statement on the matter?

Hansard 6/3/90 B332E

THE MINISTER OF JUSTICE

- (1) No. There are no prisoners in South African prisons which are classified as

political prisoners. Persons found guilty and sentenced for offences aimed against the security of the State may, however, be classified as security prisoners.

- (2) Falls away

Sebenza secondary school: teachers

*11 Mr K M ANDREW asked the Minister of Education

- (1) Whether all the White teachers who commenced this year as teachers at Sebenza Secondary School in Crossroads are still at the school, if not, (a) why not, (b) how many have left the school and (c) on what dates did they leave;
- (2) whether the White teachers who left this school have been replaced,
- (3) whether any White teachers currently teaching at this school have been absent since they commenced teaching there this year, if so, during what periods?

Hansard 6/3/90 B336E

THE DEPUTY MINISTER OF EDUCATION

- (1) No
- (a) The acting principal and acting deputy principal left the school when a group of students violently forced them out of the school's premises. Other teachers resigned.
- (b) Seven
- (c) On 31 January 1990 (the acting principal and the acting deputy principal and three teachers), 15 February 1990 (one teacher) and 19 February 1990 (one teacher)
- (2) Three teachers have been replaced
- (3) Yes. 5 to 9 February (one teacher on sick leave), 19 to 27 February (one teacher on sick leave)

For a period, a number of teachers were on duty, but not present at the school.

Mr K M ANDREW Mr Speaker, arising out of the hon the Deputy Minister's reply, may I ask him whether the seven teachers who have left are still in the employ of the department or not?

The DEPUTY MINISTER Mr Speaker, I mentioned very clearly in paragraph 1(a) of my reply that the acting principal and deputy principal left

the school under violent circumstances and that they are still in the employ of the department. The other teachers resigned.

Mr K M ANDREW Mr Speaker, further arising out of the hon the Deputy Minister's reply, may I ask what posts within the department the principal and deputy principal are filling at present?

The DEPUTY MINISTER Mr Speaker, that will be dealt with in the answer to the next question.

Western Cape schools: White principals

*12 Mr K M ANDREW asked the Minister of Education

- (1) Whether any White persons who were principals or acting principals of schools in the Western Cape at any time since 1 January 1989 are no longer at those schools, if so, at which schools were they principals or acting principals,
- (2) whether he will furnish the names of these persons, if not, why not, if so, what are their names,
- (3) whether any of these persons are still employed by his Department; if so, in what capacity in each case?

The DEPUTY MINISTER OF EDUCATION

- (1) Yes
- ID Mkhize
Cross Roads No 3
Simon Hebe
Fezeka
Musemvyuze
Islamela
Sebenza
Inshukumo
Luhlaza
- (2) Yes
- J S Slabber
L Redelinghuys
G Visser
P de Wet
C Kelly
J Schutte
H Coetzee
W Slabbert
W van der Vyver

HOUSE OF ASSEMBLY

*MR H D K VAN DER MERWE I am here in terms of a law of Parliament!

*The MINISTER We want to suggest to the hon member that he improve his politics, that he improve his policy and that he improve his arguments [Time expired]

*MR J J NIEMANN He is what he is! [Interjections]

*MR SPEAKER Order! The time for Interpellation No 1 has expired [Interjections] Order! [Interjections] Order! I hope hon members can hear that Mr Speaker is trying to lead the House according to the Order Paper

Debate concluded.

Internal Security Act: repeal/amendment

2 Mr P G SOAL asked the Minister of Justice:

Whether it is the intention of the Government to repeal or amend those sections of the Internal Security Act, No 74 of 1982, which affect the normal political functioning of the recently unbanned organizations, if so when, if not, why not?

B407E INT

The MINISTER OF JUSTICE Mr Speaker, it is not apparent and clear what the hon member who has put the question perceives to be provisions in the Internal Security Act of 1982, which affect the normal political functions of the recently unbanned organizations. The ANC, for instance, which is now a lawful organisation is in exactly the same position as the NP, the CP and the DP. There is no provision in the Internal Security Act of 1982 which inhibits these organisations from taking part in normal lawful political activities. The provisions of the Internal Security Act of 1982 have never inhibited the DP as far as normal political functioning is concerned, because they were lawful activities.

What provisions does the hon member think should be repealed—section 54(1) in respect of terrorism, 54(2) in respect of intimidation, 54(3) in respect of sabotage, 54(4) in respect of harbouring or rendering or assisting, 56 in respect of causing, encouraging or fomenting feelings of hostility between different population groups? *Heard 6/3/90*

All these provisions involve either violence or lawlessness which, as the hon the State President

HOUSE OF ASSEMBLY

said, no democratic country can tolerate. It is a fact that during times of reform people may resort to violence in reaction to reform. There are either those who reject reform or those who want to speed up reform or those who do not want reform but are only interested in a transfer of power and the destruction of a political system.

The provisions of the Internal Security Act are aimed at violence which threatens the security of the State—and these are there for all to observe—and are there also to serve all of those who wish to attain their political objectives through lawful means.

Mr P G SOAL Mr Speaker, I will tell the hon the Minister which sections I want to have repealed because he has not done his homework very well. I hope he is better prepared for the next two contributions he is going to make in this mini-debate. *Heard 6/3/90*

The Harare Declaration, section 19 4 reads

The state of emergency should be ended and all legislation repealed such as and including the Internal Security Act designed to circumscribe political activity.

I believe attention should be given to the Act. Certain sections have to be repealed and others have to be kept. Some of those he mentioned, including section 62 which provides for the prohibition of feelings of hostility between different population groups. I think we should have a new Act with a new title. I will take a look at specific sections and draw the hon the Minister's attention to some of them so that he might be able to respond during the course of this debate.

Section 33 and section 34 disqualify certain individuals from being members of the House of Assembly if their names have been on the consolidated list or if they have been convicted of offences in terms of section 54, 55 or 56. Therefore Mr Slovo, for instance, whose name was on the consolidated list but has now been removed—he is a hard-line communist—is eligible to be a member of the House of Assembly. Mr Nelson Mandela who was convicted in terms of sections 54, 55 and 56 is a nationalist but he is not eligible to be a member of the House of Assembly. I think that that section should be looked at.

Section 34 disqualifies individuals whose names appear on the consolidated list from practising as attorneys, advocates or conveyancers. In this connection Mr Slovo, who is a hard-line Communist, has also not been convicted in terms of sections 54, 55 and 56. He is permitted to practise as an advocate whereas Mr Nelson Mandela, who is a nationalist, is not permitted to practise as an attorney. I think that is another section that should be attended to.

Section 4 of the Act declares that certain organisations are unlawful, among other reasons because they might promote the communist cause. The Communist Party is now legal. Why is it wrong for the Communist Party to promote its own cause?

Section 5 allows the hon the Minister to prohibit publications if, amongst other reasons, they spread communism. *Sechaba* is banned in this connection. Now will the hon the Minister allow *Sechaba* to be distributed in this country and, if it falls under the Publications Act, will he speak to his colleague the hon the Minister of Home Affairs to ensure that the ANC is able to disseminate its views in its official publication which is called *Sechaba*? [Time expired.]

*MR C D DE JAGER Mr Speaker, all of a sudden everyone is concerned about the ANC's participation, but no one has said a word about the SA Communist Party which has also been legalised in the interim. [Interjections] I do not want to elaborate much on members of the ANC. I understand there is already a member of the ANC in Parliament, but I cannot be very sure of that, because it might just emerge that he is a member of Military Intelligence. We would not know, because there is quite a lot of confusion about whether members are members of the ANC or of Military Intelligence. The hon member for Claremont may comply with the latter qualification.

Communism has been legalised, but section 55 of the Internal Security Act has remained. No one may preach it. The SA Communist Party may put up a candidate, but it may never preach communism.

The hon the Minister of Justice said it had become obsolete. It is very strange, however, that last week it was still necessary, in terms of this Act, to say one was not a communist if one wanted to become an advocate or an attorney.

How something can become obsolete when one still has to say under oath that one does not belong to it is beyond me.

I think the hon the Minister of Justice must take another look at this. There are a number of sections in this Act which it has justifiably been said should receive attention. One cannot simply accept that one must have a situation in which everything will suddenly go well. There were numerous sections with which one had to comply.

We should like to know more from the hon the Minister about the Act we passed last year concerning foreign funding. The ANC is collecting money abroad at present. What is the hon the Minister going to do about that? That is the kind of question to which we should like to have answers.

*The MINISTER OF JUSTICE Mr Speaker, the hon member who placed the questions on the Order Paper must please look at the large number of proclamations that were promulgated. Those who remain, and therefore remain listed, are those who were sentenced under sections 54 etc as a result of violent intent and violent associations. They remain on the list. The others have all been removed from the list. Everyone has been removed from the list apart from those who committed violence-related crimes.

*MR D J DALLING I know that I did my homework.

*The MINISTER No, the hon member did not know that. He did not know it. The hon member can get the proclamations from me. That is the position in that regard. For the hon member's information Mr Mandela was not listed as a communist or anything else. [Interjections] If his name ever appeared on the list, Mr Mandela has now been delisted.

*An HON MEMBER What about section 54?

*The MINISTER If the hon member wants further information, he can come and ask me personally, and I should be very pleased to assist him.

A further fact in respect of this section with regard to communism, as I explained last time, is that the action in respect of the organisations etc was an administrative action. The hon member for Bethal agreed with me. With regard to the

HOUSE OF ASSEMBLY

prohibition on the promotion of communism, this was and is contained in the Statute. Its removal would have to be an act of this Parliament. I infer from the hon member for Bethal that he is the foremost advocate for the removal of that section [Interjections] Of course! The entire House is my witness

*Mr SPEAKER Order! The hon the Minister is becoming just too enthusiastic. His time has expired

Mr L FUCHS Mr Speaker, we on this side of the House are obviously particularly pleased by the hon the State President's announcements on 2 February 1990 in regard to the steps which will be taken to ease certain sections of the state of emergency in favour of liberty, and also the steps taken to allow people to participate in political debate. I am not the first speaker on this side of the House to welcome the tentative steps towards normalising the political process in South Africa. But steps taken by the hon the State President are in serious danger of having little or no positive influence in the political arena because the Internal Security Act contains provisions which could negate or nullify any good that has been done by the easing of the state of emergency or lifting of restrictions. The Internal Security Act, via the back door, makes severe inroads into the common law rights and privileges of every citizen in this country, and it continues, as it has done in the past, to pervert the course of justice in South Africa.

It is our philosophy, and the philosophy adopted by any civilized country, that a person is entitled to be brought to trial as soon as possible.

It is in particular sections 28, 29 and 31 of the Internal Security Act which are a stumbling block to every citizen's right to receive a fair hearing.

I can do little better than to quote Mr Justice Goldstone in the Report of the Commission of Inquiry into the Death of Clayton Sizwe Sihole when he makes the following statement in regard to section 29 of the Internal Security Act:

I quote

The provisions of section 29 are drastic and make serious inroads into the normal rights and privileges of every citizen of the Republic. It is of utmost importance therefore that the letter and spirit of the regulations should be

adhered to by those responsible for the well-being of such detainees.

The judge then carries on as follows [Time expired.]

Mr P G SOAL Mr Speaker, the hon the Minister has not answered our question. He has dealt with the latter half of the Act, where we have sympathy with him, with regard to crimes of violence, but genuine political activity should be allowed, unfettered by this Act, as regards the first half of the Act. I hope the hon the Minister will give attention to that [Interjections]

I have looked at his proclamations. I know that 177 names have had been removed from the lists. I bet the hon the Minister does not know that. [Interjections] I know that more than 400 names still remain there. I counted them. So I am aware of what is going on, but I am not sure that he is [Interjections]

The Act is not in keeping with the spirit announced by the hon the State President on 2 February. There is a spirit of reconciliation and hope, and this Act is in conflict with that spirit. I think the hon the Minister should have a look at the first 30 or so sections of the Act and have them repealed [Interjections]

The MINISTER OF JUSTICE Mr Speaker, for the information of the hon member for Johannesburg North, Mr Nelson Mandela's name is still on the roll of attorneys. It was never removed!

Secondly, as regards the names that are still on the list, I want to say—I am emphatic about this and the hon member must listen carefully—those names are on the list for the reason that those people have committed violence-related crimes. They will remain there until such time as another policy prevails [Interjections] Until such time as another policy prevails [Interjections] That is the policy now [Interjections]

*I also said in the Other Place that I was not familiar with every letter of this Act. It is not I who say that! Mr Justice Rabie advised, in 1982, that this Act be revised from time to time.

*Mr S C JACOBS Any legislation must be revised from time to time!

*The MINISTER He advised that, because he said it should be adapted to the circumstances and needs of the time. Consequently I have no

problem in saying that this Act will from time to time, as is necessary, be brought into line with what is needed at a specific juncture.

I want to address the hon member for Bethal once again and say that the last date on which a person was listed as a communist was 1970. The only person we could trace who was prosecuted under the Communism Act, the old Act before it was amended as a result of what Mr Justice Rabie had advised, was Mr Rolet Arenstein who was prosecuted in 1966. It did not happen again! [Interjections] *How sad!* 6/3/90

I now come to the last point. Hon members resent our standpoint on communism, but they know that if one wants to prosecute anyone under this Act, with reference to the relevant sections which prohibit the promotion of communism, one has to do so according to the letter of the 1982 legislation which deals with communism as interpreted by Lenin, Marx and others. The hon the Leader of the Official Opposition reproached us, however, and said that what one should be careful of today was a new type of communism which he called Gorbachev's communism [Interjections]

No, he called it Gorbachev's communism. Hon members are welcome to take a look at column 47 of the Hansard [Interjections] Of course! [Time expired]

Debate concluded

QUESTIONS

†Indicates translated version

For oral reply

General Affairs

North-Western Transvaal: designated area

*1 Mr A A B BRUWER asked the Minister of Planning and Provincial Affairs †

- (1) What is the purpose of the designated area in the North-Western Transvaal,
- (2) whether he will make a statement on the matter?

B245E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS *Hansard 6/3/90*

(Reply laid upon the Table with leave of House)

(1) and (2)

The North-Western Transvaal is of strategic importance to the RSA. It is the thoroughfare between the RSA and the rest of Africa and must be stabilized to realize specific strategic, political and security objectives.

The depopulation of rural and especially peripheral rural areas such as the border area of the North-Western Transvaal, is an international phenomenon and can be ascribed to economic push and pull forces. The economic basis of the North-Western Transvaal is agriculture which is severely hampered by structural defects. Unconventional farming units, unfavourable debt burdens, marginal soils, periodic droughts and the distance from markets complicate farming in this area and promote depopulation. A reduced farming population handicaps the inherent growth potential of smaller growth centres and the decline of infrastructure forms part of the intricate process of regional depopulation.

The farmer who has sufficient financial reserves and makes an existence on an economic unit, is to resist shorter term agricultural drawbacks such as droughts, and is seen by the Government as the antipode to depopulation. A comprehensive approach to the stabilization of border areas within the wider concept of regional development, is necessary to keep farmers on the land.

The Government has committed itself to such a comprehensive stabilization strategy for the North-Western Transvaal and with the exception of agricultural stabilization which is at present receiving special attention, satisfying progress has been made.

Socio-economic stabilization of border areas can only be successfully implemented over a relatively longer period of time. It is thus clear that the nature of and progress with stabilization are subject to various factors which are liable to change. The Development of Designated Areas Act, 1979 (Act 87 of 1979) was formulated as a special instrument to stabilize areas with structural agricultural shortcomings, but where certain security risks also exist. The situation in the North-Western Transvaal necessitated the proclamation of the border area as a Designated Area.

It must be fully understood that the above-mentioned Act is to be seen as just one facet of the comprehensive stabilization strategy, since it

Sithole death. nobody blamed

MR CLAYTON Sizwe Sithole who died in detention this year killed himself and nobody could be criminally blamed for his death, according to the report of a one-man commission of inquiry by Mr Justice R J Goldstone released in Cape Town yesterday. *Sowetan*

Sithole was found hanging by his shoelaces and a belt in his cell at the John Vorster Square police station on January 27 this year. *6/3/90*

Goldstone found that Sithole, who had been associated with the Mandela family, had without doubt caused his own death by hanging. No recent injuries that were not associated with hanging were found on his body.

The judge found there was a reasonable possibility that one or more of a number of factors could have made him decide to kill himself.

On the evidence before the commission the factors which could have given rise to his decision to commit suicide were:

"His anger that certain people from Orlando West had provided the police with fake information against him;

"His impression that he could continue to be detained under Section 29 (of the Internal Security Act) for a long time; and,

"His having implicated people very close to him in criminal conduct, i.e. Winnie and Zinzi Mandela."



There was no schooling for these children yesterday after their teachers were killed.

Harms told of killings

From page 1

Internal investigation into the CCB.

The commission yesterday heard that Colonel Joe Verster, the commanding officer of the CCB, was arrested on Friday and was being held under Section 29 of the Internal Security Act.

Badenhorst, who was assisted by Brigadier Krappies Engelbrecht during investigations, said he received information from General Jaap Joubert about two members of the CCB - Mr Calla-Botha and Mr Ferdie Barnard.

Allegations were made that Botha and Mr Slang van Zyl had planted a bomb at the Cape Youth Congress Centre in Athlone and that Barnard and Van Zyl were going to plant monkey feces at Archbishop Desmond Tutu's house.

The statements also alleged that CCB operations had been approved by the President and that Botha was allegedly involved in the murder of Boetie van der Merwe.

Badenhorst said he only knew about the CCB when he was asked about its activities by a senior member of the SAP, Gen Joubert. The witness said the commanding officer of special forces in the SADF, Major-General Eddie Webb, did not tell him about the existence of the CCB.

Former security policeman and alleged hit squad member, Butana Nofemela, who has confessed to having participated in the cold-blooded killing of Durban lawyer, Mr Griffiths Mxenge, in November 1981, is expected to testify before the commission tomorrow.

(proceeding)

AT CHARLIE PARKERS

S 4194

Probe into CCB told of 71 murders

By MONK NKOMO

The Harms Commission investigating the activities of the Civilian Co-operation Bureau and alleged police hit squads was yesterday told that there were 71 cases of unsolved politically motivated murders countrywide.

Mr Tim McNally, the Attorney-General of the Free State, who is leading evidence, submitted the list of the unsolved murders to the chairman of the commission, Mr Justice Harms, in Pretoria. It was compiled by the Ministry of Justice.

The first witness, Lieutenant-General Rudolf Badenhorst, Chief of Staff Military Intelligence, said he did not know about the existence of the CCB. He was ordered by the Minister of Defence, General Magnus Malan, on December 20 last year to launch an in-

To page 2

Sowetan 6/3/90

252

Sowetan 6/3/90

252

- (3) (a) Yes
- (b) J S Slabber—Services temporarily utilized at Area Office
L Redelinghuys—Transferred to Good Hope College
G M W Visser—Services utilized at the Umzingisi Special School
P H de Wet—Transferred to Head Office
C S Kelly—On sick leave pending application for early retirement due to ill health
J J Schutte—Transferred to Head Office
H S J Coetzee—Services temporarily utilized at Area Office
W Siabbert—Services temporarily utilized at Area Office
C W van der Vyver—Services temporarily utilized at Area Office.

Harms Commission: investigators

*13 Mr D J DALLING asked the Minister of Justice *Hansard 6/2/90*

Whether, with reference to his statement on 7 February 1990, a team of investigators to be put at the disposal of the Harms Commission has been appointed; if so, (a) what are the names of the persons involved, (b) what are their qualifications and (c) by whom are they employed at present?

B338E

The MINISTER OF JUSTICE

- Yes
- (a) (i) Advocate T P McNally, SC
(ii) Advocate L J Roberts, SC
(iii) Major-General R N van der Westhuizen.
(iv) Lieutenant-Colonel J P Wright
- (b) (i) Advocate McNally is the Attorney-General of the Orange Free State and has been enrolled as an advocate of the Supreme Court of South Africa
(ii) Advocate Roberts is a Deputy Attorney-General of Natal and has been enrolled as an advocate of the Supreme Court of South Africa

- (iii) Major-General Van der Westhuizen is a member of the Detective Branch at the Head Office of the South African Police *252*
- (iv) Lieutenant-Colonel Wright is a member of the Detective Branch at the Head Office of the South African Police *Hansard 6/3/90*
- (c) Advocates McNally and Roberts are employed by the Department of Justice while Major-General Van der Westhuizen and Lieutenant-Colonel Wright are employed by the South African Police

Lead concentration exceeded *Hansard 6/3/90*

*14 Mr R F HASWELL asked the Minister of National Health and Population Development

Whether the maximum allowable concentration of lead in the atmosphere, as specified in the reply to Question No 506 on 26 May 1989, was exceeded in Cape Town on any day in 1989, if so, on how many days? *B339E*

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

No, the concentration was never exceeded during 1989

Hout Bay: development of harbour area

*15 Mr C W EGLIN asked the Minister of Planning and Provincial Affairs *Hansard 6/3/90*

- (1) Whether any progress has been made with the plans for the development of the harbour area at Hout Bay, if not, why not, if so, when will the plans be finalized,
- (2) whether, in considering these plans, his Department or the Cape Provincial Administration has commissioned an environmental impact study relating to such development, if so who undertook the study,
- (3) whether this environmental impact study will be made public, if not, why not, if so, when;
- (4) whether his Department or the Administration has discussed the plans for the proposed development with representatives of the local community; if not, why not, if so, (a) with what representatives and (b) when? *B340E*

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS *Hansard 6/3/90*

- (1) Major developers were asked to submit sketch plans for the development of part of the harbour at Hout Bay for purposes of tourism. Two groups of developers came to the fore, and the preliminary plans of these two groups are at present with the Provincial Executive Committee for a decision and the appointment of one of them. Subsequently the successful developer will be asked to submit full architectural plans, which, if necessary, will be subjected to an environmental impact study
- (2) Falls away
- (3) Falls away
- (4) No, because there are as yet no final plans which can be discussed with the local community. The final plans will be open to inspection by interested parties

Mr C W EGLIN Mr Speaker, arising out of the hon the Minister's reply, may I take it that although they are called "final", the plans will not actually be finally formalised until an impact study has been done and approved and until the local residents have been consulted and have made their input?

The MINISTER Mr Speaker, what is happening at the moment is that two different plans are being evaluated. One of these developers will then be asked to present architectural plans, as they are rather expensive items. Once they have been received, those plans will be submitted to the local community for their input and comment.

Brown's Farm: housing
*16 Mr J VAN ECK asked the Minister of Planning and Provincial Affairs

- (1) How many persons will Brown's Farm be able to accommodate after it has been developed, *Hansard 6/3/90*
- (2) whether any other land has been allocated for those persons who were forced to leave the Crossroads area in 1986 and cannot be accommodated on Brown's Farm, if not, why not, if so, what land? *B341E*

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

- (1) The assumption is made that the 249 ha development area at Philippolis is at present developed, and at a family size of 6 the estimated number of people is in the order of 30 000
- (2) No. Current indications are that the development area will be sufficient for *inter alia* the particular category of people

Business interrupted in accordance with Rule 180C (3) of the Standing Rules of Parliament

Cape Town railway station: certain police officer present *Hansard 6/3/90*

*17 Mr J VAN ECK asked the Minister of Law and Order:

- (1) Whether a certain police officer, whose name has been furnished to the South African Police for the purpose of the Minister's reply, was present on the third-class concourse of the Cape Town railway station on the afternoon of 31 January 1990, if so, why,
- (2) whether this officer or any policemen under his control took any action there, if so, what action,
- (3) whether he will make a statement on the matter? *B342E*

The MINISTER OF LAW AND ORDER

- (1) Yes. The officer was in charge of a group of policemen who were performing duty on the station
- (2) No
- (3) No

Hansard 6/3/90 Partrazane

*18 Mr M J ELLIS asked the Minister of National Health and Population Development whether her Department has received any representations regarding the use of tartrazine in foodstuffs during the past five years, if so, (a) from whom, (b) when, and (c) what was the (i) purport of and (ii) response to these representations, in each case? *B343E*

The MINISTER OF TRANSPORT.

- (1) No *Hansard 6/3/90*
- (a) and (b) Fall away
- (1) The investigation is not yet completed, and
- (ii) Towards June 1990
- (2) No
- (3) The Federal Aviation Administration issued an Airworthiness Directive to amend and improve the preceding certification requirements for class "B" (man-deck-cargo) compartments
- (4) According to my colleague the hon the Minister of Mineral and Energy Affairs and Public Enterprises the majority of claims by dependants have been disposed of. Only 8 claims are outstanding. Almost all freight charges have been settled. It can also be mentioned that some of the claimants are possibly awaiting the publication of the report of the Margo Commission

For the hon member's information, the Chief Directorate of Civil Aviation has unofficially received a draft report from the Margo Commission of Inquiry. A copy of the relevant report has also been made available to the National Transport Safety Board (NTSB) of the USA, who represent the state of manufacture. In accordance with the Chicago Convention, this authority has the privilege of studying the report and, if considered necessary, can make comments based on facts to the board of inquiry.

When received—we expect to receive the comments by 15 March this year—they will be carefully studied and considered for adoption by the commission. If the commission is in agreement with the comments obtained from the NTSB, the commission will amend its report accordingly before its release. If, however, the commission is not in agreement with the NTSB, the reason for the rejection of its comments must be furnished and appended, with the NTSB comments, to the commission's original report before it can be released.

Corporal punishment: representations

- *9 Mr A J LEON asked the Minister of Justice:
- (1) Whether, over the past five years, he has received any representations regarding

HOUSE OF ASSEMBLY

corporal punishment as a judicial sentence, if so, (a) from whom in each case and (b) what was (i) the purport of and (ii) his response to each such representation,

(2) whether he has given any consideration to the abolition of corporal punishment as a judicial sentence, if not, why not; if so,

(3) whether he will make a statement on the matter?

Hansard 6/3/90 252 B331E

The DEPUTY MINISTER OF JUSTICE

- (1) As far as could be established no representations have been received. Cognizance has, however, been taken of viewpoints expressed in case law and articles in journals
- (2) Yes. During the promotion of the Criminal Procedure Amendment Act, 1986 (Act 33 of 1986), the question as to the retention of corporal punishment or not was considered carefully and all three Houses supported the retention thereof
- (3) A statement is not necessary.

Mr A J LEON Mr Speaker, arising out of the hon the Deputy Minister's reply, may I ask whether he would be prepared to comment on the fact that every Western jurisdiction with which South Africa is associated with regard to human rights—or should be—has now abolished corporal punishment, particularly the countries of the European Convention, the United Kingdom and the United States? Should this matter not be looked at afresh?

The DEPUTY MINISTER Mr Speaker, I invite the hon member for Houghton to argue the merits of this matter during the discussion of the Justice Vote

Jailed conscientious objectors: treatment

- *10 Mr A J LEON asked the Minister of Justice
- (1) Whether he has given any consideration to treating jailed conscientious objectors as political prisoners, if so,
- (2) whether he will make a statement on the matter?
- Hansard 6/3/90 B332E*
- †The MINISTER OF JUSTICE
- (1) No. There are no prisoners in South African prisons which are classified as

political prisoners. Persons found guilty and sentenced for offences aimed against the security of the State may, however, be classified as security prisoners

Hansard 6/3/90

(2) Falls away.

Sebenza secondary school: teachers

*11 Mr K M ANDREW asked the Minister of Education

- (1) Whether all the White teachers who commenced this year as teachers at Sebenza Secondary School in Crossroads are still at the school, if not, (a) why not, (b) how many have left the school and (c) on what dates did they leave,
- (2) whether the White teachers who left this school have been replaced,
- (3) whether any White teachers currently teaching at this school have been absent since they commenced teaching there this year, if so, during what periods?
- Hansard 6/3/90 B336E*

The DEPUTY MINISTER OF EDUCATION

- (1) No
- (a) The acting principal and acting deputy principal left the school when a group of students violently forced them out of the school's premises. Other teachers resigned
- (b) Seven
- (c) On 31 January 1990 (the acting principal and the acting deputy principal and three teachers), 15 February 1990 (one teacher) and 19 February 1990 (one teacher)
- (2) Three teachers have been replaced
- (3) Yes. 5 to 9 February (one teacher on sick leave), 19 to 27 February (one teacher on sick leave)
- For a period, a number of teachers were on duty, but not present at the school

Mr K M ANDREW Mr Speaker, arising out of the hon the Deputy Minister's reply, may I ask him whether the seven teachers who have left are still in the employ of the department or not?

The DEPUTY MINISTER Mr Speaker, I mentioned very clearly in paragraph 1(a) of my reply that the acting principal and deputy principal left

the school under violent circumstances and that they are still in the employ of the department. The other teachers resigned.

Mr K M ANDREW Mr Speaker, further arising out of the hon the Deputy Minister's reply, may I ask what posts within the department the principal and deputy principal are filling at present

The DEPUTY MINISTER Mr Speaker, that will be dealt with in the answer to the next question

Hansard 6/3/90

Western Cape schools: White principals

*12 Mr K M ANDREW asked the Minister of Education.

- (1) Whether any White persons who were principals or acting principals of schools in the Western Cape at any time since 1 January 1989 are no longer at those schools, if so, at which schools were they principals or acting principals,
- (2) whether he will furnish the names of these persons, if not, why not, if so, what are their names,
- (3) whether any of these persons are still employed by his Department, if so, in what capacity in each case?
- B337E*

†The DEPUTY MINISTER OF EDUCATION

- (1) Yes
- ID Mkrize
Cross Roads No 3
Simon Hebe
Fezeka
Mvusemwuze
Isulmela
Sebenza
Intshukumo
Luhlaza
- (2) Yes.
- J S Slabber
L Redelinghuys
G Visser
P de Wet
C Kelly
J Schutte
H Coetzee
W Slabbert
W van der Vyver

HOUSE OF ASSEMBLY

*Mr H D K VAN DER MERWE I am here in terms of a law of Parliament!

*The MINISTER We want to suggest to the hon member that he improve his politics, that he improve his policy and that he improve his arguments [Time expired]

*Mr J J NIEMANN He is what he is! [Interjections]

*Mr SPEAKER Order! The time for Interpellation No 1 has expired [Interjections] Order! [Interjections] Order! I hope hon members can hear that Mr Speaker is trying to lead the House according to the Order Paper
Debate concluded

Internal Security Act: repeal/amendment

2. Mr P G SOAL asked the Minister of Justice
Whether it is the intention of the Government to repeal or amend those sections of the Internal Security Act, No 74 of 1982, which affect the normal political functioning of the recently unbanned organisations, if so, when, if not, why not?

252

~~SECRET~~

B407E INT

~~SECRET~~
The MINISTER OF JUSTICE Mr Speaker, it is not apparent and clear what the hon member who has put the question perceives to be provisions in the Internal Security Act of 1982, which affect the normal political functions of the recently unbanned organisations. The ANC, for instance, which is now a lawful organisation is in exactly the same position as the NP, the CP and the DP. There is no provision in the Internal Security Act of 1982 which inhibits these organisations from taking part in normal lawful political activities. The provisions of the Internal Security Act of 1982 have never inhibited the DP as far as normal political functioning is concerned, because they were lawful activities.

What provisions does the hon member think should be repealed—section 54(1) in respect of terrorism, 54(2) in respect of intimidation, 54(3) in respect of sabotage, 54(4) in respect of harbouring or rendering or assisting, 56 in respect of causing, encouraging or fomenting feelings of hostility between different population groups? ~~Heard~~ 6/3/90

All these provisions involve either violence or lawlessness which, as the hon the State President

HOUSE OF ASSEMBLY

said, no democratic country can tolerate. It is a fact that during times of reform people may resort to violence in reaction to reform. There are either those who reject reform or those who want to speed up reform or those who do not want reform but are only interested in a transfer of power and the destruction of a political system. The provisions of the Internal Security Act are aimed at violence which threatens the security of the State—and these are there for all to observe—and are there also to serve all of those who wish to attain their political objectives through lawful means.

Mr P G SOAL Mr Speaker, I will tell the hon the Minister which sections I want to have repealed because he has not done his homework very well. I hope he is better prepared for the next two contributions he is going to make in this mini-debate. ~~Heard~~ 6/3/90

The Harare Declaration, section 19 4 reads

The state of emergency should be ended and all legislation repealed such as and including the Internal Security Act designed to circumscribe political activity.

I believe attention should be given to the Act. Certain sections have to be repealed and others have to be kept. Some of those he mentioned, including section 62 which provides for the prohibition of feelings of hostility between different population groups. I think we should have a new Act with a new title. I will take a look at specific sections and draw the hon the Minister's attention to some of them so that he might be able to respond during the course of this debate. Section 33 and section 34 disqualify certain individuals from being members of the House of Assembly if their names have been on the consolidated list or if they have been convicted of offences in terms of section 54, 55 or 56. Therefore Mr Slovo, for instance, whose name was on the consolidated list but has now been removed—he is a hard-line communist—is eligible to be a member of the House of Assembly. Mr Nelson Mandela who was convicted in terms of sections 54, 55 and 56 is a nationalist but he is not eligible to be a member of the House of Assembly. I think that that section should be looked at.

Section 34 disqualifies individuals whose names appear on the consolidated list from practising as attorneys, advocates or conveyancers. In this connection Mr Slovo, who is a hard-line Communist, has also not been convicted in terms of sections 54, 55 and 56. He is permitted to practise as an advocate whereas Mr Nelson Mandela, who is a nationalist, is not permitted to practise as an attorney. I think that is another section that should be attended to.

Section 4 of the Act declares that certain organisations are unlawful, among other reasons because they might promote the communist cause. The Communist Party is now legal. Why is it wrong for the Communist Party to promote its own cause?

Section 5 allows the hon the Minister to prohibit publications if, amongst other reasons, they spread communism. *Sechaba* is banned in this connection. Now will the hon the Minister allow *Sechaba* to be distributed in this country and, if it falls under the Publications Act, will he speak to his colleague the hon the Minister of Home Affairs to ensure that the ANC is able to disseminate its views in its official publication which is called *Sechaba*? [Time expired]

*Mr C D DE JAGER Mr Speaker, all of a sudden everyone is concerned about the ANC's participation, but no one has said a word about the SA Communist Party which has also been legalised in the interim [Interjections.] I do not want to elaborate much on members of the ANC. I understand there is already a member of the ANC in Parliament, but I cannot be very sure of that, because it might just emerge that he is a member of Military Intelligence. We would not know, because there is quite a lot of confusion about whether members are members of the ANC or of Military Intelligence. The hon member for Claremont may comply with the latter qualification.

Communism has been legalised, but section 55 of the Internal Security Act has remained. No one may preach it. The SA Communist Party may put up a candidate, but it may never preach communism.

The hon the Minister of Justice said it had become obsolete. It is very strange, however, that last week it was still necessary, in terms of this Act, to say one was not a communist if one wanted to become an advocate or an attorney.

How something can become obsolete when one still has to say under oath that one does not belong to it is beyond me.

I think the hon the Minister of Justice must take another look at this. There are a number of sections in this Act which it has justifiably been said should receive attention. One cannot simply accept that one must have a situation in which everything will suddenly go well. There were numerous sections with which one had to comply.

We should like to know more from the hon the Minister about the Act we passed last year concerning foreign funding. The ANC is collecting money abroad at present. What is the hon the Minister going to do about that? That is the kind of question to which we should like to have answers.

*The MINISTER OF JUSTICE Mr Speaker, the hon member who placed the questions on the Order Paper must please look at the large number of proclamations that were promulgated. Those who remain, and therefore remain listed, are those who were sentenced under sections 54 etc as a result of violent intent and violent associations. They remain on the list. The others have all been removed from the list apart from those who committed violence-related crimes.

*Mr D J DALLING I know that I did my homework.

*The MINISTER No, the hon member did not know that. He did not know it. The hon member can get the proclamations from me. That is the position in that regard. For the hon member's information Mr Mandela was not listed as a communist or anything else. [Interjections.] If his name ever appeared on the list, Mr Mandela has now been delisted.

*An HON MEMBER What about section 54?

*The MINISTER If the hon member wants further information, he can come and ask me personally, and I should be very pleased to assist him.

A further fact in respect of this section with regard to communism, as I explained last time, is that the action in respect of the organisations etc was an administrative action. The hon member was an administrative action. The hon member for Bethal agreed with me. With regard to the

HOUSE OF ASSEMBLY

prohibition on the promotion of communism, this was and is contained in the Statute. Its removal would have to be an act of this Parliament. I infer from the hon member for Bethal that he is the foremost advocate for the removal of that section. [Interjections.] Of course! The entire House is my witness.

*Mr SPEAKER Order! The hon the Minister is becoming just too enthusiastic. His time has expired.

Mr L FLUCHS Mr Speaker, we on this side of the House are obviously particularly pleased by the hon the State President's announcements on 2 February 1990 in regard to the steps which will be taken to ease certain sections of the state of emergency in favour of liberty, and also the steps taken to allow people to participate in political debate. I am not the first speaker on this side of the House to welcome the tentative steps towards normalising the political process in South Africa but steps taken by the hon the State President are in serious danger of having little or no positive influence in the political arena because the Internal Security Act contains provisions which could negate or nullify any good that has been done by the easing of the state of emergency or lifting of restrictions. The Internal Security Act, via the back door, makes severe inroads into the common law rights and privileges of every citizen in this country, and it continues, as it has done in the past, to pervert the course of justice in South Africa.

It is our philosophy, and the philosophy adopted by any civilized country, that a person is entitled to be brought to trial as soon as possible.

It is in particular sections 28, 29 and 31 of the Internal Security Act which are a stumbling block to every citizen's right to receive a fair hearing.

I can do little better than to quote Mr Justice Goldstone in the Report of the Commission of Inquiry into the Death of Clayton Sizwe Sibhole when he makes the following statement in regard to section 29 of the Internal Security Act:

I quote

The provisions of section 29 are drastic and make serious inroads into the normal rights and privileges of every citizen of the Republic. It is of utmost importance therefore that the letter and spirit of the regulations should be

HOUSE OF ASSEMBLY

adhered to by those responsible for the well-being of such detainees.

The judge then carries on as follows. [Time expired.]

Mr P G SOAL Mr Speaker, the hon the Minister has not answered our question. He has dealt with the latter half of the Act, where we have sympathy with him, with regard to crimes of violence, but genuine political activity should be allowed, unfettered by this Act, as regards the first half of the Act. I hope the hon the Minister will give attention to that. [Interjections.]

I have looked at his proclamations. I know that 177 names have had been removed from the lists. I bet the hon the Minister does not know that. [Interjections.] I know that more than 400 names still remain there. I counted them. So I am aware of what is going on, but I am not sure that he is. [Interjections.]

The Act is not in keeping with the spirit announced by the hon the State President on 2 February. There is a spirit of reconciliation and hope, and this Act is in conflict with that spirit. I think the hon the Minister should have a look at the first 30 or so sections of the Act and have them repealed. [Interjections.]

THE MINISTER OF JUSTICE Mr Speaker, for the information of the hon member for Johannesburg North, Mr Nelson Mandela's name is still on the roll of attorneys. It was never removed!

Secondly, as regards the names that are still on the list, I want to say—I am emphatic about this and the hon member must listen carefully—those names are on the list for the reason that those people have committed violence-related crimes. They will remain there until such time as another policy prevails. [Interjections.] Until such time as another policy prevails. [Interjections.] That is the policy now. [Interjections.]

*I also said in the Other Place that I was not familiar with every letter of this Act. It is not I who say that! Mr Justice Rabie advised, in 1982, that this Act be revised from time to time.

*Mr S C JACOBS Any legislation must be revised from time to time!

*The MINISTER He advised that, because he said it should be adapted to the circumstances and needs of the time. Consequently I have no

problem in saying that this Act will from time to time, as is necessary, be brought into line with what is needed at a specific juncture.

I want to address the hon member for Bethal once again and say that the last date on which a person was listed as a communist was 1970. The only person we could trace who was prosecuted under the Communism Act, the old Act before it was amended as a result of what Mr Justice Rabie had advised, was Mr Royley Arenstein who was prosecuted in 1966. It did not happen again! [Interjections.] *Hansard 6/3/90*

I now come to the last point. Hon members resent our standpoint on communism, but they know that if one wants to prosecute anyone under this Act, with reference to the relevant sections which prohibit the promotion of communism, one has to do so according to the letter of the 1982 legislation which deals with communism as interpreted by Lenin, Marx and others. The hon the Leader of the Official Opposition reproached us, however, and said that what one should be careful of today was a new type of communism which he called Gorbachev's communism. [Interjections.]

No, he called it Gorbachev's communism. Hon members are welcome to take a look at column 47 of the Hansard. [Interjections.] Of course! [Time expired.]

Debate concluded

QUESTIONS

†Indicates translated version

For oral reply

General Affairs

North-Western Transvaal: designated area

*1 Mr A A B BRUWER asked the Minister of Planning and Provincial Affairs †

- (1) What is the purpose of the designated area in the North-Western Transvaal,
- (2) whether he will make a statement on the matter?

B245E

THE MINISTER OF PLANNING AND PROVINCIAL AFFAIRS *Hansard 6/3/90*
(Reply laid upon the Table with leave of House)

(1) and (2) *Hansard 6/3/90*
The North-Western Transvaal is of strategic importance to the RSA. It is the thoroughfare between the RSA and the rest of Africa and must be stabilized to realize specific strategic, political and security objectives.

The depopulation of rural and especially peripheral rural areas such as the border area of the North-Western Transvaal, is an international phenomenon and can be ascribed to economic push and pull forces. The economic basis of the North-Western Transvaal is agriculture which is severely hampered by structural defects. Uneconomic farming units, unfavourable debt burdens, marginal soils, periodic droughts and the distance from markets complicate farming in this area and promote depopulation. A reduced farming population handicaps the inherent growth potential of smaller growth centres and the decline of infrastructure forms part of the intricate process of regional depopulation.

The farmer who has sufficient financial reserves and makes an existence on an economic unit, is to resist shorter term agricultural drawbacks such as droughts, and is seen by the Government as the antipode to depopulation. A comprehensive approach to the stabilization of border areas within the wider concept of regional development, is necessary to keep farmers on the land.

The Government has committed itself to such a comprehensive stabilization strategy for the North-Western Transvaal and with the exception of agricultural stabilization which is at present receiving special attention, satisfying progress has been made.

Socio-economic stabilization of border areas can only be successfully implemented over a relatively longer period of time. It is thus clear that the nature of and progress with stabilization are subject to various factors which are liable to change. The Development of Designated Areas Act, 1979 (Act 87 of 1979) was formulated as a special instrument in stabilize areas with structural agricultural shortcomings, but where certain security risks also exist. The situation in the North-Western Transvaal necessitated the proclamation of the border area as a Designated Area.

It must be fully understood that the above-mentioned Act is to be seen as just one facet of the comprehensive stabilization strategy, since it

HOUSE OF ASSEMBLY

No offence evident in Sithole's death — judge

By Day 6/3/90.

252

Political Staff

CAPE TOWN — There was no evidence to suggest the death of Clayton Sithole had been caused by any act or omission involving an offence by anyone, Mr Justice R.J. Goldstone states in a report tabled in Parliament yesterday.

This, he says, was conceded by counsel appearing for Sithole's family.

Sithole — boyfriend of Zinzi Mandela, Nelson Mandela's daughter — was found hanged while detained under Section 29 of the Internal Security Act in connection with 12 murders in the Soweto area.

In the report, the judge, who was a one-man commission of inquiry into Sithole's death, is critical of certain aspects of the way in which Section 29 detainees are handled.

The judge says no manpower shortage in the police force justifies these detainees being guarded by young and inexperienced policemen — Sithole's two guards were aged 19 and 20.

Neither was there justification for these detainees being guarded by policemen who were ignorant of the relevant regulations applying to such

detainees — the two guards were unaware of these regulations.

Mr Justice Goldstone said the provisions of Section 29 were "drastic" and made serious inroads into the normal rights and privileges of every citizen.

It was, therefore, of the "utmost importance" that the letter and spirit of the regulations be adhered to by those responsible for the well-being of such detainees.

Mr Justice Goldstone said further careful consideration needed to be given by the authorities to the manner in which Section 29 detainees were held.

In particular, consideration should be given to the apparent conflict between the necessary requirement for humane, dignified, and decent treatment on the one hand and safe detention and interrogation on the other.

The judge said further careful consideration should be given to the desirability of allowing investigating officers a discretion as to certain privileges allowed to detainees.

Tambo tape: appeal against sentence upheld

CAPE TOWN — The Cape Town Supreme Court yesterday upheld an appeal by a Guguletu man against a nine-month prison sentence for the possession of a tape recording of a speech by ANC leader Mr Oliver Tambo

Mr Justice A J Lategan, with Mr Justice DM Williamson concurring, suspended the sentence imposed on Xohle Jaxa (26) on

July 20 last year

Mr Percy Sonn, for Jaxa, said he was appealing against the sentence on the grounds that it had been shockingly inappropriate, inadequate consideration had been given to the fact that he had been detained for a long time and that the magistrate had over-emphasised Jaxa's failure to give evidence to explain his possession

252 329 3/21/90
The magistrate had also failed to give weight to mental damage suffered by Jaxa during detention and that he had received psychiatric treatment, he said.

Mr J D Tredoux, for the State, said the magistrate had correctly exercised his discretion and asked that the sentence remain and the appeal be turned down. — Sapa.

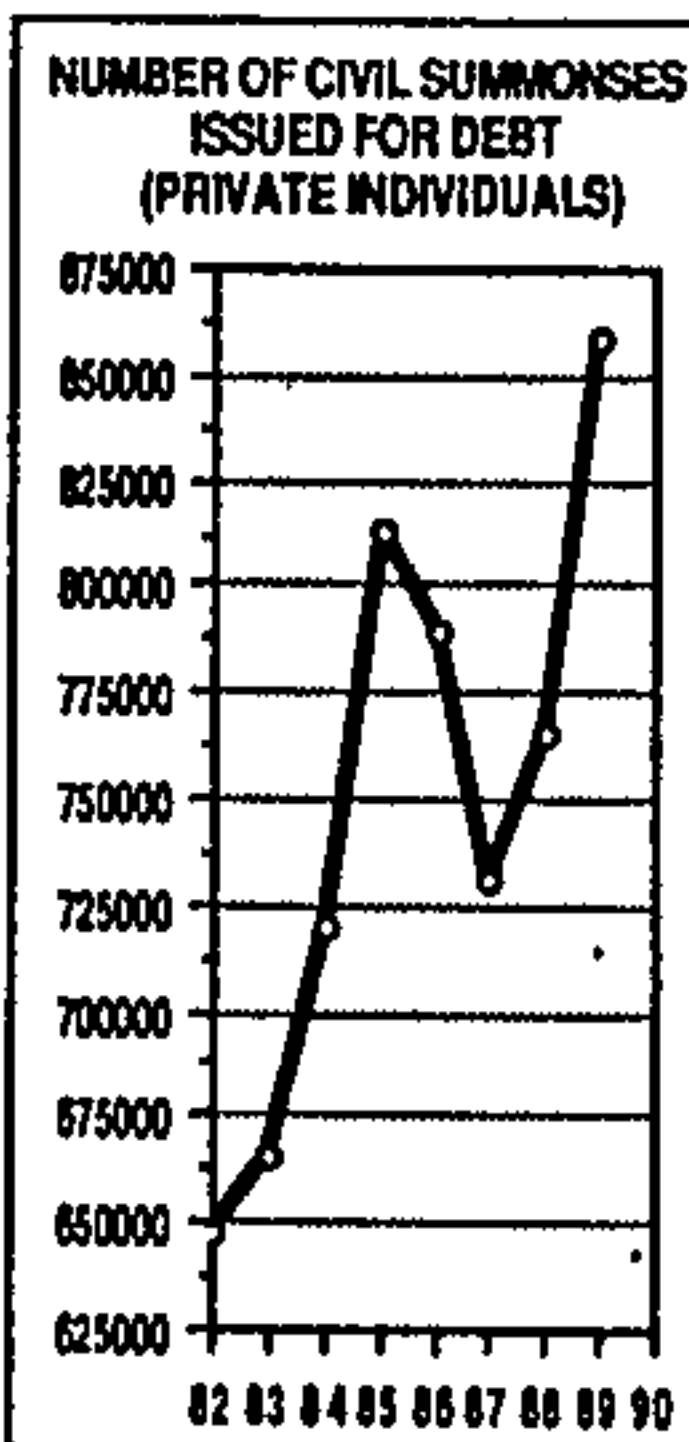
Spec 6/3/90

252

Debt summonses soar to 860 000

R1 b paid out to creditors in 1989

By Michael Chester



South African consumers overladen with debts were forced by court orders to hand over R1 billion to creditors in legal actions last year — and massive debt problems have spilled over into 1990.

Tens of thousands of cases were still waiting to be heard and debt summonses flowed out faster than they came to court.

The full extent of the debt dilemma has been exposed by the Central Statistical Service in a final 1989 count of civil cases triggered by creditors seeking settlement from debtors.

The number of debt summonses sent out to private individuals in the 12 months soared to the highest annual total on record at almost 860 000 — far worse than the 1985 peak which was considered the consumer disaster of the decade.

If the summonses issued to business enterprises is added to this, the total leaps to nearly one million.

All in all, the amount of debt involved in court judgments broke the R1 billion barrier for the first time and climbed to more than R1 238 million.

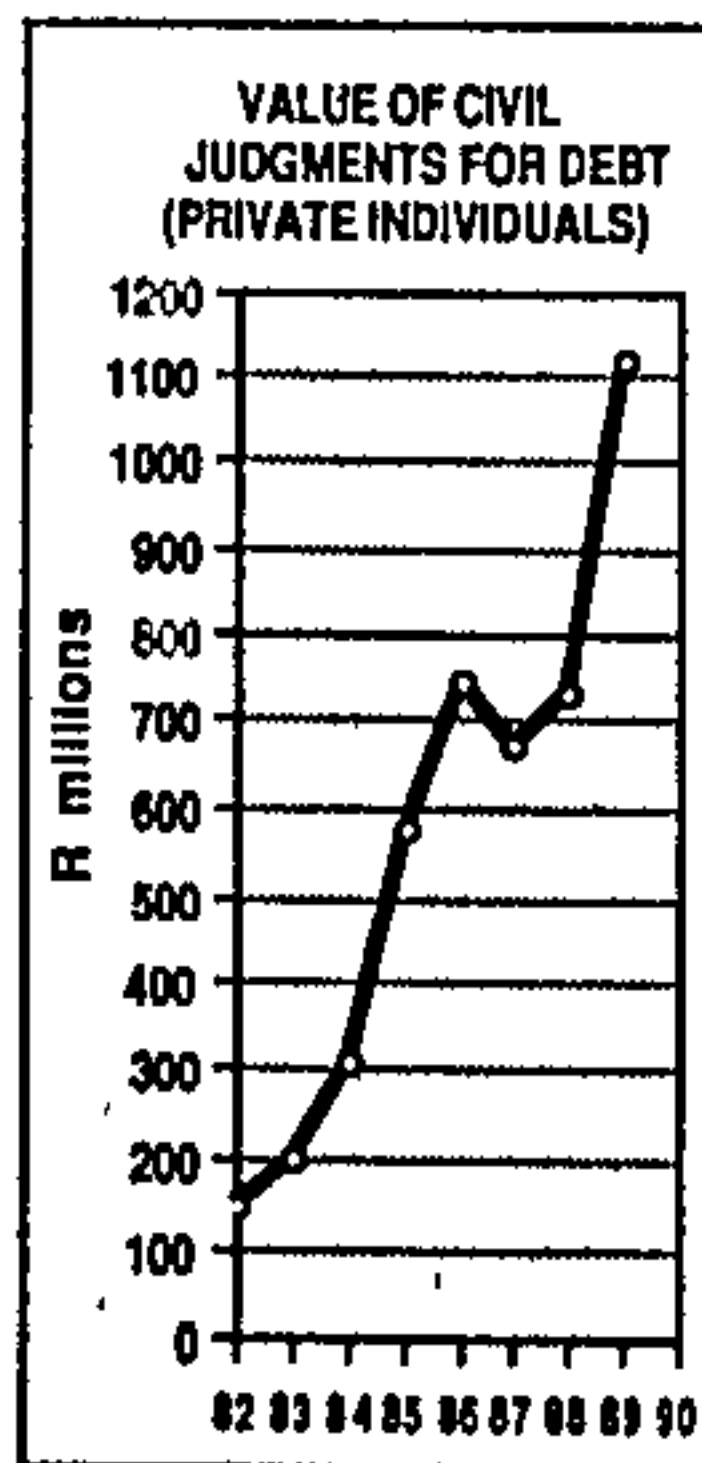
The load to be cleared by private individuals in court orders weighed over R1 120 million.

Of the more than 400 000 court judgments that hit individual debts, 150 000 were concerned with clearing R124 million in unpaid bills for goods charged to open accounts run by shop-keepers.

But the heaviest debt load of all had to be cleared by 43 000 people who had failed to repay R560 million in cash loans — many of them in the hands of money lenders.

Another 28 000 faced the courts with over R110 million in bounced cheques and over-spending on credit cards.

Yet the worst may not be over. Mrs Ruth Ellosov, executive director of the Advanced Credit Bureau, estimates that no fewer than 8 000 names are being added every month to blacklists of consumers with persistent bad records of writing out dud cheques or trying to dodge settlement of bills.



Case took three years to settle

R1,5 m trust fund for KTC camp

STOR 6/3/90

252

CAPE TOWN — The case between the Minister of Law and Order and residents of the KTC squatter camp over the burning of the camp in 1986 was settled in the Supreme Court in Cape Town yesterday, with the establishment of an initial R1,5 million trust fund.

The Legal Resources Centre in Cape Town, which has been handling the case for the plaintiffs, said that the Government had undertaken to make an initial contribution of R1,5 million to a fund "which will be established to undertake community development projects in the areas from which the various claimants come, and to provide relief to residents who suffered losses during the events of May and June 1986".

Government fund

The government has also undertaken to contribute a further sum of not more than R500 000 on a rand for rand basis to match other contributions to the fund.

The case has taken three years to reach settlement, and has involved a long and costly litigation.

A spokesman for the Legal Re-

sources Centre said the case had arisen out of the burning of the KTC settlement during the unrest of 1986, and although there had been 3 000 claims for damages, a Mr P N Mzamka and 20 others — including the Methodist Church of South Africa — had been chosen to represent the residents as a test case.

"The settlement has resulted in a saving of the very substantial legal costs that would have been incurred if the case had been continued," the Legal Resources Centre statement added, pointing out that the costs would probably have "exceeded the contribution the Government has agreed to make to the trust fund".

It noted that the establishment of the fund was "a constructive use of money ... and will benefit a large number of poor people and help them establish better lives for themselves".

The fund will provide assistance for community development programmes in KTC Camp, Nyanga Bush Camp, Nyanga Extension Camp and Portland Cement Camp, and also provide *ex gratia* compensation to residents of these areas who suffered loss or damage to property during the events of May and June 1986. — Sapa.

CAF 7/3/90

2 men to hang for burning hobo to death

JOHANNESBURG. — A Rand Supreme Court judge yesterday sentenced two Johannesburg men to death for the murder of a hobo in January last year. Gert Swart, 30, and Dean Plank, 22, were last week convicted of murdering Mr Eric Stopford, who died in Mr Plank's burning car on January 31, 1989.

Passing sentence, Mr Justice M J Strydom said he and his two assessors, Mr Dries de Klerk and Mr Michael Traub, had found no extenuating circumstances.

He said Plank had not acted impulsively when he had committed "this heinous crime".

Plank had told a former lover, Ms Heather Robertson, of his plan to fake his own death and claim insurance money, and he had also discussed this plan on numerous occasions with Swart.

A month later this plan was brought into execution when Mr Stopford died in a burning car.

The judge said the fact that a living person would be the victim had "not bothered Mr Plank much".

He had picked up Mr Stopford at the Johannesburg station knowing he would die as Dean Plank, thereby enabling Plank and Swart to claim more than R800 000 from two insurance companies.

Mr Justice Strydom said that although the court had to accept it was Plank who had set the car alight with Mr Stopford inside, Swart had entered into a conspiracy with Plank and the two had "done everything together".

Plank and Swart were also sentenced to three years' imprisonment each on two counts of conspiring to defraud two insurance companies. The sentences are to run concurrently — Sapa

I feared for my life, says Chili

A YOUNG man told a Rand Supreme Court judge yesterday that he feared for his life when two youths grabbed him, saying they were taking him to "mama", meaning Mrs Winnie Mandela.

Mr Sibusiso "Sp-onge" Chili (25) was giving evidence in his defence at a murder trial before Mr Justice Solomon and two assessors.

The trial follows the death of Maxwell Sanele Madondo, said to have been a member of the Mandela Football Club. He was killed on February 13 last year in Orlando West, Soweto.

Chili said he had heard from a man called Piet Ikaneng, a member of Mrs Mandela's Football Club, that he (Chili) should be killed.

Nofomela to tell story to Harms

SOWETAN Reporter

FORMER police hit squad member Butana Nofomela will today give evidence before the Harms Commission.

Mr Justice Louis Harms is investigating alleged State involvement in politically motivated violence.

Nofomela's allegations about the existence of a police hit squad led to his stay of execution for a murder unrelated to hit squads.

He alleged police used former police members, called "Askaris", to eliminate anti-apartheid activists.

Nofomela claimed he was involved in the death of Natal anti-apartheid activist lawyer Mr Griffiths Mxenge's wife Victoria in August 1985.

Her body had more than 40 stab wounds.

Mr Mxenge was murdered in November 1981.

The inquiry adjourned for the day shortly before the lunch break yesterday after the head of military intelligence, Lieutenant-General Rudolph Badenhorst, requested that the hearing concerning slain Swapo executive member Mr Anton Lubowski's alleged SADF involvement be heard in camera.

Badenhorst, who gave evidence to Harms on Monday, yesterday asked that the commission hear evidence of certain CCB activities in camera.

Harms accepted this request. (252)

This evidence will be heard on Friday despite objections by Mr Martin Luitting who represents the Lubowski family.

EARN MORE MONEY

How Griffiths Mxenge died

● From page 1

instructed to eliminate Mxenge. Coetzee told them to disguise the incident as a robbery.

After poisoning the lawyer's dog and monitoring his movements, the four assassins set up a "car breakdown" in the middle of the road

Mxenge, who was on his way home, stopped and asked if he could help. "I said yes, and immediately produced my Makarov pistol and ordered him into the car," Nofomela said

Stabbed

Mxenge pleaded with them but was told to shut up by Mamasilela. The lawyer was brutally assaulted and repeatedly stabbed with knives near Umlazi Stadium.

Mxenge's wrist watch and jacket, according to Nofomela, were taken by Coetzee, who told them that the radio and booster stripped from the

deceased's car would be installed in Schoon's car. Coetzee told them to keep the money they had taken from Mxenge.

Nofomela said he and Coetzee drove in two cars, including Mxenge's, to Piet Retief on the night of the murder. There, Coetzee poured petrol on Mxenge's car and set it alight.

Mission

Nofomela said, after returning to Pretoria, he was paid R1 000 in cash.

He said the next mission was in 1982 when he and Mamasilela were ordered by Coetzee to go and "steal" a certain Moabi in Soweto.

Moabi was driven with Coetzee, Captain Grobelaar of the Protea security branch in Soweto and a Lieutenant Vermeulen, to a farm in Zeerust where he was interrogated and severely assaulted until he lost consciousness.

(Proceeding)

R1 000 paid for Mxenge

By MONK NKOMO

FORMER security policeman and death row prisoner Butana Nofomela yesterday told how he and three others were paid by a senior policeman to kidnap and kill Durban attorney Mr Griffiths Mxenge.

Nofomela told the Harms Commission in Pretoria that he, former ANC member Brian Justice Nyulunga, police informer Joseph Mamasilele and student constable, a Mr Tshikalange, kicked, punched and repeatedly stabbed Mxenge to death

near the Umlazi Stadium in November 1981.

Nofomela said he and several former members of the ANC and of the PAC - referred to as Askaris - were trained by Captain Dirk Coetzee at Vlakplaas, a police farm near Pretoria.

He joined the police force in 1978 and was recruited into the security branch soon after completing his training.

During November 1981 he met Coetzee and Brigadier Schoon at the security headquarters in Pretoria. Here they were

● To page 2



BUTANA NOFOMELA

252

257

Lawyers condemn action

252

THE Black Lawyers Association (BLA) yesterday condemned the continued incarceration of political prisoners, some of whom are on hunger strike at Robben Island.

Mr Dikgang Moseneke, publicity secretary of the BLA, said. "We condemn their continued incarceration because it is related to and emanates from the undemocratic, repressive and racist nature of our society" *sovietas*

813190
Lawyers have been appointed to meet senior officials in Cape Town this week, to make representations to Mr F W de Klerk for the release of political prisoners

Sats workers face charges

Own Correspondent

CAPE TOWN — Six Sats workers who allegedly threw a striker off a moving train between Ysterplaat and Mutual Stations appeared in the Cape Town Magistrate's Court yesterday.

Mr Oliphant Mpheka, Mr Mxolisi Ntika, Mr Bisinathi Nkandalana, Mr Ngubenkomo Bonase, Mr Nozitsolo Dudumayo and Mr Bonakele Nqalathi face a charge of attempted murder.

They were not asked to plead and the case was referred to the Regional Court for hearing on March 22.

Their bail of R100 each was extended.



252

8/3/90

SAC-A

Police identified...
 capees as CE Lottering
 and W Goosen, former
 AWB members who were to
 be tried for murder.

ed murder to robbery and
 illegal possession of fire-
 arms — were Freddy Sith-
 ole, Clifford Ntuli, Maxwell

spokesman said, adding
 they were all dressed in
 "private clothing". — Sapa.

Man guilty of football club murder

ONE man has been found guilty of the murder of Mandela Football Club member Maxwell Sanele Madondo.

The Rand Supreme Court yesterday found Si-

THEO RAWANA

busiso Chili, 25, guilty with extenuating circumstances.

Madondo was murdered in Orlando West on February 13.

Of the other three men who appeared with Chili yesterday, Lerotodi Andrew Ikaneng, 23, was found not guilty; Sandilo Blanket, 22, was found guilty of common assault; and Isaac Mazibuko, 23, was found guilty of assault with intent to do grievous bodily harm.

The four men had pleaded not guilty to murdering Madondo.

Three of the original seven accused — Dudu Chili, 47, her son Mpika, 22, and Moses Nhlanhla Blan-

ket — were acquitted last month.

Mr Justice R A Solomon and two assessors found that Sibusiso Chili, who had been under threat from the Mandela Football Club, had been involved in a fight with Madondo and had hit him first with one stone and then with a heavier one while he lay on the ground.

While he found extenuating circumstances in that Chili had been accosted by Madondo and had been engaged in a fight, the judge said he must have realised that hitting Madondo with the second, heavier stone would result in death.

Sentence will be passed today. Mazibuko and Blanket were released on their own recognisances.

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65 867	104 372
<u>234 160</u>	<u>197 954</u>

NATAL UNREST DEATHS

September 1987 — January 1989:.....	668
February 1989 — March 7 1990:.....	672
Past 24 hours' official toll:.....	1
TOTAL:.....	1 341

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GENERAL'S COMMISSIONS FIRST WEEK OF OPEN SITTINGS

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S

NOW I know how a dove must feel when it just misses getting nailed by a hawk. Some anger, some fear perhaps, but mainly relief, I think.

Major-General Eddie Webb of the Civil Co-operation Bureau said many interesting things during his testimony to the Harms Commission, but the key line for me was when he said I had been "monitored with the aim of elimination" and that the mission "had not been successful".

At least 120 anti-apartheid activists, here and abroad, were not so fortunate, and ended up as the assassination victims of soldiers and security policemen working for generals and politicians.

As was the case with detentions a decade or so ago, it seemed until last year that political murders were horrendous events that happened to other people.

At first it was people I knew of — Rick Turner, Ruth First, Griffiths Mxenge, Joe Gqabi. Then it happened to people I had met — Matthew Goniwe, Sipho

Thoughts of a victim who got away

Hashe, Eric Mntongo, Joe Sereame. Then last year a close friend, David Webster, was murdered by a death squad.

For many of us who knew this gentle opponent of apartheid it was an event which shocked us perhaps more than any other single act of state brutality that we had experienced.

But still a certain *nazi éié* lingered, and also a kind of fatalism. You could check under your car, watch your rear-view mirror, move carefully, but when your number was called, would it be enough?

Over the previous five years there had been a range of "threatening" incidents — my motorbike tyres, brake cables and upholstery slashed up on eight occasions, threatening phone calls, a teargas canister through my window and several brief spells in detention.

One of the names on the 'hit list' was that of Weekly Mail writer **GAVIN EVANS**. Here he tells how he escaped the fate of his friend David Webster

But this always seemed to be "par for the course" for one of apartheid's opponents and was insignificant compared with what others experienced.

Nearly two years ago, after a short period in detention, a security police lieutenant threatened me, aiming at his bombs and a bullet in the back. But he was a braggart known for wild claims and I did not take it seriously.

Then, five months ago, as a result of one of many leaks within the security

forces, I first learnt that my name was on a military intelligence assassination list.

I spoke to my lawyers, but decided to keep quiet. Even if the the CCB men were on the run, there were plenty of righteous freelancers who might see it as their duty to pick up the fallen spear.

Further leaks from the security force grapevine now make it almost certain that it was the South African Defence Force's vendetta against the End Conscription Campaign which led to my name being on the list.

General Magnus Malan always gave the impression of being personally affronted by the existence of an organisation which sought to destroy his power base, and his reaction was frequently out of proportion and even bizarre. ECC had little more than 1 000 active members throughout South Africa, yet

Malan regularly spoke of it in the same breath as the ANC and SACP, as being a revolutionary threat and a major enemy.

I suppose what follows logically in the mind of a general is that if you are at war with someone you do your best to eliminate them, which is how, as a former ECC publicity secretary, my name came to be on their list.

In all this there is a sense of satisfaction in seeing the generals squirm like rats on a drowning ship, desperately trying to push off those below them to save their own skins — though I'm sure this is small compensation for the families of David Webster, Anton Lubowski and scores of others.

The noses — or is it the cars? — of General Malan and Lieutenant-General "Wytkop" Badenhorst grow bigger each time they open their mouths in an attempt to pass the buck. By the end of the year both will be belly-up and the country much better for it.

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... ..

Killing's so much easier than doing paperwork

W/Mail 9/13-15/3/90
Narrow
 brief limits
 the scope
 of Harms
 inquiry

FEARS are growing that the Harms Commission into political killings is more an exercise in damage control in investigation than an inquiry that will get "to the bone," as President FW de Klerk promised.

And it will not necessarily be the fault of the commissioner, Mr Justice Louis Harms. The terms of reference of the commission limit its investigations in ways which make it difficult for him to get to the marrow.

By limiting the commission to an investigation of politically related killings within the borders of South Africa, De Klerk has ruled out the vast majority of covert actions against opponents of apartheid. Cross border actions were more frequent and more horrifying than many of the internal ones in the years of the "total onslaught".

However, this is not the only problem facing Harms. He also has to deal with a security establishment not used to being called to account for its actions.

Harms has agreed to an in camera hearing relating to allegations that murdered Swapo lawyer Anton Lubowski was an agent of the SA Defence Force.

The hearing will determine whether evidence relating to Lubowski's relationship to the SADF should be heard in open sitting. The outcome may be the first credibility test for Harms.

Harms said yesterday that there would probably be an open hearing on Monday, dealing with the Civil Co-



Assassins on parade ominous testimony at the Harms inquiry

operation Bureau — the secret SADF agency allegedly responsible for the murders of Lubowski and Johannesburg activist and academic David Webster.

Harms was unable, in terms of his brief, to take immediate strong action against Major General Eddie Webb — head of SADF Special Forces and CCB chairman — when the latter, with a cynical dismissiveness reminiscent of the Steve Biko inquest, all but refused to co-operate with the commission.

Meanwhile, Defence Minister Magnus Malan — despite his prominent position in former State President PW Botha's State Security Council since its inception in the late 1970s — claims that he knew nothing about the CCB until November last year. This claim is being disputed by Army Chief of Staff Major General Jan Klopper and SADF Deputy Chief of Staff Major General Abraham Joubert, both of whom give evidence to the effect that Malan would indeed have known of special force operations.

Supporting Malan — in effect, if not necessarily in intention — was General Rudolf "Witkop" Badenhorst, Chief of Army Intelligence.

According to Badenhorst, who is the intermediary in the chain of command between Webb and Malan, CCB chairman Webb had kept him in the dark about the existence of the CCB and, equally, about the nature of special force operations.

What many observers interpret from all the intrigue by the top military brass — especially in view of the fact that the formation of the CCB has been conclusively documented at the highest levels of the state security apparatus — is that Webb is being set up by his fellow officers to take the fall. He, on the other hand, is reacting the only way he knows how: with silence and aggression.

Perhaps the most significant problem the commission will be grappling with in the coming months is its definition of the interests of state security.

In the past, the securocrats manufactured a condition of "total onslaught" and used this to justify the most extreme measures against the ANC. The notion of state security became little more than a synonym for the repression of the ANC/SACP/PAC/Swapo. Now, however, the situation has changed.

The ANC has been unbanned and can no longer be portrayed as the sinister force the securocrats wanted it to be. So, too, the notion of state security itself has become highly questionable. Far from providing the excuse the securocrats would like, "state security" is precisely the problem.

ALMOND Nofemela told the Harms Commission that he had made only one arrest in his eight years as a policeman.

There is no reliable estimate of how many people he killed but 50 is not an unreasonable number.

Mr Justice Louis Harms expressed some surprise were people not at least occasionally processed through the usual channels in the special branch's anti-terrorist unit?

"Too much paperwork," Les Roberts, deputising for state attorney general Tim McNally, muttered under his breath. W/Mail 9/13-15/3/90

The picture which emerged this week of the C1 branch of the SB's anti-terrorist unit involved, so to speak, little paperwork. It was easier to simply kill or destroy.

When Nofemela — brought up from death row to give evidence — described the training he received at the unit's base on the police farm, Vlakplaas, he detailed three areas of instruction: ambushing, kidnapping and shooting (mainly with Soviet-made weapons) and knifing. Arson might also have been mentioned and assault and torture, but in the main, the job description — at least on Nofemela's testimony — was accurate enough.

Nofemela showed few signs of remorse during the approximately six hours he spent in the witness box.

His only emotive gesture came right at the beginning of his examination when he refused to take the oath.

It went against his beliefs, he said tersely, to swear before God.

Prison life had made him an atheist, it seemed.

Describing the killing of human rights lawyer Griffiths Mxenge he calmly went into clinical detail.

The four security police assassins were busy stabbing Mxenge, as ordered by his commander, former Captain Dirk Coetzee.

But fellow assassin David Tshikange's knife got stuck in the victim's throat and the killer lost his grip. Already pierced with more than a score of stab wounds, Mxenge managed to pull the knife out of his throat and turn it on his attackers. But despite his desperate attempt, Mxenge soon lay dead on the ground and the four security police killers could report a mission accomplished.

According to Nofemela's evidence, the Mxenge killing was the first secret mission in which he was involved. His role, as a trained policeman — he attended police college at Hammanskraal for six months in 1980 before joining the security police — was to supervise the Askaris, former ANC guerrillas now working for the SAP. Nofemela said at least one trained policeman always accompanied the Askaris on missions.

One week after the Mxenge mission, Nofemela returned to Vlakplaas. His next mission he said, was to "steal" an ANC suspect by the name of Moabi from his Soweto home.

The star witness to the Harms commission tells nonchalantly how he murdered, stole, tortured and cheated. How many people has he killed? Too many to remember. By IVOR POWELL.

After being taken to a police-owned farmhouse outside Zeerust, Moabi was systematically beaten and tortured. Finally Coetzee asked Nofemela whether he thought the man would be able to recognise his assailants. When Nofemela said yes, Coetzee replied "Then we must get rid of him."

This dialogue, more a ritualised formality, was repeated on other occasions. As when Japie Maponye, a Krugersdorp building society guard and the brother of a suspected ANC guerrilla, was "arrested" by Nofemela on a supposed fraud charge, then taken back to Vlakplaas.

There Maponye was interrogated and assaulted at the hands of Coetzee's successor Major Eugene de Kock, Nofemela and two Askaris.

When the interrogation proved fruitless — the man knew nothing of his brother's whereabouts — Nofemela was asked "Will he be able to recognise you?"

When Nofemela said the man probably would, De Kock shot Maponye in the head.

"Coetzee said if we can't 'steal' people, we must make them worry," Nofemela told the commission.

In this way instructions were given to Vlakplaas operatives to kidnap a particular individual or to steal his car. In one such incident, under orders from a Colonel Cronje, Nofemela stole a car belonging to a Vryburg UDF activist, having failed to find an opportunity to kidnap the man. He drove it to a disused mine near Kuruman, as arranged.

There the car was "stripped". The hubcaps were removed (and given to Nofemela as a present), the car's clock was taken out, possessions were divided up as spoils. And the five live chickens which were found in the boot of the car were promptly eaten. Then, as was the usual practice, the car was set alight.

Vlakplaas under Coetzee and equally under De Kock, appears to have been as much a place of mindless criminality as it was of political repression.

It was standard practice to destroy a whole motor car for the sake of a set of wheelcaps. In one incident, a Lesotho man was murdered by Nofemela Coetzee's orders after he had tried to palm off inferior quality diamonds to Coetzee.

Asked by Harms whether he did not feel that it was wrong to pursue criminal activities under the protection of the police, Nofemela thought for a while.

Then he shrugged in the witness box. "Private enterprise," he said.

WITH YOUR HELP OUR CHILDREN LIVE

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OPERATION HUNGER

One Million Rand

FOR OPERATION HUNGER

Small on sale

Pick 'n Pay

YOU COULD BE THE WINNER
 But only if you have a ticket in the draw. So rush now — closing 10 March! Tickets available at Pick 'n Pay, Bradlows, Joshua Doore, Computicket, Family Circle Pharmacies and other caring stores countrywide.

W/M and 9/13-15/3/90

Narrow brief limits the scope of Harms inquiry

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And it will not necessarily be the fault of the commissioner, Mr Justice Louis Harms. The terms of reference of the commission limit its investigations in ways which make it difficult for him to get to the marrow.

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Assassins on parade ... ominous testimony at the Harms inquiry

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WITH YOUR HELP OUR CHILDREN LIVE

**Cheque
this**

OPERATION HUNGER

21-4-1990

of Tenner of Tenner

one Million Rand R1,000,000

FOR OPERATION HUNGER

Shraolonsela

Pick 'n Pay

YOU COULD BE THE WINNER...
But only if you have a ticket in the draw So rush now -
closing 10 March! Tickets available at Pick 'n Pay,
Bradlows, Joshua Doore, Computicket, Family Circle
Pharmacies and other caring stores countrywide.

Hearing

252

adjourned

Sowetan 9/3/90
SELF-confessed murderer
and kidnapper of anti-
apartheid activists Butana
Nofomela will be cross-
examined next Tuesday.

The Harms Commis-
sion adjourned the hear-
ing yesterday following
requests from legal
counsel who include law-
yers representing the
Minister of Law and Or-
der, Mr Adriaan Vlok.

Hanged in shame?

Clayton Sithole may have hanged himself out of remorse, while in police custody on January 30, after accusing Winnie Mandela and her daughter Zinzi of serious criminal conduct. That's according to the one-man Goldstone Commission which investigated Sithole's death. F14 9/3/90



Zinzi

In a report tabled in parliament this week, the judge said the allegations against the Mandelas were untested and could not be made public in the interests of fairness and justice.

He found that one or more of three reasons probably caused

Sithole to kill himself:

- His having implicated Winnie and Zinzi (who was his lover and mother of his child);
- Anger at "certain people from Orlando West" who gave fake information about him to the police; and
- His impression that he would be detained for a long time.

Sithole was arrested in Soweto on January 26 and found in possession of arms and ammunition. He admitted to police that he had been involved in various armed attacks in Soweto and described himself as "a soldier of the armed struggle."

It was stated in evidence that allegations against Winnie Mandela, "whether true or false," were not infrequently made to the police by Internal Security Act detainees.

Justice Goldstone found that there was no doubt Sithole caused his own death by hanging in a shower room at John Vorster Square in Johannesburg. 252

Counter

would like to meet her

"That same afternoon he turned up at the SABC. He called me from the reception area and asked to be introduced to Joleen. It now looks as if he had set me up to get to Joleen. I do not know what is going on."

After speaking to Wicomb, we called the Pretoria number that the man had given him. The woman who answered declined to



Du Plessis

give her name and denied that an Eric du Plessis lived there.

Returning to the Harms Commission itself: the judge decided to hold *in camera* the preliminary hearing into the allegations that Lubowski was a government agent. This was after a sworn statement by the head of military intelligence, General Witkop Badenhorst, was handed in to the commission.

Badenhorst said sworn statements and documentation about the work relationship between the SADF and Lubowski could have severe implications for State security and the SADF if made public. A detailed description of what the documents and statements contained would for the same reasons also have to be heard *in camera*, Harms decided

Badenhorst added that even the selective publication of some of the information would place innocent individuals in danger. Badenhorst was supported in his submission by Free State Attorney-General Tim McNally, who is leading evidence for the commission.

Replying to a question from advocate Luitingh, the judge said he could not conceive that any evidence which might be presented on behalf of the family would be *in camera*. Once he has heard the preliminary evidence by the SADF on Lubowski's alleged role as an agent, said Harms, he would decide whether to continue the *in camera* ruling.

□ The Harms Commission has been instructed to investigate alleged death squads and the involvement of the SADF's Community Co-operation Bureau, as well as Defence Minister Magnus Malan's allegation that Lubowski was a paid military agent

Eddie Botha

HARMS COMMISSION F1M9/390

More worms

Defence Minister Magnus Malan and some of his generals tried desperately this week to distance themselves from the Civil Co-opera-

F1M 9/3/90 252 249
tion Bureau (CCB) as the hit squad scandal exploded around them. It now appears to be every man for himself.

But opposition MPs claim the evidence so far before the Harms Commission has been so damaging that neither Malan nor SADF chief Jannie Geldenhuys can avoid accepting some responsibility.

Indications are that attempts to create scapegoats could backfire if former CCB operatives use the Harms Commission to give evidence about secret operations to cover their own backs

President F W de Klerk, who went out on a limb in parliament last Thursday to back Malan and condemn the "witch-hunt" being conducted against him, is said to be increasingly embarrassed by both the factual evidence now coming out (as opposed to the "innuendo and speculation" he referred to last week) and Malan's handling of the situation.

Malan's position was further undermined by his own decision on Monday night to "play open cards" with the public and claim that he learnt of the CCB's existence only late in November last year. That was when his military intelligence chief General Witkop Badenhorst was approached by SAP investigators who had uncovered the secret unit during probes into political murder allegations. Earlier in the day, Badenhorst told the Harms Commission that he, too, had been unaware of the CCB until the police told him of it.

In his staunch defence of the CCB in parliament last week, Malan said the unit was formed in the mid-Eighties, but he gave no indication that he was unaware that it existed until last year. Chief of Staff (operations), Gen Jan Klopper, told the commission that while the CCB was only formally established on April 7 1986, it had been in existence since 1980.

Malan also implied that Badenhorst controlled the CCB by claiming that former Swapo executive official Anton Lubowski was a valuable military intelligence agent and that Badenhorst would, therefore, not have ordered action to be taken against him. The CCB is suspected of murdering Lubowski

Malan's statement on Monday also contradicted his announcement last week — that neither he nor the SADF would react directly or indirectly to any further questions about the CCB, in order not to prejudice the investigations.

His decision to admit that he didn't know until November that the CCB existed is seen as the playing of a trump card which he wanted to save for later in the game

P.T.O



**Badenhorst... no co-operation
from colleagues**

The *FM* said last week that Malan's claim about Lubowski opened a whole new can of worms (*Current Affairs* February 2), but it was nothing compared to what this week's Harms Commission evidence has produced.

The questions have multiplied. The unfolding saga now shows that not only was there lack of co-operation between different branches of the security community, but even within the SADF itself Badenhorst, as chief of military intelligence, was not only unaware of the existence of a secret military unit that was also apparently gathering intelligence, but couldn't get co-operation from its commanders when he was asked by Malan to investigate allegations against the unit.

It's also not clear who decided on what operations the CCB would undertake. The head of the SADF's Special Services (which includes the CCB), Gen Eddie Webb, told the Harms Commission that projects of a political nature required ministerial approval — but Malan says he was unaware of the unit's existence. It therefore appears that:

- CCB commanders didn't regard any projects as "political," or
- They didn't bother to apply for ministerial approval, even if projects were political; or
- Malan gave approval for projects of which he had no knowledge (just as former Finance Minister Owen Horwood did in the Info era)

Webb also refused (on the grounds that it could incriminate him) to answer questions relating to a bomb attack in Athlone and to the incident when a foetus of a monkey was hung in front of Archbishop Desmond Tutu's official Bishop's Court residence. Earlier, Badenhorst told the commission that CCB members had admitted responsibility for the two incidents.

Badenhorst also told Judge Harms that Webb reported directly to Jannie Geldenhuys. The question now is whether Geldenhuys knew of the CCB's existence. The implications of Badenhorst's testimony and Malan's latest statement are frightening.

The few CCB projects revealed so far to the Harms Commission seem to point more to harassment of government's relatively

harmless political opponents (such as anti-draft campaigner and journalist Gavin Evans, Cape Town attorney Dullah Omar, SA Council of Churches general secretary Frank Chikane and Anglican archbishop Desmond Tutu) and plots to murder them or destroy their property by acts of terrorism, than to defensible action against real threats to State security.

There seems little doubt that the Commission will continue to uncover information which will further compromise the government. ■

FIM 9/13/90 (252)

promoted to brigadier and, last month, was made deputy regional head detective of the Special Units branch.

"The SAP has been my calling since 1954 rather than my job," says Mostert "I have no regrets and have lived a very full and happy life."

He and wife Marie are particularly proud of their daughter, Lindé, who has just qualified as a dietician at Stellenbosch. But at the moment, the joy of his life is undoubtedly his bull terrier pup, Webster, named after the kid on TV

FIM 9/13/90

In many respects SA has been a home from home — lots of sunshine, cricket, rugby and wine. Angel was a fine cricketer and managed a game for South Australia in his youth. His love for Australian Rules football, which has left him with "crooked fingers and



forward to new

and considers his strengths to be good communication and delegation skills. His weakness — impatience with delays

appalling ankles," remains undiminished. He plays tennis, jogs and says many corporate problems have been resolved on the Sea Point promenade.

He reads extensively, subscribing to the *Financial Times*, *Wall Street Journal*, *International Herald Tribune*, *Time* and *Newsweek*. He enjoys biographies, has just finished reading eight books on World War 2, and also makes time for popular authors like Frederick Forsyth and James Michener.

Angel has a reputation in the business world for being hard-working and decisive. He is more a big-picture than a detail man

FIM 9/13/90

(252)

lan's shock announcement last week that murdered advocate Anton Lubowski was a SADF agent "Whether or not he was a spy, a murder was committed and there's a legal process to be followed before the file can be closed," he says.

Years in the police force have made him sympathetic to the need for "unorthodox methods" in dealing with the enemy. He says covert operations are commonplace and regular practice in most countries. But Mostert stresses that no one is above the law. "This is the basis of a democratic society and, while following orders from superiors might be a mitigating factor, it's not an exonerating one. Orders must be legitimate. There are enough legal procedures to curb all harmful activities," he says.

The son of a Stellenbosch wine farmer, Mostert joined the police force in 1954, straight out of school. He was only 17 at the time and wanted to serve his community. He was soon transferred to the detective branch of the CID and spent the next 10 years in the Cape Peninsula. In 1967, he was promoted to lieutenant and formed the Peninsula Murder and Robbery unit soon afterwards.

It was during these years that he rose to prominence as the investigating officer in the famous Cohen murder case. He returned to Cape Town as deputy CID officer for Wynberg and, in 1979, was sent to Paarl as district CID officer.

Before his appointment to the Brixton Murder and Robbery Squad in August 1988, Mostert served a stint in Potchefstroom as divisional CID officer. In May 1989, he was

FLORIS MOSTERT

FIM 9/13/90 (252)

Justice for all

For Brigadier Floris Mostert, solving the David Webster murder is merely part and parcel of heading the Brixton Murder and Robbery Squad "Crime is my business, my bread and butter, my daily life," says the man who's responsible for combating serious crime on the Witwatersrand.

Of course, this murder is somewhat different. There have been allegations of SADF and SAP involvement and fierce accusations from the Left and Right.

But none of this seems to bother Mostert. He's been a CID cop for the past 34 years and, despite a friendly manner and wonderful sense of humour, he leaves no doubts that there are no holy cows in this investigation. "If the police or army are involved — tough, they have to face the music," says Mostert.

He's also unperturbed by Magnus Ma-



Mostert ... "no one is above the law"

Nofemela describes killing Natal lawyer

BID 9/13/90
252

SUSAN RUSSELL

A POLICE squad that assassinated civil rights lawyer Griffith Mxenge in November 1981 was given the details of its mission by its commander Capt Dirk Coetzee at the C R Swart Square headquarters in Durban, the Harms Commission was told yesterday.

This evidence was given by death row prisoner and former policeman Butana Almond Nofemela, who alleges he was part of a police "hit squad" based at Vlakplaas near Erasmusia

He was brought into the commission room handcuffed to a prison warder, but the cuffs were removed once he took his place

During his evidence, led by Natal Deputy Attorney-General Les Roberts, Nofemela said he was one of the four-man squad ordered to kill Mxenge

Each of them was paid R1 000 for the mission, he said

They were paid a bonus for successful missions and this amount would depend on how "effective" the person was they were called to eliminate or kid-

nap
Nofemela said the Mxenge assassination was the first mission in which he had killed a person since his recruitment by the Security Branch in December 1980.

He told the commission he was first informed he was going on a mission when he was summoned to the office of the now retired Brig Willem Schoon, where Coetzee was present

"Brig Schoon said to me 'You are going to Durban for a mission and you must listen carefully to this captain and do everything he says you must do'"

He said he was not given details of the mission but back at Vlakplaas Coetzee ordered the four of them to go to Durban where he would tell them what they had to do

"He said we must eliminate Mr Mxenge and make it look like a robbery He said he (Mxenge) was ANC and dangerous to us He said he (Mxenge) would kill us if we didn't kill him"

Nofemela then described how

he and the three other members of the squad stopped Mxenge on his way home. When they saw him approaching they pushed their car into the middle of the road

"He came and stopped behind our car and asked if he could help us I said yes After he switched off the engine I produced a pistol"

Nofemela said one of the squad then drove Mxenge in his car to the Umlazi Stadium where they assaulted him

"We were all in possession of knives We started stabbing him We all stabbed him - I cannot remember who started

"After we realised he was dead we took off his jacket and watch, making it look like a robbery as we had been instructed"

Nofemela said he then accompanied Coetzee to Piet Retief where Mxenge's car was stripped by Coetzee and two others

Nofemela said Coetzee told him the booster and radio from the car were to be installed in that of Schoon, and that his payment had come from Schoon.



A pensive Butana Nofemela waits to testify before the Harms Commission yesterday. Picture ROBERT BOTHA

Star 9/3/90

252

Board forced to suspend or curtail some services

Legal Aid cash-strapped

Lack of funds was the prime reason for denying a large number of citizens access to the courts, according to the Legal Aid Board's annual report for April 1 1988 to March 31 1989.

The report, tabled in Parliament yesterday, said that while the board had been in a position to make accrued cash payments, this had been coupled with a curtailment of services.

The board had been forced to suspend legal aid for criminal and civil appeals as well as civil matters where the quantum of the claim amounted to R2 000 or less for the year in review.

Restrictions

During this period no advocates had been instructed in the lower courts and no senior advocates in the Supreme Court.

Legal aid for Industrial Court actions had also been suspended between April 1 1988 and November 30 that year.

Divorce and related cases had been restricted on a legal aid tariff to a maximum of R750 if one attorney was involved and R1 000 if two attorneys were involved.

In addition, legal costs in respect of applications or petitions after imposition of the death

Applications for help increase

Legal aid applications rose by 2 740 between April 1988 and March 31 1989 despite the suspension of services, according to the Legal Aid Board's annual report for this period tabled yesterday.

During the year under review the board paid out R9 613 875,19 in South Africa and R66 880,60 in Namibia in respect of legal aid.

A total of 70 614 applications were received, of which 24 082, or 34,01 percent, were granted.

Refused cases totalled 13 232, while 22 166 were resolved by mediation or referred to the State or other institutions. A further 11 134 cases were pending further investigation, or social work reports. — Sapa.

penalty had been restricted on a legal aid tariff to a maximum of R500 per application or petition, the report said.

The director of the Legal Aid Board, however, retained the authority in respect of all these suspensions and restrictions to grant legal aid in meritorious cases.

He could also instruct advocates and senior advocates to increase or remove restrictions.

The board had been forced to institute these restrictions and suspensions in an effort to stay within the appropriated amount from Parliament — R12 million — and to avoid having to request more funds.

The activities of the board had increased annually and in these circumstances it was no longer possible to cope with the existing staff and methods, the report said.

Legal aid officers were located in Johannesburg, Pretoria, Germiston, Durban, Bloemfontein, Port Elizabeth, Athlone, Cape Town and Mitchells Plain.

The board was bound by financial obligations of about R23 445 846.

These had not been reflected in the balance sheet as cash settlements had not been required in the year concerned.

The board had been unable to recover R2 535,25 in legal costs

to which it was entitled, but R985 221,15 had been recovered from successful or settled actions.

A further R20 705,06 had been recovered from debtors.

There was still R45 209,66 outstanding — but which could possibly be recovered — at the end of the year.

The demands for the board's services would probably become greater.

Meaningless

Access to the courts would become of ever greater importance in the protection of human rights, since the mere existence of a legal right was meaningless without means of enforcing it.

It was common cause that a large number of citizens did not now have access to the law.

The first problem remained the lack of funds, the report said.

Although Parliament had drastically increased the funding of the board since 1985/86 this was not nearly enough.

It had to be realised that reform — political or labour-related — could succeed unless the majority of the public experienced a just functioning of the law — Sapa.

Nzo wins appeal on murder conviction

Star 9/3/90 (S) 252

BLOEMFONTEIN — The Appeal Court in Bloemfontein yesterday set aside the conviction and sentence for murder imposed on Rufus Nato Nzo, but dismissed the appeal of Douglas Mnyisile Tyutyu.

Nzo, a member of the military wing of the ANC and self-confessed terrorist, and Tyutyu, a key figure in the terrorism campaign in Port Elizabeth, were convicted of high treason and murder by Mr Justice C T Howie in the Eastern Cape Supreme Court on September 19 1984.

They were imprisoned for 15 years for the murder, with 10 years of the sentence to be served concurrently with 20 years for treason.

Their appeal was against the murder conviction only, where they were found to have had a common purpose with the killer of Vukile Tshiwula's wife. Mrs Tshiwula was killed on May 8 1984 by a man identified only as Joe.

Yesterday Mr Justice Hefer, with the concurrence of Mr Justice Nestadt, set aside Nzo's conviction and sentence for the murder. They found he had dissociated himself from the common purpose before the murder was committed.

The judges said Tyutyu's sentence was disturbingly excessive, but not sufficiently so to warrant Appeal Court interference.

Mr Justice Steyn took the view that the appeals of both men should have succeeded on the murder count. His view was that the mere foreseeability that the woman might be murdered by Joe or someone else ... did not amount to authority for or participation in the murder. — Sapa.

HE might before Almond Nofemela appeared before the Harms Commission I was called by a commodities broker in New York — a former South African who now abbreviates his a's and colour co-ordinates his ties, socks and underpants. He was drinking Coke and discussing news of home.

"So what's all the fuss about the hit-squad thing?" he asked across echoing continents "That stuff happens everywhere."

"Sure it does. But that doesn't make it right."

"I know, babe," he said "But who's got space for moral outrage?"

Sitting on the second floor of Pretoria's Smodale Sentrum, I remembered the commodities broker I didn't have space for moral outrage either. There wasn't space for anything but sheer, gut-churning horror.

Butana Almond Nofemela was talking about taking someone to a panel-beating firm for a torture session and a long encounter with a blow torch flame.

Eight years ago, Johannesburg walls were sprayed with red graffiti "Who killed Griffiths Mxenge?"

The question seemed rhetorical then. After decades of people "slipping in police cell showers", "falling out of windows" and bashing their own heads on interrogation-room walls, the answer was chillingly obvious.

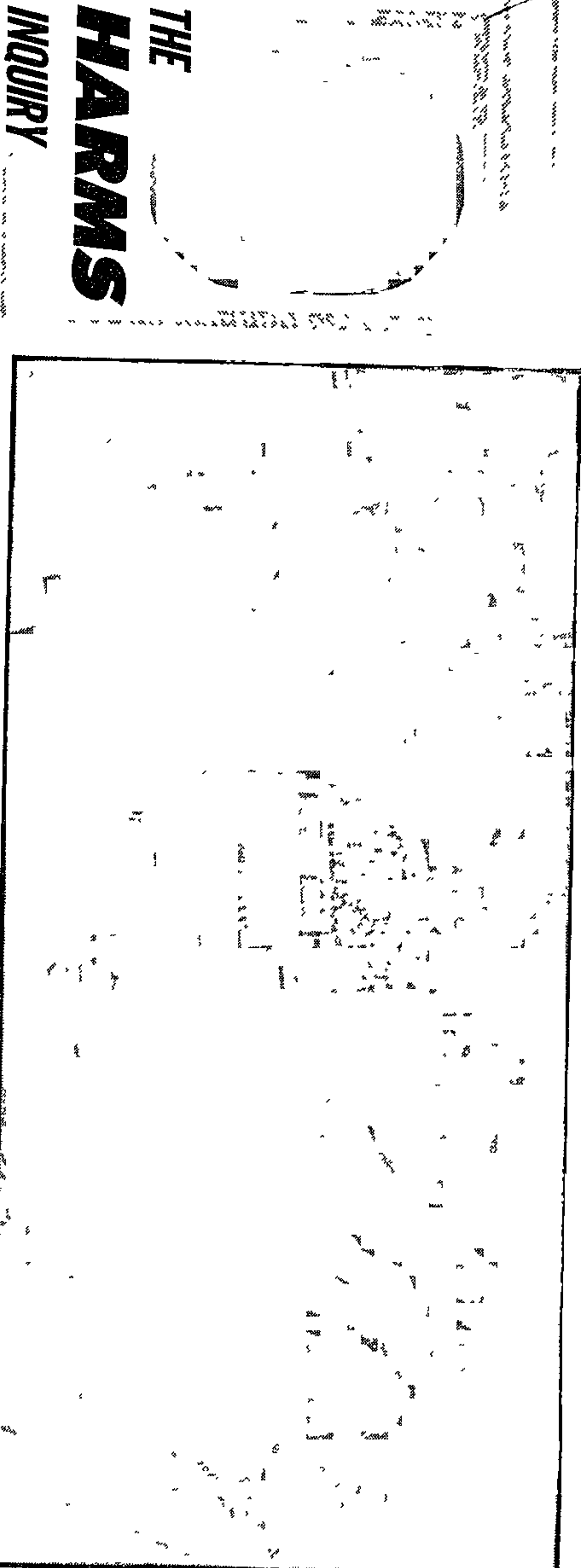
But in the last few days, under the coolly watchful gaze of Judge Harms, ghastly suspicions have been confirmed. For years, more than R20-million annually was mysteriously issued to a shadowy organisation called the CCB. It had its own medical and schemes, car allowance system, expense accounts.

Its members allegedly killed, kidnapped, assaulted, bombed and poisoned. For light relief, presumably, they gutted cars, burned homes and planned to send a monkey foetus to Archbishop Desmond Tutu.

All in the name of the Great White South African Way.

The unraveling facts are so awful you'd have trouble suspending disbelief were they to appear in a novel.

Who murdered Griffiths Mxenge?



Picture PIERRE OOSTHUYSEN

THE HARMIS INQUIRY

Talking the pain

PNINA FENSTER REPORTS

Almond Nofemela and three alleged police agents. Or is murder easier when it's called "elimination"?

"We took him to a stadium and kicked and punched him until he fell. Then we stabbed him. He tried to pull a knife out of his chest. But I had a sharp wheel spanner."

Mxenge must have bled like a dog in the stadium dust. Hot, desperate blood staining Nofemela's jeans and takers Human entrails spilling in the Natal evening.

What does one do with R1 000 made by a murder?

Nofemela bought Lionel Ritchie records, clothes and gifts for his eight siblings.

Now he's sitting quietly in a room of attorneys, journalists, photographers. His voice is evenly efficient as he describes eight years of bloodletting.

"He's got killer written all over him," remarks one newspaperman.

Oh, yes? Well, I defy anyone to pick this killer out in a crowd. He has tapered fingers, a fine, strong neck, a beautifully shaped head.

Apparently, imprisonment has imbedded him with new integrity. He's found God.

He sees Jesus. He corresponds with Jimmy Swaggart.

According to his lawyer, Ahmed Motala, the man with killer written all over him is actually "intelligent and pleasant".

ACCORDING to his sister Cynthia, he's always been neat and clean. "Even when he was possessed by the devil, he permed his hair," she said. "He didn't drink. He once wanted to be a lawyer."

But with only a Std 9 education and some bricklaying experience behind him, Nofemela joined the Security Branch instead. Money, travel, a chance to work in civilian clothes.

Then, in the brutal tradition of Gestapo

NOE and. But blood

reality — But the would Not obey such For Lio cars? For To protect legal ANC

The room confer P boredom F restaurants Outside mother, E!

Why? Sh shunned by call her the

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But if the g dered by A could hover they'd shud! All day it Is Nofem of a cancer legal repre

washed vict But in the tion, moral Lawyers for sent victims

"The stuff said Ahmed Human Ragi "But we'r off a charge his interests emerges"

Still, he ad — or any of

Woman jailed twice for R295 debt - Shell eases the hurt

By COLLETTE CAINE

UNEMPLOYED mother-of-three Veronica Maruapula was twice jailed for three months for not paying a R295 debt to Shell subsidiary Easigas and was about to be jailed for a third time for the same debt.

Then *City Press* and the Legal Resources Centre stepped in, and instead of going back to prison, Shell gave Veronica a R3 600 cheque.

Easigas managing director Peter Gray said the lawyers who prosecuted Veronica continued proceedings long after Easigas had told them to drop the case.

And this week Shell executive chairman John Kilroe gave Veronica a R3 600 cheque "to make reparations for her suffering".

He also assured her that Easigas would testify in court on her behalf in any action she brings against the lawyers who jailed her in the companies' names.

Veronica bought an Easigas stove and small appliances for R295 in 1983. Then she was retrenched and could not keep up her payments.

Easigas instructed Cape Town lawyers Hazell and Rabbie to sue Veronica.

Gray said he was "dumbfounded" by the vendetta Hazell and Rabbie and their Randfontein correspondents, attorneys Van Ryneveld, Hammes and Wright, had waged against Veronica in the name of Shell and Easigas, as they had been instructed "as far back as 1986" not to proceed against debtors beyond applying for default judgment without specific instruction from Easigas.

Technically, people

don't go to jail in South Africa for debt but for "contempt of court" because a judgment against them becomes an order of court. When they can't pay, they are in contempt of court - and can end up in jail.

To avoid the provision Van Ryneveld and partners got Veronica to sign an acknowledgement of debt form on her release from prison.

"As a result of signing the debt acknowledgement the procedure started again."

The lawyers said she "voluntarily" visited their offices on her release from jail to sign the acknowledgement.

However, Veronica said that once she was there "they refused to listen to my reasons. They just asked me questions and said I must sign the papers, so I signed. I didn't know that what I signed could send me back to jail."

The acknowledgement added hundreds of rands in legal fees to her debt. She had no money to pay either the debt or the fees, so sat out 180 days in jail.

"When I was arrested, I had to leave my three children with my pensioner mother. There was nothing else I could do because we were struggling to live. I bought the stove and other things when I was working, but I lost my job and just had no money to pay," said Veronica at her small Randfontein home.

After the first jail spell in 1987 she had just found a job when she was recalled to the lawyers' offices and told to sign the papers.

☑ To Page 5

c/press
11/3/90



252

Woman jailed twice for R295 debt - Shell eases the hurt

c/ves
11/3/90

152

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■ To Page 5

P.T.O.

Shell tries to ease blows

c/press 11/3/90
252

■ From Page 1

"I tried to tell them I couldn't pay, especially because they were now asking R1 400 including their fees,

"My son, who used to do a paper round after school, went to the lawyers' office and asked if they couldn't take his paper round money, but they said it was not enough. They just said I must sign, so I signed."

What she signed was an acknowledgment of debt promising to pay R50 a month. She paid the first R50, but could not keep up payments.

The lawyers issued a fresh summons and got Veronica to sign a writ-

ten offer to pay off the debt. This offer was made an order of court.

According to the court file, the lawyers estimated that from her R200 a month income, she could afford R100 for food for her family, R38 for transport to and from work and R50 to pay off the debt, leaving R12 for clothes, doctors, school fees and everything else.

She borrowed R50 to pay the next instalment and paid it on June 2.

Next day, Van Ryneveld applied to court for the default judgment which put her in jail for the second time.

This time she was arrested in the middle of

the night, and had to leave her crying children behind.

"The worst thing about going to prison for the second time was that my husband - from whom I am separated - took my two daughters to live with him.

"Now he refuses to give my daughters back. I lost them because of Easigas and their lawyers."

Two months after getting out of prison the second time, Veronica got another notice from the Van Ryneveld firm

threatening to put her in jail a third time - unless she paid almost R1 900 within 10 days.

The notice advised Veronica to "give this matter your immediate and undivided attention."

She did. She got legal advice and the jail threats and demands for money stopped.

Life looked brighter for Veronica this week with Easigas's cheque, and with help from City Press she will be able to start proceedings to get her children back.

Veronica Maruapula...jailed twice for defaulting on payment of the same debt.

Sowetan 12/3/90

3 freed detainees to testify

THREE men who were last week specially released from their detention in terms of Section 29 of the Internal Security Act are to give evidence before the Harms Commission of Inquiry into Certain Alleged Murders when it resumes in Pretoria today.

They are the managing director of the Civil Cooperation Bureau (CCB), Mr Joe Verster, his covert organisation's financial manager Mr Theuns Kruger, and alleged CCB operative Mr Abraham "Slang" van Zyl.

Van Zyl spent several weeks in detention, Verster (a former colonel) just under a week, and Kruger a few days, before Minister of Law and Order Mr Adriaan Vlok signed release papers on Thursday so that they could be free to give evidence.

Van Zyl is claimed to be a member of the CCB's sector 6 unit, operating under the command of former police officer Staal Burger, who is being sought by the police.

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year increased by about 11%
The increased income was due

The SABS-mark
pulsory levies also

Group rights report to be published ²⁵²

CAPE TOWN — A report by the SA Law Commission on group and human rights is to be published near the end of the year. According to the annual report of the commission, tabled in Parliament yesterday, it has been swamped with more than 4 000 requests for copies of the working paper published in March last year.

The return date for comment was August 31 1989, but a great deal of comment and bulky memoranda streamed in after that date. ^{blown 13/2/90}

Conflict

The working paper which elicited such interest concluded that the protection of the rights of the individual had become a universal claim and that the recognition of such rights had become part of the international legal consciousness.

It had also concluded that a large section of the population of the republic strongly supported the idea of a Bill of Rights.

Among the commission's suggestions for inclusion into such a Bill were:

- Abolition or adjustment of laws that were in conflict with the proposed Bill of Rights; and
- Launching a process of educating the public with regard to human rights and its enforcement and legitimising the Constitution and Bill of Rights by a referendum involving the total population. — Sapa.

Rentmeester

Disposal of J

Introduction

Ed Hem, Rudolph Inc. 1990, Rentmeester disp Sydney to AECI Limite

Nature of business of

James Sydney is a manu and also trades in expl Sydney owns 60% of the of the shares being held of explosives.

Rationale for the tran

Rentmeester's board of Sydney because Rent other areas of business

Financial effects

The financial effects of having been in effect

EPS for the year to 30 NAV as at 30 June 19

A circular to shareholders process of preparation

Johannesburg 13 March 1990

Sponsoring broker

 ED H

ailed to lodge financial statements or an auditor's report.

In a separate move, Board of Execu-

or not it can pay its

They will make recommendations by May 8 as to whether the village should be placed under final judicial management or liquidation.

Judge rules: no photographs of CCB MD

MR JUSTICE Louis Harms yesterday prohibited the media from publishing photographs of or information relating to the whereabouts of Civil Co-operation Bureau (CCB) MD Col Joe Verster.

The judge made this ruling when the Harms Commission of inquiry into politically motivated murders inside SA reconvened in Pretoria.

Mr Justice Harms said if any photographer was found inside the building where the commission was sitting when Verster gave evidence next Monday, he would henceforth conduct proceedings in camera.

Verster and two other CCB members - Abraham "Slang" van Zyl and Theunis Kruger - were due to testify yesterday, but Mr Justice Harms postponed their evidence until next Monday at the request

of their legal representatives.

The commission was informed that Van Zyl's counsel, E du Toit SC, had not yet taken a statement from his client and also wished to make representations to the Witwatersrand Attorney-General.

Last week the commission heard evidence about the workings of the CCB, which was a unit of the SADF's Special Forces.

Mr Justice Harms also referred to Press reports containing interviews with commission witnesses.

He said he would not tolerate interviews with witnesses, nor could he allow the Press to "conduct its own commission" of inquiry.

252
SUSAN RUSSELL

Downturn 8/Dec 12/90

From Page 1

Local authorities: remuneration

*2 Mr R M BURROWS asked the Minister of Planning and Provincial Affairs

- (1) Whether he has received a report from the Commission for Administration on the remuneration of local authority councillors and committee members; if so, (a) when did he receive the report, (b) what were the main recommendations made in it and (c) what is the likely annual additional cost which would be incurred by local authorities in implementing the recommendations contained in the report,
- (2) whether the Council for the Co-ordination of Local Government Affairs has considered the above report, if not, why not, if so, (a) to what effect and (b) what alternatives have been recommended?

B352E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

- (1) Yes
 - (a) 18 June 1989
 - (b) That a comprehensive remuneration system of which the detail has not yet been formulated, be determined.
 - (c) As detail has not yet been formulated in the report, the likely costs that it holds in for local governments cannot be determined
- (2) Yes, before the Action Committee of the Council for the Co-ordination of Local Government Affairs
 - (a) It has been decided that the recommendations, contained in the report of the Commission for Administration, be accepted, provided that
 - (i) the rand value as mentioned in the report be determined by the Office of the Commission for Administration,
 - (ii) any discrepancies and other deficiencies which may occur be addressed by the Office of the Commission for Administration,
 - (iii) special attention be afforded to the position of the deputy mayor of Cape Town and the deputy

were not summoned to appear in court, if so, (a) which such witnesses and (b) why? *Howard 13/3/90 252* B357E

The MINISTER OF JUSTICE

- (1) (a) (i) Murder
 - (ii) Culpable Homicide
- (ii) Assault
- (b) R100,00 or 50 days' imprisonment
- (2) Yes
 - (a) M S Nkosi, L N Xaba J Q Sithole and M S Ndlangamandla. The latter two did in fact turn up at court
 - (b) I had enquires made and it seems that the main state witness's evidence was in no way contradicted and that there were no challenged facts concerning the assault between the State and the defence. The District surgeon further testified that the cause of death had absolutely no connection with the assault. In the light of these facts the prosecutor concerned decided not to call any further witnesses

The MINISTER OF FINANCE

B363E

The thrust of the Action Plan for the Combating of Inflation is fiscal and monetary discipline. Both of these have been exercised during the past year, and this will certainly continue. Government spending is under control. The over-run in the 1989/90 Budget is estimated at a mere 0,3 per cent. Fiscal discipline will be maintained in the coming year. Details will be forthcoming tomorrow.

The promotion of saving must clearly be a component of a counter-inflationary strategy, and the Government sets a high premium on both personal saving and the avoidance of dissaving on its own part. But here too it would be better to wait until tomorrow for the fine print.

In the monetary field, a declining money supply growth reflects the Reserve Bank's tightened policy, which was achieved inter alia by raising the cost of accommodation to the banking sector, both by penalty rates at the discount window and by increases in Bank rate. Positive real interest rates, together with disciplined public expenditure, have contributed to curtailing gross domestic expenditure growth successfully. Gross domestic expenditure actually declined by 1 per cent in real terms during 1989. These are important factors in the lowering of inflationary expectations. The more stable and even slight appreciation of the rand in recent months, was a further positive factor.

More generally and within a longer-term framework, the Government seeks to strengthen the supply side of the economy, and not least by tax reform that will reduce

Development Boards: taking over of staff

chairman of the management committee of a local authority, as well as to the positions of persons in other relevant posts, and

- (iv) the Office of the Commission for Administration (convenor) and the four provincial governments determine a formula, as well as finalise the objections raised

It was also decided that after the conditions have been reconsidered and discussed, the Office of the Commission for Administration again submits the report as adapted to the Action Committee of the Co-ordinating Council for discussion. In the meanwhile the Office of the Commission for Administration withdrew itself from the investigation. The Co-ordinating Council for Local Government Affairs convened a special meeting on 8 December to consider the matter. During the meeting it was decided—

- that the four administrators, with Administrator D J Hough as convenor, will consider the matter further and finally decide on the percentage of the proposed increase in the remuneration of councillors as well as the date of commencement, and
- that the Minister of Planning and Provincial Affairs will clear the matter of partly in the compensation of councillors of local governments with the Own Affairs Ministers
- The matter has thus not been finalised
- (b) None.

The state v W H Rabé (252)

- *3 Mr L FUCHS asked the Minister of Justice
 - (1) With reference to the case of *The State v W H Rabé*, concluded in the Pret Refet Regional Court on 12 February 1990, (a) for what offences was the accused (i) charged, (ii) prosecuted and (iii) convicted and (b) what sentence was handed down, *Howard 13/3/90*
 - (2) whether any witnesses present at the time of the alleged offences were committed

The MINISTER FOR ADMINISTRATION AND PRIVATISATION

Yes. However, requests for the adjustment of the dispensation of individual staff members, which were later received, are at present being attended to.

Inflation

*5 Mr H H SCHWARZ asked the Minister of Finance *Howard 13/3/90*

What action is being taken in order to reduce the level of inflation in South Africa?

The promotion of saving must clearly be a component of a counter-inflationary strategy, and the Government sets a high premium on both personal saving and the avoidance of dissaving on its own part. But here too it would be better to wait until tomorrow for the fine print.

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Development Boards: taking over of staff

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B352E

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Handwritten: 13/3/90 252 B357E

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I would like to add that I do not agree with the sentence that was imposed and cannot defend it. This is an excellent example where the State would possibly have liked to appeal against the sentence. A proposal in this regard will be laid upon the table soon and I am of the opinion that I shall get support of Parliament

My opinion, which I have repeatedly stated, is that the lower courts are under the control of the Supreme Court and that the Supreme Court should give the necessary guidance to the lower courts. It would be inappropriate for politicians to try and play this role

Development Boards: taking over of staff

*4 Mr H D K VAN DER MERWE asked the Minister for Administration and Privatisation, whether all phases of the taking-over of staff of the former Development Boards have been completed, if not, why not?

Handwritten: 12/3/90 B361E

The MINISTER FOR ADMINISTRATION AND PRIVATISATION

Handwritten: 13/3/90

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Harms rules over CCB boss

252
~~252~~

Sowet on 13/3/90

MR Justice Louis Harms, chairman of the Harms Commission, yesterday issued a directive in Pretoria that no information regarding the whereabouts or any other details of Civil Co-operation Bureau head Colonel Joe Verster be published.

In addition, Harms said no photograph of Col Verster may be published.

He warned that if any photographer was seen at the commission's offices

next Monday, when Col Verster is due to testify, the hearing would be held in camera.

Harms made these rulings in response to a request he received from Col Verster's legal representative.

He also said newspaper interviews with witnesses who were yet to testify amounted to obstruction of the commission.

Press

"I will not tolerate this any longer," he said.

"I cannot allow the Press to conduct its own commission."

If the media wanted to do this they should tell him.

Harms yesterday postponed to next Monday testimony on the activities of the CCB. Col Verster, Mr. Theunis Kruger, and Mr. Abraham "Slang" van Zyl - all of the CCB - are expected to testify on this aspect of the inquiry.

Van Zyl's legal representative, Mr du Toit, requested the postponement



Mr Justice Harms

in order to submit representations to the Attorney-General of the Witwatersrand.

Death Row prisoner Butane Almond Nofomela - who told the commission he had been a Security Police assassin - is due to be cross-examined from Tuesday.

Two Members of Parliament - the Democratic Party's Mr Peter Soal and the Conservative Party's Mr Chris de Jager - attended yesterday's brief session.

The ranks of local and foreign journalists covering the inquiry have swelled.-Sapa.

~~Handwritten~~
13/3/90

would geographically speaking be part of Lesotho should the normal contour of the mountain border as proposed by Lesotho In terms of the above-mentioned agreement the trans- gule has always been RSA territory

(b) The difference of opinion will again receive attention as soon as talks can be held with the new Minister of Foreign Affairs of Lesotho to discuss the matter

(c) The following steps have already been taken or are now envisaged

(i) On 30 June 1989 a Joint Commission of Enquiry visited the area After completion of the enquiry the officials involved in the Commission came to the conclusion that the matter would have to be resolved at Government level Lesotho consequently requested that the matter be referred to me and Colonel Thabae Letseie of the Military Council of Lesotho for consideration

(ii) The Department of Foreign Affairs has on various occasions since then tried to further the discussions

(iii) At the beginning of 1990 it was once again suggested that a meeting be arranged in Lesotho as soon as possible after the opening of the RSA parliament In February it was proposed to Lesotho that the Deputy Minister of Foreign Affairs visit Lesotho for this purpose on 26 or 28 March 1990 Because of the changes in the Military and Ministers' Councils of Lesotho soon afterwards and specifically the retirement of Colonel Thabae Letseie as Minister of Foreign Affairs, Lesotho's reaction is at present being awaited as to when a meeting with the

new Minister of Foreign Affairs can take place ~~Handwritten~~

(2) Falls away

*11 Mrs C H CHARLEWOOD asked the Minister of National Health and Population Development ~~Handwritten~~ 13/3/90

Whether any consideration has been given to the establishment of a compulsory transferable pension scheme, if so, (a) what consideration, (b) when and (c) with what result, if not, why not?

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT B422E

(a) the matter was investigated by various committees over a number of years,
(b) over the period as from December 1964 to February 1987,
(c) no positive results could be achieved because of opposition to such a scheme from various bodies and/or organisations

Distribution of free condoms

*12 Mrs C H CHARLEWOOD asked the Minister of National Health and Population Development

(1) Whether funds are allocated by the State for the distribution of free condoms, if not, why not, if so, what funds,
(2) whether there are any (a) surcharges and/or (b) duties on imported condoms, if so, what surcharges and/or duties,
(3) whether, in view of the increasing number of cases of Aids, she will take steps to have such surcharges and/or duties withdrawn, if so, (a) what steps and (b) when, if not, why not?
~~Handwritten~~ 13/3/90 B423E
The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT
(1) Yes, for the purchase of 21 000 000 condoms
(2) (a) and (b) yes,
— surcharge 20%
— import duties 25%

— general sales tax 13%
— provincial handling fee 8%

(3) (a) and (b) yes, the matter has already been discussed with the State Tender Board and with Customs and Excise of the Department of Finance, but is to be placed on the agenda for discussion again

Robben Island prisoners on hunger strike

*13 Mr A J LEON asked the Minister of Justice Whether any prisoners held on Robben Island have been on a hunger strike since 1 January 1990, if so, (a) how many prisoners are involved, (b) when did they (i) start and (ii) end their hunger strike, (c) what were the stated reasons for the hunger strike and (d) what action was taken by the authorities to end it? ~~Handwritten~~ 13/3/90 B424E

The MINISTER OF JUSTICE

Yes
(a) The numbers varied from 303 to 344
(b) (i) 26 February 1990
(ii) 8 March 1990

(c) The prisoners offered a large number of complaints and demands as reasons for the hunger strike These varied from complaints about privileges and classification to demands for release

(d) The authorities acted consistently in terms of internationally accepted practices These varied from the application of the Declaration of Tokyo to discussions and my request to the acting Judge-President of the Supreme Court of the Cape of Good Hope, The Honourable Judge M R de Kock, to deal with the complaints of the concerned prisoners Judge De Kock's report has now been received and is presently being studied I also refer the honourable member to a press statement issued by my office last night

Black pupils: technical education

*14. Mr K M ANDREW asked the Minister of Education ~~Handwritten~~ 13/3/90

Whether the Department provides technical education for Black pupils at secondary school level, if not, why not, if so, (a) what technical education, (b) where, (c) how many pupils can be catered for and (d) how many pupils are enrolled for technical education at secondary school level? ~~Handwritten~~ 13/3/90 B425E

The MINISTER OF EDUCATION

(a) Education for the technical field of study Pupils who follow the technical field of study have to take Technical Drawing as well as at least one technical subject (Woodworking, Welding and Metalwork, Electrician work, Electronics, Fitting and Turning, Motor Mechanics, Motor Body Repairing, Plumbing and Sheet Metal-working, Bricklaying and Plastering)

(b) At comprehensive schools countrywide located in the different regions as follows
Diamond Fields 2
Highveld 15
Johannesburg 12
Cape 7
Natal 2
Northern Transvaal 3
Orange-Vaal 4
Orange Free State 4

(c) Workshops are designed to accommodate 100 pupils per field of study With the existing facilities technical education can be provided to approximately 22 500 pupils at 49 schools.
(d) 9 313 pupils in Std 6-10.

Registrar of Reporting Organizations

*15 Mr D J DALLING asked the Minister of Justice ~~Handwritten~~ 13/3/90
(1) Whether he has appointed a Registrar of Reporting Organizations and Persons in terms of section 2 of the Disclosure of Foreign Funding Act, No 26 of 1989, if so, what (a) is his name and (b) are his qualifications, ~~Handwritten~~ 252
(2) whether the Registrar of Reporting Organizations and Persons has submitted a report in terms of section 7(1) of the said Act, if not, (a) why not and (b) when is it anticipated that the report will be completed?

The MINISTER OF JUSTICE

(1) Yes *RSJ*

- (a) Pieter Hendrik Terblanche Kleynhans *Hansford 13/3/90*
 (b) B Iur LL B

(2) No

(a) and (b) The first declaration of an organization to be a reporting organization in terms of section 3(1) of the Disclosure of Foreign Funding Act, 1989 (Act 26 of 1989), took place as recently as 10 January 1990 and a report will be tabled in due course

Magistrate's comments

*16 Mr D J DALLING asked the Minister of Justice *Hansford 13/3/90* *RSJ*

- (1) Whether, with reference to information furnished to the Minister's Department for the purpose of his reply, he has noted the comments made by a magistrate in a judgment given in a recent court case which was subsequently overturned by the Supreme Court, if so, what is the name of this magistrate,
 (2) whether he intends taking any action as a result of these comments, if so, what action, if not, why not,
 (3) whether he will make a statement on the matter?

The MINISTER OF JUSTICE.

B427E

The Honourable Member is referred to my reply to Question No 1 on Thursday 1 March 1990 in the House of Delegates

Vehicles on beaches/dunes

*17 Mr R J LORIMER asked the Minister of Planning and Provincial Affairs *RSJ*

- (1) Whether his Department or any provincial administrations have taken and/or intend taking action in regard to controlling the use of vehicles on beaches and coastal dunes, if not, why not, if so (a) what action and (b) in terms of what laws and ordinances, *Hansford 13/3/90*
 (2) whether it is the intention to introduce legislation in this regard, if not, why not,

HOUSE OF ASSEMBLY

if so, (a) what legislation and (b) when?

B428E

The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS

Natal

(1) Yes *Hansford 13/3/90*

(a) (i) Zoning of the coastline into areas where vehicles would be permitted or prohibited, based on a survey of environmental sensitivity, analysis of environmental capacity and evaluation of user conflicts,
 (ii) establishment of a permit system to control vehicle activity

(b) In terms of section 10 of the Sea Shores Act (Act No 21 of 1935)

(2) Yes

(a) Amendment of General Seashores Regulations (1962),
 (b) 1991

Cape Province

(1) Yes

- (a) Control over vehicles on beaches is exercised by local authorities. Regulations in this regard have been made over the years with the approval of various Ministers and, in more recent times, the Administrators. However, there is no legislation in terms of which vehicles can be prohibited on coastal dunes above the highwater mark. At present the Cape Provincial Administration is preparing a map which will fully reflect all sensitive areas along the Cape coast in order to consider intensified steps against vehicles
 (b) Beach control is exercised under regulations made in terms of the Sea Shores Act, 1935 (Act 21 of 1935)
 (2) Yes
 (a) Legislation to declare the use of any vehicle in any place other than a public road, except on land belonging to such user or with such landowner's consent to be an offence

This will restrict the use of vehicles on coastal dunes

As soon as possible after all legal aspects in connection with such legislation have been investigated

Mngweni River: mercury/other chemical pollution

*18 Mr R J LORIMER asked the Minister of Water Affairs *Hansford 13/3/90*

- (1) Whether mercury and/or any other chemical pollution has been reported in the Mngweni River near Cato Ridge in Natal, if so, (a) by whom was such pollution reported, and (b) what was his response to these reports, in each case,
 (2) whether any tests have been conducted in the Mngweni River and/or the Umgeni River for mercury contamination, if so, (a) why and (b) with what result,
 (3) what is the internationally accepted maximum level of mercury pollution in water?

B429E

The MINISTER OF WATER AFFAIRS

(1) Yes

(a) Umgeni Water Board

(b) The matter was investigated

(2) Yes

(a) Routine sampling is undertaken to determine chemical concentrations in the water and to trace possible sources of pollution
 (b) The results of the tests carried out at various sampling points varies from site to site and from time to time and is directly influenced by the river flow at the time of sampling. The tests indicated mercury contamination

- (3) The maximum acceptable mercury concentration in water varies from country to country and from institution to institution. The requirements for the purification of waste water or effluent produced by, or resulting from the use of water for industrial purposes in the Republic of South Africa, determined in terms of section 21(1)(a) of the Water Act, 1956 (Act 54 of 1956) was published in Notice

991 of Government Gazette 9225 of 18 May 1984 and lays down the maximum concentration of mercury at 0,02 milligrams per litre *Hansford 13/3/90*

The mercury contamination in the vicinity of Cato Ridge appears to be due to seepage from a series of dams that store mercury-containing effluents on the property of a company that recovers mercury from industrial waste and which is situated in the catchment of the Mngweni River, a tributary of the Mgeni River

Once the source of the mercury contamination was identified, the company concerned was instructed to investigate and rectify the problem, which subsequently led to the appointment of a consultant to determine the extent of the mercury contamination and to propose remedial action. Regular and thorough monitoring of the position is being carried out in the meantime by the company concerned. Once the report of the consultant becomes available it will be studied in depth and the necessary remedial steps will be taken to reduce the mercury contamination which is, to a large extent, the result of historical disposal practices

At this point in time there is no need for concern regarding the presence of mercury in the rivers in question. There is close and regular liaison between water boards and the Department of Water Affairs, as well as between the other State departments such as the Departments of Environment Affairs and National Health and Population Development when it comes to matters such as pollution and pollution control and this spirit of co-operation enables them all to deal effectively with cases such as the one presently under discussion

Bezuidenhout Valley: new police station

*19 Mr G ENGEL asked the Minister of Law and Order *Hansford 13/3/90*

Whether a new police station is to be erected in Bezuidenhout Valley, if so, (a) when will it become operational, (b) where will it be located and (c) how many (i) members of the South African Police and (ii) police vehicles is it anticipated will be stationed there?

B430E

The MINISTER OF LAW AND ORDER

Yes

(a) to (c)

HOUSE OF ASSEMBLY

Handwritten signature

Handwritten signature 424

Local authorities' remuneration

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The MINISTER OF PLANNING AND PROVINCIAL AFFAIRS B352E

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- The matter has thus not been finalised
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The MINISTER OF JUSTICE

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Development Boards' taking over of staff

- *4 Mr H D K VAN DER MERWE asked the Minister for Administration and Privatisation
 - Whether all phases of the taking-over of staff of the former Development Boards have been completed, if not, why not? *Handwritten: 13/3/90* B361E

The MINISTER FOR ADMINISTRATION AND PRIVATISATION *Handwritten: 13/3/90*

Yes. However, requests for the adjustment of the dispensation of individual staff members, which were later received, are at present being attended to

Inflation

*5 Mr H H SCHWARZ asked the Minister of Finance *Handwritten: 13/3/90* B363E

The MINISTER OF FINANCE *Handwritten signature*

The thrust of the Action Plan for the Combating of Inflation is fiscal and monetary discipline. Both of these have been exercised during the past year, and this will certainly continue. Government spending is under control. The Government in the 1989/90 Budget is estimated at a mere 0,3 per cent. Fiscal discipline will be maintained in the coming year. Details will be forthcoming tomorrow.

The promotion of saving must clearly be a component of a counter-inflationary strategy, and the Government sets a high premium on both personal saving and the avoidance of dissaving on its own part. But here too it would be better to wait until tomorrow for the fine print

In the monetary field, a declining money supply growth reflects the Reserve Bank's tightened policy, which was achieved inter alia by raising the cost of accommodation to the banking sector, both by penalty rates at the discount window and by increases in Bank rate. Positive real interest rates, together with disciplined public expenditure, have contributed to curtailing gross domestic expenditure growth successfully. Gross domestic expenditure actually declined by 1 per cent in real terms during 1989. These are important factors in the lowering of inflationary expectations. The more stable and even slight appreciation of the rand in recent months, was a further positive factor.

More generally and within a longer-term framework, the Government seeks to strengthen the supply side of the economy, and not least by tax reform that will reduce

Funeral marchers attracted interest

Minister is sued for shooting of boy (14)

By Shehnaaz Bulbulia

A summons will be served on the Minister of Law and Order, Mr Adriaan Vlok, and the Soweto City Council this week after police allegedly shot and seriously injured a 14-year-old youth, a lawyer revealed at the weekend.

The lawyer said the mother of the minor, Mrs Paulina Monamodi of Soweto, claimed in an affidavit that on September 16 1989 police allegedly assaulted and shot mourners during a funeral procession. Her son, David Monamodi, was injured while walking alongside the mourners "out of interest".

A claim of R50 000 was being sought for David, the lawyer said.

"On September 16 1989 at about 2 pm in Jabulani, Soweto, members of the South African Police (alternatively municipal police of the Soweto City Council) arrived at a scene where mourners were marching.

"Both black and white policemen allegedly confiscated a flag that was being flown by the mourners and assaulted people in the crowd. Some of the white policemen allegedly shot at the crowd with what seemed like police service pistols," the affidavit claims.

According to the affidavit, one of the bullets allegedly fired by police hit David in his back.

He was treated at Baragwanath Hospital and later underwent further and more extensive treatment at the hospital from September 21 to October 5 1989.

"David complained of an inability to walk and talk and he complained of severe pain in the right leg. The doctor informed us that permanent damage may have been caused," the lawyer said.

Spinal cord injury

According to the medical report there was stiff paralysis of the left leg, flaccid paralysis of the right leg and no sensation to pain or touch on the left leg. The chest x-ray revealed an opaque small foreign body on the right side compatible with a bullet.

"A clinical diagnosis of a gunshot injury to the spinal cord was made. On discharge David was limping severely," according to the medical report.

A spokesman for police headquarters in Pretoria said "We cannot comment because a summons will be served."

A spokesman for the Soweto City Council, Mr Jabu Mnguni, refused to comment.

Inquest court grants exhumation request

By Celeste Louw

252

A Johannesburg inquest court magistrate yesterday granted a request to have the body of 50-year-old woman, buried in 1987, exhumed *Star B/3/90*

Mr T Steenkamp ordered that the remains of the body of Mrs Valerie van Dyk of Rosettenville be disinterred from the West Park Cemetery for the purpose of examining the neck structure for signs of possible injuries.

At an informal inquest in 1988, after Mrs van Dyk's death, a mag-

istrate found she had committed suicide by gassing herself.

The Attorney-General then ordered the inquest to be reopened for evidence to be led

In previous evidence at a formal inquest, the court heard that relatives of Mrs van Dyk had claimed to have seen strangulation marks on the neck

Mrs van Dyk's brother, Mr Daniel Neale, told the court that a security guard had heard an argument between his sister and her

fiance shortly before her death.

Mrs van Dyk's fiance, Mr P van der Merwe, was the last person to see her alive, the court heard

The investigating officer and an expert on forensic medicine testified that they saw no signs of injury on Mrs van Dyk's body

Dr Vernon Kemp told the court that Mrs van Dyk had to be alive when the gas was turned on because carbon monoxide was found in her blood following her death.

The hearing was postponed to a date to be decided

Surprise turn in terror trial

13/3/90 Own Correspondent

252

CAPE TOWN — The prosecution in the Yengem terrorism trial announced yesterday that it was considering closing its case against all 14 accused without handing in alleged confessions made by them.

A one-week postponement has been granted to the State prosecutors to allow them to hold discussions with the Attorney-General about their position.

Mr Hendrik Klem, SC, for the State, asked for the postponement yesterday, saying the prosecution had been "taken by surprise" by a ruling by Mr Justice Selikowitz last week.

The judge ruled that the State had to prove that four of seven statements by the accused were made freely and voluntarily.

The defence legal team, which had offered to lead evidence in the trial-within-a-trial on the admissibility of the documents, was taken aback by the request.

Mr Michael Donen, one of the defence counsel, had risen and called Miss Jennifer Ann Schreiner to the box as its first witness, when Mr Klem interjected to make his application for a postponement.

He said "it would be wrong" to lead evidence on the alleged confessions until the State had had a chance to consider its position in the light of Mr Justice Selikowitz's ruling.

Triple death sentences: 2 win appeal

BLOEMFONTEIN — The triple death sentences imposed on two Namibian men after a farmer and his wife were killed in a robbery, were yesterday set aside and replaced by the Appeal Court in Bloemfontein with effective imprisonment of 15 years.

Sebedus Munonjo, of Otjiwarongo, and Jefta Mbenge, of Oruwa, had been convicted by Mr Justice H Hendler in the Supreme Court of Namibia on June 13 1989. He convicted them for the murders of Mr Siegward Kurt Kretzschmar and his wife, Mrs Hannelore Kretzschmar, and for house-breaking and robbery, with aggravating circumstances on the farm in the Otjiwarongo district on September 21 1988.

Mr Justice Nestadt, with the concurrence of Mr Justice Joubert and Mr Justice Nicholas set aside the convictions and death sentences for the two murders.

Mr Justice Nestadt said the trial judge

erred when he imposed the death sentence on the count of robbery.

Mr Justice Nestadt said it had not been proved that the two men foresaw the possibility of the death of the couple

It did not follow, however, that they must be acquitted of the murder.

It had rightly been conceded, on their behalf, that they were accessories to murder.

Regardless whether one committed the murders, they could both be convicted as accessories

Instead he found they were guilty as accessories to murder and they were sentenced to eight years for each murder, with the sentences to run concurrently

Five years of the eight-year imprisonment on the murder counts is also to run concurrently with 12 years that was substituted for the death penalty on the house-breaking and robbery count. — Sapa

Mxenge 'butchered' to impress Nofemela's boss

252

3/10/14/3/90

SUSAN RUSSELL

FORMER policeman Butana Almond Nofemela told the Harms Commission yesterday he "butchered" civil rights lawyer Griffiths Mxenge because it was his first killing as part of a police assassination squad and he wanted to impress his senior officer, Capt Dirk Coetzee.

Nofemela gave this evidence during cross-examination by Sam Maritz SC, who is representing individual members of the police

The former policeman, sentenced to death for the murder of a Brits farmer, was granted a last-minute stay of execution last October after making an affidavit in which he claimed to have been a member of a hit squad that assassinated Mxenge in Durban in November 1981.

Maritz asked him why, if Coetzee had ordered him to make Mxenge's murder look like a robbery, he had done everything to make it look just the reverse.

"You poison his dogs, you kidnap him, take him miles away to a stadium and then you butcher him," Maritz said.

Nofemela said they had stabbed Mxenge repeatedly to make sure he was dead as he wanted to make a success of his mission.

"But you knew he was dead," Mr Justice Harms remarked, referring to Nofemela's evidence in which he said the stabbing continued after Mxenge was dead.

"I think I was trying to impress my senior," Nofemela said.

Earlier Nofemela told Maritz he could not remember when in 1981 he had been appointed to the assassination squad which he said was based at Vlakplaas. He accepted "because I was given to understand it was my duty".

Nofemela said while at the police farm his was the only assassination squad he knew of, although there were others at Vlakplaas involved in different missions.

Maritz cross-examined Nofemela at length on the composition of his squad.

The squad, Nofemela said, consisted of himself, an informer, a gardener from Vlakplaas, a turned ANC member or "Askari" and the commander, Coetzee.

Asked what trust could be placed in a turned ANC member, Nofemela replied that he had undergone thorough interrogation and denounced violence.

The commission room erupted with laughter when the judge interjected: "Denounced violence. He had joined an assassination squad."

At the beginning of his cross-examination Nofemela conceded there were inaccuracies in his original affidavit made the day before he was due to be executed.

He publicly admitted yesterday that he had murdered the farmer for whose killing he was sentenced to death.

He also said he had not received orders to eliminate Mxenge from Brig Willem Schoon as stated in his affidavit.

He said Schoon had told him he was going on a mission and must listen carefully to what Coetzee told him to do.

Coetzee was present and it was he who disclosed details of the mission to kill Mxenge once they were in Durban.

Nofemela also reiterated that he had been trained to kill while at Vlakplaas.

Cross-examination continues today.

Warning after protest by warden

Court told of cop killings

252
Soweto
14/3/90

A VICTIM of the "Russians" lay on the ground as he was being kicked by a man who accused him of being partly responsible for the suffering of black people.

This was evidence yesterday at the trial of nine alleged members of the "Russians" gang accused of having killed two policemen and a police informer, robbery with aggravating circumstances and illegal possession of firearms and ammunition.

Appearing before Mr Justice Sutej and two as-

By MANDLA
NDLAZI

sessors, the nine accused - eight men and a woman - have pleaded not guilty to all the charges.

The State alleges that they killed constables Maila Matsepa (22) and Abraham Thomatsana (28) and the alleged informer, Mr John Mphale, on July 27, 1988 in Phiri township, Soweto.

It is alleged they first assaulted the constables and robbed them of their

firearms before killing them. They are also charged with illegal possession of five firearms and ammunition.

Mrs Maggie Kwedashi told the court that she jumped out of bed when she heard gunshots fired and looked through the window.

She saw six men armed with sticks chasing a man down the street. The man was knocked down and she saw him try to ward off blows as the six men attacked him.

Minutes later she heard two gunshots and

saw six men running away, holding their sticks high as if they were rejoicing.

Among the group she saw two of the nine accused, Mr Masilo Ranyama (49) and Mr David Masiphuli (49). She saw Mr Ranyama hit the man with a stick and Masiphuli fired two shots to the ground.

Another man kicked the victim and said he was partly responsible for the suffering of black people. She said she could identify the man if she saw him again

Nofemela 'is a liar'

BY MONK NKOMO

SELF-CONFESSED murderer, Almond Butana Nofemela, made a false statement under oath and his allegations about murders, kidnappings and assaults by the police hit squad were concocted lies, the Harms Commission was told yesterday.

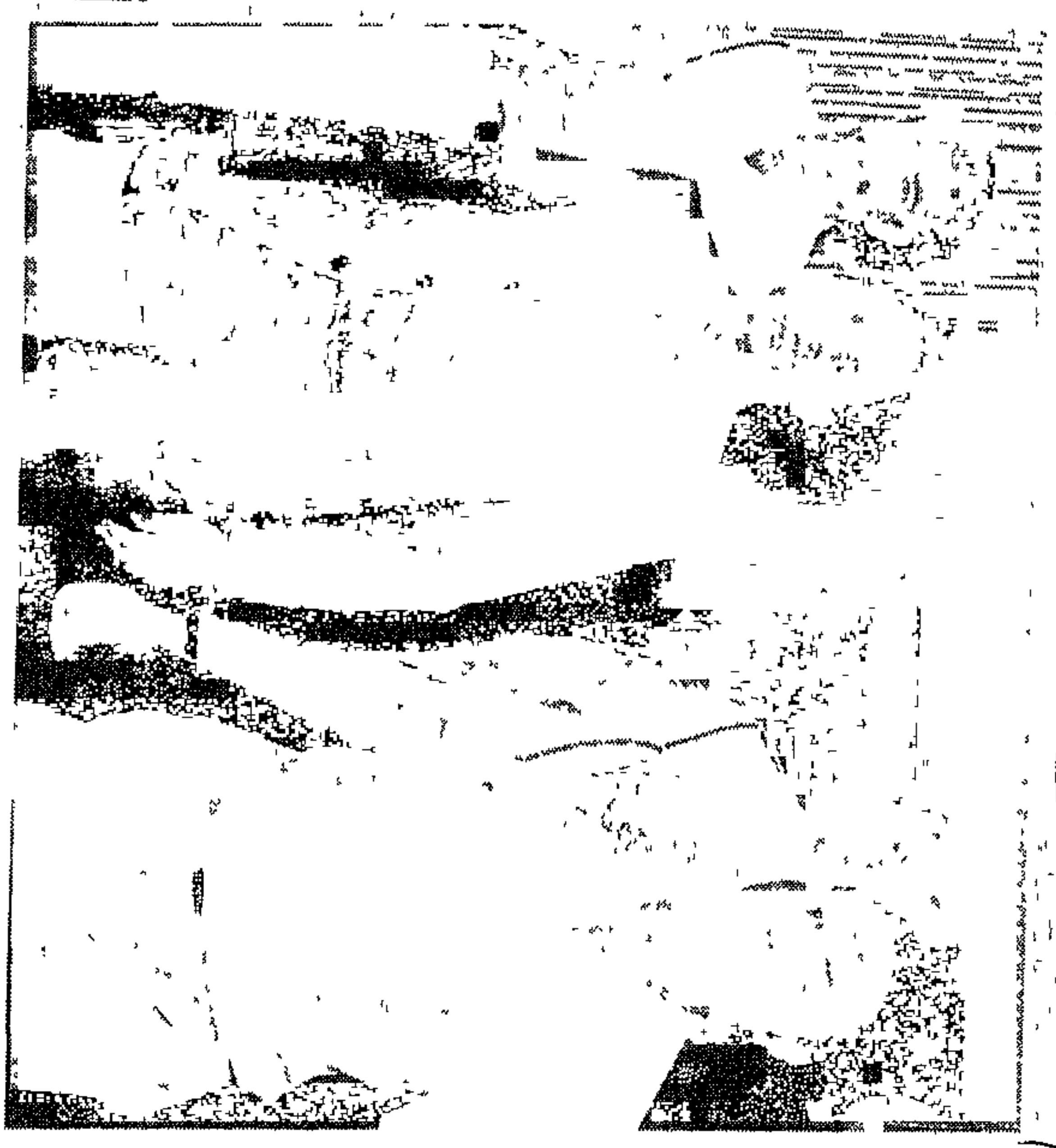
Mr Sam Maritz, SC who appeared for individual members of the SAP, also produced sworn statements by two policemen who denied having been involved with Nofemela in the abduction of Mr Japie Maponya in 1985.

Nofemela earlier alleged that Maponya was abducted from his place of work in Krugersdorp and eventually shot dead by a Major De Kock. He also said he and two other policemen, Mr Moses Nzimande and Mr Johannes Mbele, had kidnapped Maponya and, together with Major De Kock, questioned him about his brother, Odurie, who allegedly shot dead a policeman near De Wildt in 1985.

Dreamer

Maritz yesterday produced sworn statements by Nzimande and Mbele who denied involvement in the incident. "I am not surprised that they have denied. I expected that," said Nofemela.

Maritz labelled him a liar and a dreamer. "I used to lie according to instructions from my superiors," Nofemela replied.



Death squad killer Nofemela handcuffed to a police sergeant on his way to the Harms Commission of Inquiry.

Nofemela admitted he had lied under oath regarding a statement he made about the assault on a 17-year-old youth, Bongani Mkhize, at Piet Retief in 1983. He alleged in his evidence-in-chief that he and other policemen had taken Mkhize to a plantation where they severely assaulted him. The youth was burnt with a welding torch. Maritz produced a certificate from Dr Hendrik Krynauw who examined Mkhize after the assault. He had only sustained small lacerations on the head and hand "and nothing else". "How do you explain that?" Maritz asked Nofemela. "I could have made a mistake about the sequence of events," Nofemela replied. "It cannot be expected of me to remember these incidents accurately," he added. (Proceeding).

Biday 15/3/90

Nofemela 'has twisted evidence on hit squads'

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FORMER security policeman Butana Almond Nofemela was accused during cross-examination before the Harms Commission yesterday of twisting his accounts of real incidents to suit his evidence.

This accusation was levelled at Nofemela by Sam Maritz SC who represents individual policemen at the Harms Commission of inquiry into politically motivated murders

Maritz has spent the past two days presenting police documentation to contradict the former security policemen's evidence about police hit squad activities

Nofemela last week gave evidence about his involvement in the murder of civil rights lawyer Griffiths Mxenge and other missions which he said he undertook as a member of a police assassination squad

Cleverly

"What you have been doing all along quite cleverly, is taking actual occurrences that you had a bit of information on, sailing close to the truth and then twisting the incident to your advantage," Maritz said

Nofemela insisted that his version of events was true

Maritz said Nofemela's evidence that he received instructions to kill Mxenge from his commander Dirk Coetzee in Durban on November 5 1981 could not be true because according to police records Coetzee only left Pretoria for Durban on November 11

"The fact is I met Coetzee on the 5th," Nofemela said

He also said he did not know about a contingent of 11 people from Vlakplaas which, according to police documents, left Vlakplaas for Durban on November 4 1981 and returned on November 21

Nofemela said he did not see them in Durban.

"I was not even aware that others were in Durban," he said.

Maritz "From the 4th to the 11th virtually the whole Vlakplaas squad was in Durban and you didn't know

"According to the records you went down with a whole group of inmates of Vlakplaas to go and do a specific

SUSAN RUSSELL

job in Durban and most of you left on November 4th"

Nofemela "That is not the truth"

Maritz "I want to put it to you that during November 1981 there was a marked escalation in terrorist activities in Durban and virtually the whole Vlakplaas contingent was taken down to Durban to try and curb activities in Durban and Natal"

Nofemela did not dispute that

He also agreed that the job of the turned ANC members at Vlakplaas was to identify former colleagues and that they travelled around SA for this purpose

"Where you came in," Maritz said, "was to keep control of these (Askaris)"

Nofemela "That's correct."

"Where you came in further was when you were lucky enough to have a suspect, insurgent or terrorist pointed out and identified by one of these Askaris, there was a policeman there right on the spot to make an arrest"

Nofemela "That's correct."

Maritz also closely cross-examined Nofemela about the details of Mxenge's murder

Maritz asked him which member of the four-man squad which Nofemela said killed Mxenge had slit the lawyer's throat to the bone

"You claim you were there Who did that?"

"As I explained, what might have happened was that one of my colleagues cut his throat I cannot say who actually did it"

Mr Justice Harms "Could it have been yourself"

Nofemela "It could have been myself I cannot actually recall."

Maritz "Surely if it had been yourself you could recall such a hideous wound"

Nofemela "Actually the main thing that interested me was that the deceased must die. Not how he should be stabbed."

Maritz also put it to Nofemela that he had irresponsibly sat before the commission and implicated other policemen totally falsely.

"I don't agree," Nofemela replied

Stadler said yesterday of violence

WHERE IS SIPHIWO?

South
1513-213190

Q52

THE parents of an Eastern Cape student leader who disappeared eight years ago have had their hopes dashed that startling new information may solve the mystery that still haunts their lives.

When Mr Siphwo Mminkulu rushed from Port Elizabeth to Johannesburg he did so hoping that self-confessed Civil Co-operation Bureau (CCB) courier Allan van der Schyff would shed light on the Siphwo disappearance.

However, in spite of exhaustive attempts by SOUTH, the family and close friends to follow up the lead provided by Van der Schyff - that he transported seriously ill Siphwo from Port Elizabeth to Valkenberg in Cape Town - three years after he had vanished - the search has

been in vain.

Now lawyers representing the family plan to present a dossier on the poisoning and disappearance of Siphwo to the Harms Commission of Inquiry into death squads.

Said heartbroken Mrs Joyce Mminkulu, "I couldn't sleep the night after my husband spoke to the person who said he had taken Siphwo to Cape Town".

She still clings to the hope that Siphwo can be found.

"I know that if my son is alive then he is unhappy and suffering".

Mminkulu, a Congress of South African Students (COSAS) leader and close associate Topsy Madaka disappeared on April 14, 1982.

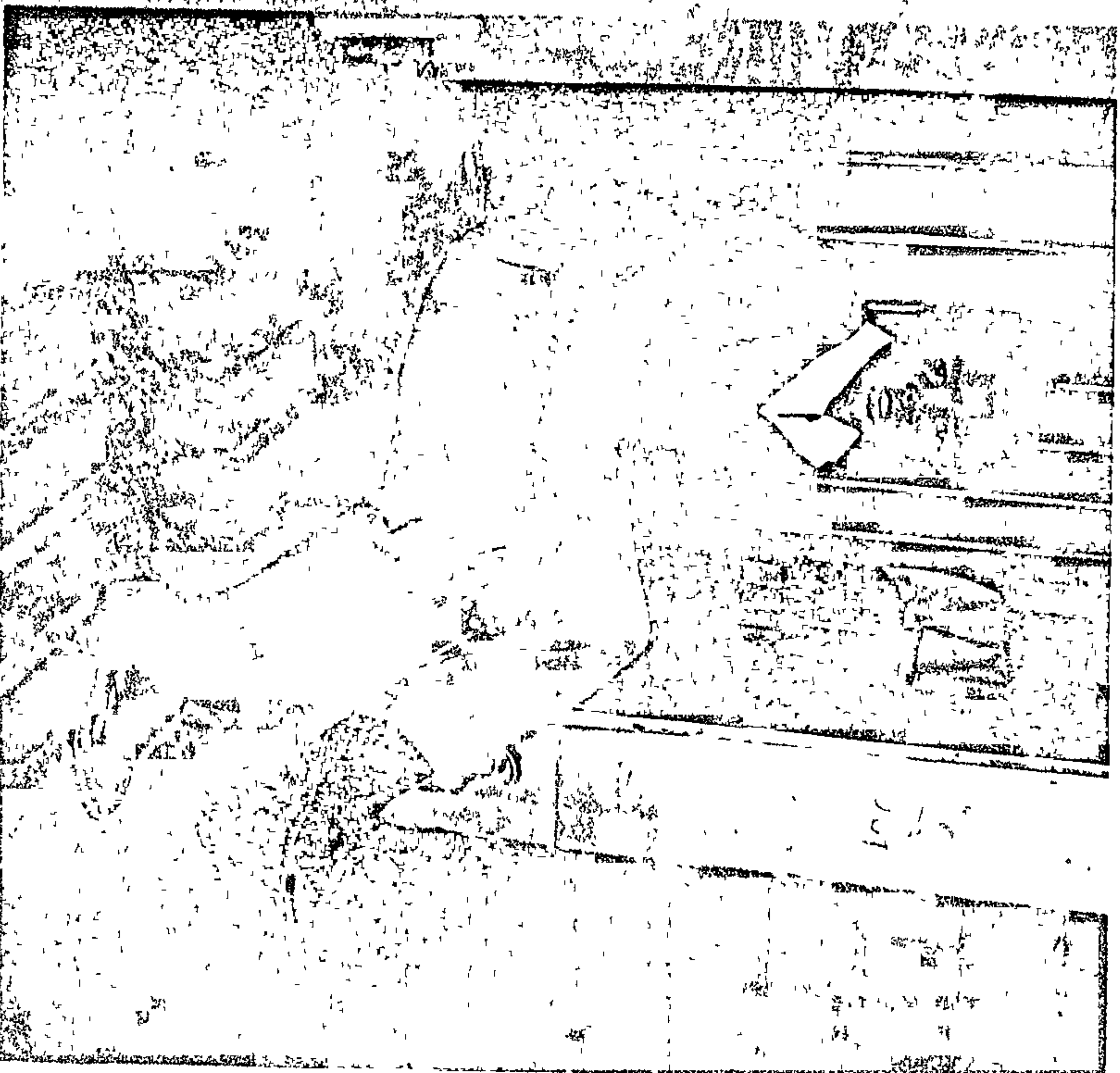


Siphwo Mminkulu

A few days earlier he lodged a R150 000 action against the Minister of Law and Order for allegedly being poisoned while in detention.

At the time of his disappearance he was recovering from the thallium poisoning which left him disabled.

Subsequently, the case was removed from the Supreme Court roll with either party still able to have it re-enrolled.



Barely two months old when his father Siphwo Mminkulu disappeared eight years ago, Sikumbuzo is caught up in the drama. Mystery of poisoned detainee, page 6

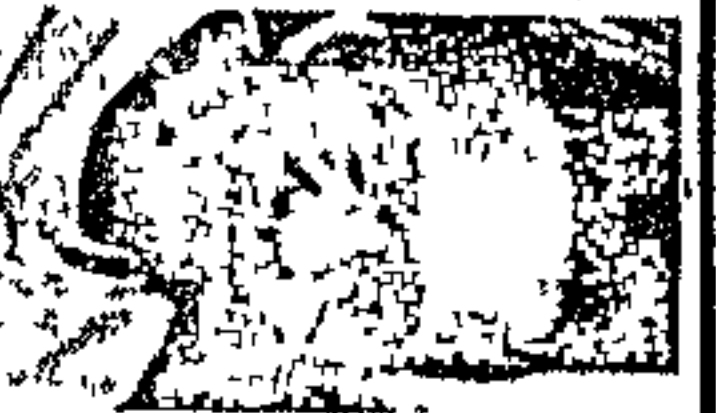
Find my

father:

a young

boy's

plea



Sounds of freedom

Freed Islanders blow up a storm

See page 3

CAIT

By **MONK NKOMO**

DURBAN lawyer Mr Griffiths Mxenge was probably forced to strip naked before he was bludgeoned with a hammer in the head and butchered to death because only his underpants were blood-soaked, the Harms Commission in Pretoria heard yesterday.

Mr Sam Maritz, SC, who is representing the SAP, also submitted records and sworn statements that revealed Mxenge could have been brutally murdered somewhere else and his body dumped along a road near Umlazi stadium in November 1981.

Maritz produced documents that contradicted Death Row prisoner Almond Butana Nofemela's evidence and also asked him to

NOFEMELA

explain why blood was not found on Mxenge's trousers.

Nofemela said the lawyer was fully clothed when he and three others cut his throat, stabbed him about 40 times with knives and battered him with a wheelspanner.

"He had his clothes on I also beat him with a wheelspanner because I thought it was more effective than the knives. He was covered in blood. I do not know why only his underpants were bloodied," said

It's lies, Harms probe is told

Nofemela. He added. "What interests me is that he died."

Maritz put it to Nofemela that he lied when he said Mxenge was murdered near the fence of the Umlazi stadium following sworn statements by two witnesses who said Mxenge could have been slain elsewhere and the body dumped along the road.

Both witnesses said there were no signs of a struggle or much blood where the body was found.

Transcribed 15/3/90 Mixed marriages
89 Mr S S VAN DER MERWE asked the Minister of Home Affairs

How many mixed marriages between (a) Whites and Blacks, (b) Whites and Coloureds and (c) Whites and Indians (i) had been entered into in the Republic since the repeal of the Prohibition of Mixed Marriages Act, No 55 of 1949, as at 31 December 1989 and (ii) were entered into in the Republic in 1989?

The MINISTER OF HOME AFFAIRS B204E

- (a) (i) 77 (ii) 24
- (b) 1 690 513
- (c) 595 202

Transport studies: funds

95 Dr Z J DE BEER asked the Minister of Transport *Transcribed* 15/3/90

(1) Whether the Department of Transport contributed any funds to the (a) Greater Johannesburg Area Transportation Study, 1970, (b) London Transport Executive Study, 1971, (c) Jomet Studies, 1975-1980, (d) Masstran Pre-feasibility Study, 1983-1985 and/or (e) Masstran Feasibility Study, 1989-1991, if so, what was the extent of these contributions (i) in each case, and (ii) in total, as at the latest specified date for which information is available;

- (2) what transit systems were recommended by each of the above studies;
- (3) whether any of these recommendations were accepted, if so, (a) which recommendations and (b) why, if not, why not?

The MINISTER OF TRANSPORT B195E

- (1) (a) No (i) Falls away;
- (b) No (i) Falls away,
- (c) No (i) Falls away,
- (d) Yes (i) Falls away,

(1) R1 046 184 as at 28 February 1990,

HOUSE OF ASSEMBLY

(e) Yes *Transcribed* 15/3/90
(1) R1 090 450 as at 28 February 1990,

- (d) (i) and (e) (ii) R2 136 634;
- (a) (ii) (b) (ii) and (c) (ii) Fall away
- (2) (a) Road and rail transit,
- (b) Underground rail transit,
- (c) Light rail transit,
- (d) Rapid rail transit, and
- (e) The relevant study is not yet completed

(3) No None of these recommendations were accepted unconditionally because it was stated in the studies that a full feasibility study into a mass transit system should first be undertaken before such a decision could be made

Competition Board: prosecutions

102. Dr P J GOUS asked the Minister for Administration and Economic Co-ordination:

- (1) (a) How many prosecutions have been instituted by the Competition Board up to now, (b) with what result have these prosecutions been instituted and (c) in respect of what date is this information furnished,
- (2) what procedure (a) does the Competition Board follow in relation to investigations into alleged collusion and similar irregularities and (b) do members of the public have to follow in order to have such irregularities investigated by the Board?

Transcribed 15/3/90
The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION B255E

(1) (a) None. The activities of the Competition Board are governed by the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979) in terms of which they are not empowered to institute prosecutions. Prosecutions in respect of contravention of arrangements or prohibitions are handled by the Department of Justice and the South African Police. Eight cases have

been referred to the relevant authorities for possible prosecution,

- (b) falls away, *Transcribed* 15/3/90
- (c) 1 January 1989 to 21 February 1990,
- (2) (a) horizontal collusion by suppliers on prices, conditions of sale, market sharing and tenders, as well as vertical price collusion are prohibited in terms of Government Notice 801 of 2 May 1990. Alleged contraventions are referred to the Department of Justice or the South African Police with the view to possible prosecutions. Allegations of horizontal collusion by buyers are investigated by the Competition Board on an *ad hoc* basis in terms of Act 96 of 1979. Investigations may give rise to prohibitions which, when contravened, are handled in the same manner as mentioned in (1) (a).

(b) members of the public may refer complaints regarding restrictive practices to the Competition Board, while alleged contraventions of prohibitions may be referred to the Competition Board or the South African Police

Nurses: lowering of retirement age

116 Mr M J ELLIS asked the Minister for Administration and Economic Co-ordination

Whether his Department is considering lowering the retirement age of nurses, if so, what is the new retirement age to be; if not, why not? *Transcribed* 15/3/90 B278E

The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION

No
The approach is not to look into the lowering of the retirement age of single groups in the Public Service in isolation but to take the position of all public servants in such case into consideration

Case of *The State v W H Rabe*: previous offences

145 Mr L FUCHS asked the Minister of Justice
Whether Mr W H Rabe was at any time convicted of any offences prior to his conviction for common assault in the case of *The State v W H Rabe*? *Transcribed* 15/3/90 B252

State v W H Rabe in the Piet Retief Regional Court on 12 February 1990, if so, (a) when, (b) of what offences, and (c) what sentence was handed down, in each case? *Transcribed* 15/3/90 B358E

The MINISTER OF JUSTICE No

Case of *The State v W H Rabe*: evidence

146 Mr L FUCHS asked the Minister of Justice

- (1) Whether, in the case of *The State v W H Rabe*, concluded in the Piet Retief Regional Court on 12 February 1990, any medical evidence concerning the cause of the death of Mr Ekati Xaba was led, if so, (a) what evidence and (b) by whom was such evidence presented, if not, why not,
- (2) whether any evidence was led suggesting a connection between the alleged assault and the death, if so, (a) what was the gravamen of such evidence and (b) by whom was it presented,
- (3) whether any mitigating factors were taken into account in the judgment and conviction of Mr W H Rabe, if so, what factors?

The MINISTER OF JUSTICE *Transcribed* 15/3/90 B359E

(1) Yes

- (a) That the cause of death was subdural bleeding and gall peritonitis
- (b) Dr F J van der Sande

(2) Dr F J van der Sande testified in this regard. His evidence did not suggest a connection between the alleged assault and the death. Dr van der Sande testified that the alleged assault could not have caused the death of the deceased

(3) Mitigating factors do not apply to judgment and conviction. They are, however, taken into account when sentence is passed

Case of *The State v W H Rabe*: autopsy

147 Mr L FUCHS asked the Minister of Justice
Whether, with reference to the case of *The State v W H Rabe*, an autopsy was held to establish the cause of death of Mr Ekati Xaba, if so, (a) on whose instructions, (b) when, (c) by whom and (d) what were the findings? *Transcribed* 15/3/90 B360E

HOUSE OF ASSEMBLY

The MINISTER OF JUSTICE

Yes *Hansard 15/3/90* 252

- (a) The Magistrate, Piet Rehef
- (b) 25 August 1989
- (c) Dr F J van der Sande, District Surgeon
- (d) Findings "Subdural bleeding occipital area Bruses back (? blunt instrument)? beaten Perforation gall-bladder + gall peritonitis Shortened right leg with scar hip area? operation" Cause of death "Subdural bleeding Gall peritonitis" (Own translation)

Own Affairs

Municipality of PE: group areas inspectors

9 Mr E W TRENT asked the Minister of the Budget and Local Government

- (1) How many group areas inspectors had been appointed in the Port Elizabeth municipality as at the latest specified date for which information is available,
- (2) whether he intends appointing any further inspectors, if not, why not, if so, (a) how many and (b) at what total cost,
- (3) how many permits were granted by his Department in terms of the Group Areas Act, No 36 of 1966, in the (a) Port Elizabeth Central constituency and (b) Port Elizabeth municipal area during the latest specified period of five years for which information is available?

Hansard 15/3/90

B80E

The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT

- (1) None The Department of Local Government, Housing and Works is involved with the management of permits which function, as set out in section 21 of the Group Areas Act, 1966, was assigned to the said Department from 21 July 1989 for application in White Group Areas This task is administered by 6 Housing Officers (Property Inspectors according to the Personnel Administrative Standard) of the said Department and the function is performed in the whole Eastern Cape region It is furthermore a function of these Housing Officers to investigate

complaints of alleged contraventions of the Group Areas Act

- (2) No There exist no need at this stage for the appointment of any additional Housing Officers *Hansard 15/3/90*
- (3) (a) Not available Statistics are not kept according to constituencies *Hansard 15/3/90*
- (b) 26 since 21 July 1989 to 31 January 1990

Group Areas Act infringements: regional offices
13 Mr J J WALSH asked the Minister of the Budget and Local Government

- (1) Whether regional offices of any Departments falling under the Administration: House of Assembly are being used as centres at which suspected Group Areas Act infringements may be reported; if so, (a) which such Departments are involved, (b) from what date has this procedure been effective, (c) where are these regional offices located, (d) how many staff, by office, are responsible for this activity, (e) how many cases, by office, have been reported since the inception of this procedure, (f) how many changes of contravening the Group Areas Act have been laid as a result of these reports and (g) what procedure has been followed regarding cases in respect of which charges were not laid,
- (2) whether he will make a statement on the matter? *Hansard 15/3/90*

Hansard 15/3/90

B85E

The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT

- (1) Yes
 - (a) Department of Local Government, Housing and Works
 - (b) 21 July 1989
 - (c) Cape Town, Port Elizabeth, Kimberley, Bloemfontein, Durban, Johannesburg and Pretoria
 - (d) Cape Town 11
Port Elizabeth 6
Kimberley 1
Bloemfontein 1
Durban 9
Johannesburg 13
Pretoria 5

(c) Cape Town 513
Port Elizabeth 108
Kimberley 12
Bloemfontein 0
Durban 348
Johannesburg 192
Pretoria 76

- (1) None *Hansard 15/3/90*
- (2) In such a case the complainant as well as the alleged transgressor are visited to establish the validity of the complaint and if valid, attempts are being made to reach an agreement through negotiations

White local authorities: debts

28 Dr P J GOUS asked the Minister of the Budget and Local Government *Hansard 15/3/90*

- Whether over the latest specified period of five years for which information is available the State had to accept responsibility for the debt of White local authorities by means of (a) payments and (b) guarantees to institutions, if so, what are the relevant details? B256E

The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT *Hansard 15/3/90*

Own affairs local government functions have only been assigned to me as from 1 April 1989

- (a) No.
- (b) No.

Education Departments: stationery

45 Mr K M ANDREW asked the Minister of Education and Culture *Hansard 15/3/90*

- (1) Whether any stationery provided by the provincial education departments falling under his Department for the use of (a) primary and (b) secondary school pupils, if not, why not, if so, what stationery is provided to each (i) primary and (ii) secondary school pupil? *Hansard 15/3/90*
- (2) whether paper is provided by the said departments for the printing of internal examination papers at (a) primary and (b) secondary schools, if not, why not, if so, how much paper is provided in respect of each (i) primary and (ii) secondary school pupil? *Hansard 15/3/90*

The MINISTER OF EDUCATION AND CULTURE *Hansard 15/3/90*

Transvaal, Cape and Orange Free State

- (1) and (2) *Hansard 15/3/90*
- (a) and (b) Yes, (i) and (ii) as required and within the limits of the school's financial allocation, *Hansard 15/3/90*
- (1) and (2) *Hansard 15/3/90*
- (a) and (b) No, (i) and (ii) a monetary allocation is made available to each school to purchase its own requirements

Students qualified as teachers

46 Mr R M BURROWS asked the Minister of Education and Culture *Hansard 15/3/90*

- How many White students graduated at the end of 1989 as fully qualified teachers from each of the (a) teacher-training colleges and (b) universities falling under his Department? *Hansard 15/3/90* B398E

The MINISTER OF EDUCATION AND CULTURE

- (a)* Paarlse Onderwyskollege 61
- Wellingtonse Onderwyskollege 77
- Port Elizabeth College of Education 50
- Cape Town College of Education 63
- Barkly House 42
- Edgewood College of Education 166
- Durbanse Onderwyskollege 75
- Bloemfontein Teachers' College 133
- Onderwyskollege Pretoria 347
- Onderwyskollege Goudstad 287
- Onderwyskollege Potchefstroom 206
- Johannesburg College of Education 254
- Pretoria College of Education 74
- (b)* Orange Free State 202
- Natal 232
- Rhodes 61
- Rand Afrikaans 241
- Witwatersrand 291
- Port Elizabeth 138
- Potchefstroom 273
- Pretoria 367
- Cape Town 205
- Stellenbosch 388
- South Africa 499

* include all education students who completed their initial training

Leave to appeal for Qibla pair

252

Sowetan 15/3/90

TWO members of the Qibla organisation have received leave from the Appeal Court in Bloemfontein to appeal against their convictions and sentences for terrorism.

Achmad Cassiem, a leader of the Qibla organisation, and Yusuf Patel, a member of its management executive, were convicted in the Pretoria Regional Court on October 26, 1988

Two days later Cassiem was imprisoned for six years and Patel for five years

Qibla was formed around 1978/79 in the Western Cape.

It was described on the charge sheet

as a Moslem organisation or society, formed to motivate and activate Moslems to become more socially, politically and economically aware to "bring on their own just social order".

The magistrate concluded that Qibla was a subversive organisation, with unlawful aims to overthrow or endanger state authority in South Africa

He found the two men had formed a conspiracy with each other and other members to commit offences contemplated by Section 54(1) of the Internal Security Act

On November 3, 1989 the Transvaal Supreme Court dismissed appeals by the men against their convictions and sentences - Sapa

Hansard 15/3/90
89 Mr S S VAN DER MERWE asked the Minister of Home Affairs

How many mixed marriages between (a) Whites and Blacks, (b) Whites and Coloureds and (c) Whites and Indians (i) had been entered into in the Republic since the repeal of the Prohibition of Mixed Marriages Act, No 55 of 1949, as at 31 December 1989 and (ii) were entered into in the Republic in 1989?

The MINISTER OF HOME AFFAIRS B204E

(a)	(i)	(ii)
(b)	77	24
(c)	1 690	513
	595	202

95 Dr Z J DE BEER asked the Minister of Transport *Hansard* 15/3/90

- Transport studies: funds
- (1) Whether the Department of Transport contributed any funds to the (a) Greater Johannesburg Area Transportation Study, 1970, (b) London Transport Executive Study, 1971, (c) Jomel Studies, 1975-1980, (d) Masstran Pre-feasibility Study, 1983-1985 and/or (e) Masstran Feasibility Study, 1989-1991, if so, what was the extent of these contributions (i) in each case, and (ii) in total, as at the latest specified date for which information is available,
- (2) what transit systems were recommended by each of the above studies,
- (3) whether any of these recommendations were accepted, if so, (a) which recommendations and (b) why, if not, why not? B195E

The MINISTER OF TRANSPORT

- (1) (a) No (i) Falls away;
(b) No (i) Falls away;
(c) No (i) Falls away,
(d) Yes (i) RI 046 184 as at 28 February 1990,

(e) Yes *Hansard* 15/3/90
(1) R1 090 450 as at 28 February 1990,

- (2) (a) Road and rail transit;
(b) Underground rail transit,
(c) Light rail transit,
(d) Rapid rail transit, and
(e) The relevant study is not yet completed
- (3) No None of these recommendations were accepted unconditionally because it was stated in the studies that a full feasibility study into a mass transit system should first be undertaken before such a decision could be made
- (a) and (b) Fall away

Competition Board: prosecutions

- 102 Dr P J GOUS asked the Minister for Administration and Economic Co-ordination
- (1) (a) How many prosecutions have been instituted by the Competition Board up to now, (b) with what result have these prosecutions been instituted and (c) in respect of what date is this information furnished,
- (2) what procedure (a) does the Competition Board follow in relation to investigations into alleged collusion and similar irregularities and (b) do members of the public have to follow in order to have such irregularities investigated by the Board? B255E

The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION

- (1) (a) None The activities of the Competition Board are governed by the Maintenance and Promotion of Competition Act, 1979 (Act No 96 of 1979) in terms of which they are not empowered to institute prosecutions Prosecutions in respect of contravention of arrangements or prohibitions are handled by the Department of Justice and the South African Police Eight cases have

been referred to the relevant authorities for possible prosecution.

- (b) falls away, *Hansard* 15/3/90
- (c) 1 January 1989 to 21 February 1990,
- (2) (a) horizontal collusion by suppliers on prices, conditions of sale, market sharing and tenders, as well as vertical price collusion are prohibited in terms of Government Notice 801 of 2 May 1990 Alleged contraventions are referred to the Department of Justice or the South African Police with the view to possible prosecutions Allegations of horizontal collusion by buyers are investigated by the Competition Board on an *ad hoc* basis in terms of Act 96 of 1979 Investigations may give rise to prohibitions which, when contravened, are handled in the same manner as mentioned in (1) (a);
- (b) members of the public may refer complaints regarding restrictive practices to the Competition Board, while alleged contraventions of prohibitions may be referred to the Competition Board or the South African Police

Nurses: lowering of retirement age

116. Mr M J ELLIS asked the Minister for Administration and Economic Co-ordination
- Whether his Department is considering lowering the retirement age of nurses, if so, what is the new retirement age to be; if not, why not? B278E
- Hansard* 15/3/90
- The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION
- No.
- The approach is not to look into the lowering of the retirement age of single groups in the Public Service in isolation but to take the position of all public servants in such case into consideration

Case of *The State v W H Rabe*: previous offences

- 145 Mr L FUCHS asked the Minister of Justice
- Whether Mr W H Rabe was at any time convicted of any offences prior to his conviction for common assault in the case of *The State v W H Rabe*?
- Hansard* 15/3/90 252

State v W H Rabe in the Piet Retief Regional Court on 12 February 1990, if so, (a) when, (b) of what offences, and (c) what sentence was handed down, in each case? B358E

- Hansard* 15/3/90 252
- The MINISTER OF JUSTICE
- No
- Case of *The State v W H Rabe* evidence
146. Mr L FUCHS asked the Minister of Justice
- (1) Whether, in the case of *The State v W H Rabe*, concluded in the Piet Retief Regional Court on 12 February 1990, any medical evidence concerning the cause of the death of Mr Ekau Xaba was led, if so, (a) what evidence and (b) by whom was such evidence presented, if not, why not,
- (2) whether any evidence was led suggesting a connection between the alleged assault and the death, if so, (a) what was the gravamen of such evidence and (b) by whom was it presented,
- (3) whether any mitigating factors were taken into account in the judgment and conviction of Mr W H Rabe, if so, what factors? B359E
- Hansard* 15/3/90
- The MINISTER OF JUSTICE
- (1) Yes
- (a) That the cause of death was subdural bleeding and gall peritonitis
- (b) Dr F J van der Sande
- (2) Dr F J van der Sande testified in this regard His evidence did not suggest a connection between the alleged assault and the death Dr van der Sande testified that the alleged assault could not have caused the death of the deceased
- (3) Mitigating factors do not apply to judgment and conviction They are, however, taken into account when sentence is passed

Case of *The State v W H Rabe*: autopsy

147. Mr L FUCHS asked the Minister of Justice:
- Whether, with reference to the case of *The State v W H Rabe*, an autopsy was held to establish the cause of death of Mr Ekau Xaba, if so, (a) on whose instructions, (b) when, (c) by whom and (d) what were the findings?
- Hansard* 15/3/90 252 B360E

The MINISTER OF JUSTICE

Yes *Heussel* 15/3/90 252

- (a) The Magistrate, Piet Reber
- (b) 25 August 1989
- (c) Dr F J van der Sande, District Surgeon
- (d) Findings "Subdural bleeding occipital area Bruses back (? blunt instrument?) beaten Perforation gall-bladder + gall peritonitis Shortened right leg with scar hip area? operation" Cause of death "Subdural bleeding Gall peritonitis" (Own translation)

Own Affairs

Municipality of PE: group areas inspectors

9 Mr E W TRENT asked the Minister of the Budget and Local Government

- (1) How many group areas inspectors had been appointed in the Port Elizabeth Municipality as at the latest specified date for which information is available.
- (2) whether he intends appointing any further inspectors, if not, why not, if so, (a) how many and (b) at what total cost.
- (3) how many permits were granted by his Department in terms of the Group Areas Act, No 36 of 1966, in the (a) Port Elizabeth Central constituency and (b) Port Elizabeth municipal area during the latest specified period of five years for which information is available?

Heussel 15/3/90 B80E
The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT

- (1) None The Department of Local Government, Housing and Works is involved with the management and works is involved function, as set out in section 21 of the Group Areas Act, 1966, was assigned to the said Department from 21 July 1989 for application in White Group Areas. This task is administered by 6 Housing Officers (Property Inspectors according to the Personnel Administrative Standard) of the said Department and the function is performed in the whole Eastern Cape region It is furthermore a function of these Housing Officers to investigate

complaints of alleged contraventions of the Group Areas Act

- (2) No There exist no need at this stage for the appointment of any additional Housing Officers *Heussel* 15/3/90
- (3) (a) Not available Statuses are not kept according to constituencies
- (b) 26 since 21 July 1989 to 31 January 1990

Group Areas Act infringements: regional offices

13 Mr J J WALSH asked the Minister of the Budget and Local Government

- (1) Whether regional offices of any Departments falling under the Administration House of Assembly are being used as centres at which suspected Group Areas Act infringements may be reported, if so, (a) which such Departments are involved, (b) from what date has this procedure been effective, (c) where are these regional offices located, (d) how many staff, (e) how many cases, by office, have been reported since the inception of this procedure, (f) how many changes of contravening the Group Areas Act have been had as a result of these reports and (g) what procedure has been followed regarding cases in respect of which charges were not laid,
- (2) whether he will make a statement on the matter? *Heussel* 15/3/90

B88E
The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT.

- (1) Yes
 - (a) Department of Local Government, Housing and Works.
 - (b) 21 July 1989
 - (c) Cape Town, Port Elizabeth, Kimberley, Bloemfontein, Durban, Johannesburg and Pretoria
 - (d) Cape Town 11
Port Elizabeth 6
Kimberley 1
Bloemfontein 1
Durban 1
Johannesburg 9
Pretoria 13

- (e) Cape Town 513
Port Elizabeth 108
Kimberley 12
Bloemfontein 0
Durban 348
Johannesburg 192
Pretoria 76

- (f) None *Heussel* 15/3/90
- (g) In such a case the complainant as well as the alleged transgressor are visited to establish the validity of the complaint and if valid, attempts are being made to reach an agreement through negotiations

White local authorities debts

28 Dr P J GOUS asked the Minister of the Budget and Local Government

- (2) No
- Whether over the latest specified period of five years for which information is available the State had to accept responsibility for the debt of White local authorities by means of (a) payments and (b) guarantees to institutions, if so, what are the relevant details? B256E

Heussel 15/3/90
The MINISTER OF THE BUDGET AND LOCAL GOVERNMENT

Own affairs local government functions have only been assigned to me as from 1 April 1989

- (a) No
- (b) No

Education Departments stationery

45 Mr K M ANDREW asked the Minister of Education and Culture.

- (1) Whether any stationery is provided by the provincial education departments falling under his Department for the use of (a) primary and (b) secondary school pupils, if not, why not, if so, what stationery is provided to each (i) primary and (ii) secondary school pupil? *Heussel*
- (2) whether paper is provided by the said departments for the printing of internal examination papers at (a) primary and (b) secondary schools, if not, why not, if so, how much paper is provided in respect of each (i) primary and (ii) secondary school pupil? *Heussel* B397E

Heussel 15/3/90
The MINISTER OF EDUCATION AND CULTURE:

Transvaal, Cape and Orange Free State

- (1) and (2)
- (a) and (b) Yes, (i) and (ii) as required and within the limits of the school's financial allocation, *Heussel*
- (1) and (2)
- (a) and (b) No, *Heussel* 15/3/90
- (i) and (ii) a monetary allocation is made available to each school to purchase its own requirements

Students qualified as teachers

46 Mr R M BURROWS asked the Minister of Education and Culture

- How many White students graduated at the end of 1989 as fully qualified teachers from each of the (a) teacher-training colleges and (b) universities falling under his Department? *Heussel* B398E

Heussel 15/3/90
The MINISTER OF EDUCATION AND CULTURE

- (a) * Paarlse Onderwyskollege 61
Wellingonse Onderwyskollege 77
Port Elizabeth College of Education 50
Cape Town College of Education 63
Barkly House 42
Edgewood College of Education 166
Durbanse Onderwyskollege 75
Bloemfontein Teachers' College 133
Onderwyskollege Pretoria 347
Onderwyskollege Goudstad 287
Onderwyskollege Potchefstroom 206
Johannesburg College of Education 254
Pretoria College of Education 74
- (b) * Orange Free State 202
Natal 232
Rhodes 61
Rand Afrikaans 241
Witwatersrand 291
Port Elizabeth 138
Potchefstroom 273
Pretoria 367
Cape Town 205
Stellenbosch 388
South Africa 499

* include all education students who completed their initial training

Guilt is a matter of innocence in the upside-down world of Harms

the commission, that is. Earlier the commission had agreed to take evidence from Coetzee in London. Now Harms is baulking at the prospect. He may face a walkout by human rights legal teams if he continues to do so.

It seems likely that Nofemela's evidence will be discredited. Harms has given numerous indications that his assessment of Nofemela's evidence is far from favourable.

Inconsistencies and memory lapses have been exposed. Sufficient doubt has been sown to place question marks over Nofemela's claims.

Nofemela has also been shown to have been an unreliable witness. In a court case arising out of an alleged wrongful arrest and assault in Pretoria, Nofemela submitted an affidavit denying that the police involved had done anything untoward.

To the commission he gave evidence of severe assault involving burning — or the threat of burning — with a welder's torch.

Of course he lied, he said of the affidavit; it's routine in situations like this. In point of fact, he claimed, he had not even composed the affidavit. It had been written by a white policeman and Nofemela had only signed it. The fact that the affidavit was written in educated Afrikaans — in which Nofemela is not fluent — gives credence to his claim.

Harms finds himself between a rock and a hard place. If his commission exposes the death squads, he risks a backlash from the armed forces. If he fails to do so, he risks loss of stature in the legal fraternity.

Despite the admonitions he delivered on Monday against the press for bringing his commission into disrepute, Harms knows that credibility is paramount. In the end, Harms and his commission will be tried in the press and by public opinion. Should his recommendations fall short of expectations, Harms will undoubtedly be accused of a cover-up.

IT could be the Mad Hatter's law party. Instead of defending himself, the man in the witness box is trying for all he is worth to convince the court he committed a long series of bizarre and gruesome murders.

But hostile state lawyers are having none of it. At great and tedious length, they try to get him to admit his innocence.

The man's defence counsel — working on behalf of Lawyers for Human Rights — objects at irregular intervals, always trying to establishing the "defendant's" guilt. Furthermore, the proceedings just happen to be taking place in a theological centre.

The man giving evidence is former security policeman and self-confessed police assassin Butana Almond Nofemela, now under sentence of death on Pretoria's death row. They "party" is the commission of inquiry into politically motivated killings currently sitting under the chairmanship of Mr Justice Louis Harms in the Dutch Reformed Church's synodal centre in the capital.

Representing the special branch of the South African Police, advocate Sam Maritz spent most of this week cross-examining Nofemela with the goal of discrediting the condemned man's testimony. Maritz's firm works under retainer to the Ministry of Law and Order, and a more usual role for Maritz is that of defending policemen on brutality or other malpractice charges.

Repeatedly, Maritz accused Nofemela of "concocting lies". On Wednesday, however, he spelt out the interpretation his team was placing on events.

Maritz put it to the witness that, due to hang on October 19 last year, Nofemela took desperate measures to save his own skin. Having been attached to Unit C1 of the police's anti-terrorist division, he had access to a number of facts relating to counter-insurgency operations and these he wove together into a self-implicating

Prosecutors and defendants have swapped their traditional roles in the Harms Commission of Inquiry into death squads, reports **IVOR POWELL**

horror story which proved convincing enough to gain a stay of execution.

But, Maritz maintained, Nofemela had no part in most of the events he described.

Notably, Maritz went to extreme lengths to discredit Nofemela's version of the murder of human rights lawyer Griffiths Mxenge in 1981.

Various inconsistencies were established with regard to Nofemela's testimony. Where he had claimed in

his evidence Mxenge's body left lying in the veld after the murder outside Umlazi Stadium, Maritz quoted inquest evidence that the body had been discovered on a nearby road. Doubt was sown regarding Nofemela's description of the stadium.

Most puzzlingly, an affidavit by the murdered man's wife, Victoria — herself assassinated in 1985 — said that her dead husband's trousers had been returned to her free of bloodstains. Such details suggest that Mxenge had been stripped before being stabbed and his clothes only pulled on again after his body was dumped in the road. Nofemela claimed that Mxenge had been fully clothed at the time of his death.

Then there was the question of the poison administered to Mxenge's dogs before the killing. Nofemela claimed that he had himself poisoned some of the meat given to Mxenge's guard dogs by "mixing" the meat

ALMOND Nofemela's evidence survived a critical test when an attempt by police lawyers to discredit his testimony was exposed in a closed hearing of the Harms Commission yesterday.

Nofemela had claimed that fellow alleged police assassin Jeff Bosego had been shot in the foot during a death-squad operation.

But police lawyer Sam Maritz had denied this, producing affidavits from a doctor and a radiologist as well as Bosego himself which claimed the ex-Askari had never

When an ankle is not a foot

been shot in the foot.

Justice Louis Harms eized upon this discrepancy as a means to establish once and for all just who was lying.

Nobody was exactly lying but an examination of Bosego's leg in court showed a bullet wound just above the ankle.

It seemed police advocate Sam Maritz had been equivocating and in the words of one lawyer "doing something so close to misleading the commission that it hardly makes any difference".

with a liquid poison — strychnine in the autopsy.

By Maritz cited an account of dog-poisoning technique given in an interview by Nofemela's former commanding officer, Dirk Coetzee. According to Coetzee — an experienced and careful dog-poisoner, as Maritz noted — and as confirmed by an Onderstepoort toxicologist, strychnine is so bitter that animals will not touch it unless it is well disguised. A careful dog-poisoner cuts a slit inside the meat and carefully pours in a lethal dose which will take effect only when digestion begins. Again Nofemela had no answer except to stick to his earlier version.

Whatever the truth of Nofemela's confessions — and his own legal team is worried by Maritz's onslaught — the police team may well end up caught in its own trap.

Much of the refutation of Nofemela's allegations has been drawn from

the evidence of former security police captain Dirk Coetzee. By using this against Nofemela, Maritz and his colleagues are giving implicit credence to this testimony.

Moreover Coetzee is scheduled to present evidence to the commission — evidence far more damning of the operations at the farm base Vlakplaas than any which Nofemela, as a low-ranking former policeman, could have access to.

Whereas Dirk Coetzee and his successors Captain (now Major) Eugene de Kock and Captain (now Lieutenant Colonel) Jan Coetzee are the highest ranking officers that Nofemela has implicated, Coetzee has implicated generals and brigadiers in death squad activities.

By establishing Coetzee as a credible authority, the police lawyers may have greater legal problems during later commission hearings.

If Coetzee's evidence is heard by

Mill responsible for six other leaks

Sappi boss fined for Lowveld effluent spill

By Clyde Johnson,
Lowveld Bureau

NELSPRUIT — The general manager of Sappi Kraft's paper mill at Ngodwana — from which hundreds of thousands of litres of effluent spilt into the Ngodwana River, polluting 36 km of water and killing large numbers of fish — was yesterday fined R6 000

Regional Court magistrate Mr WJ Wilken found Barry Charles Melrose, as a representative of the mill, guilty of contravening the Water Act by negligently polluting the river in such a way as to render it unsuitable for the propagation of fish and other aquatic life.

Melrose, in his capacity as representative of the mill, pleaded guilty

A summary of facts handed to the court stated that on Septem-

ber 23 1989 at approximately 12 30 am, an estimated 700 000 litres of a substance called "weak black liquor" and "soap skimmings" overflowed from a storage tank

The effluent found its way to the internal stormwater drainage system from where it entered the Ngodwana River and flowed into the Eland's and Crocodile rivers

Depletion

As a result of the toxicity of the spilled material and the oxygen depletion caused by it, all fish in the river died within a distance of 36 km downstream

Apart from the fish killed, the spillage also had a deleterious effect on large numbers of organisms from various levels of the aquatic food chain

Passing sentence, Mr Wilken said that although the mill had

no proven previous convictions, its history of six spillage incidents during the period February 3 1985 to September 23 1989 indicated that things were going from bad to worse

He agreed that paper mills, like the one at Ngodwana, were necessary to produce much-needed paper

"But this does not give them the right to adversely affect the environment," he said

The Lowveld, he pointed out, was well known for its picturesque surroundings, abundant wildlife and unpolluted air and water

After the spillage tremendous public concern had been expressed that Sappi restore the rivers to their natural state

"I hope this sentence will help to keep the country alert and on its toes, to ensure the incident is not repeated," Mr Wilken said

Widow awarded R15 000

16/3/90 (252)
A claim for damages by a Botswana widow, whose husband died after being locked in a metal tank for more than 24 hours by a Transvaal farmer who suspected him of stock theft, was yesterday settled in the Pretoria Supreme Court.

In terms of the settlement, made an order of court by Mr Justice van Zyl, Christiaan Wynand Johannes Pretorius of the farm Vissersrus in the Thabazimbi district agreed to pay R15 000 to Mrs Pulane Tsheole (39) of the Mochudi village in Gaborone, Botswana, in her capacity as mother and guardian of two minor daughters.

Mrs Tsheole claimed R28 000 from Mr Pretorius after the death of her husband, Mr Modise Seven Phuti (30), to whom she was married according to Botswanan customary law, on December 13 1982.

Mrs Tsheole said in papers her husband died after being imprisoned in a metal tank from sunset on December 12 1982 to about 6 pm the next day.

The only opening of the tank was welded shut with iron bars.

During this period, the tank stood in the sun, so that the interior became extremely hot, and Mr Phuti was subjected to extreme discomfort, she said.

She submitted her husband's death had been caused by the negligence of Mr Pretorius or his employees, who failed to take precautions to preserve the life and health of her husband while he was incarcerated.

They also negligently failed to take any precautions to prevent Mr Phuti from harming himself.

It was further submitted the defendant had failed to exercise reasonable care in extracting Mr Phuti, who was by then either comatose or dead, from the tank, thereby causing him to sustain an injury to his spine.

Mr Pretorius denied any negligence, saying he had lawfully arrested Mr Phuti on a reasonable suspicion of stealing six cows and six calves.

It was submitted Mr Phuti's imprisonment in the tank was wrongful and unlawful, and that Mr Pretorius was therefore liable for damages. — Sapa

Hit squad: not ever, probe told

~~252~~
252

COUNSEL for the South African Police yesterday denied that a hit squad had ever existed in the force.

"There was not then, is not now, and will never be a hit squad," Mr Sam Maritz SC, told the Harms Commission into politically motivated murders.

Mr Maritz said the allegations made by convicted killer and alleged hit squad member Butana Almond Nofemela were "scurillous and the most hideous allegations".

He was closing two-and-a-half days of cross-examination of Nofemela's evidence in chief.

The Commission, under the chairmanship of Mr Justice Louis Harms, was told by Maritz that the police denied all the allegations and were prepared to give evidence in support of their denial.

He also said Nofemela had never been a member of a hit squad.

Earlier, Maritz said the claims by Nofemela were "figments of imagination, lies, untruths and distortions of the truth".

Nofemela's claims were first made in

an affidavit made on the night before he was to hang for an unrelated murder.

They were backed by former police captain Dirk Coetzee, now a member of the ANC and living in Lusaka.

Harms opened proceedings yesterday by saying he would not make a ruling on cross-examination of an alleged incident near Swaziland but he asked that the cross-examination be limited.

Maritz said: "This was a regular activity by the police and had nothing to do with hit squad activities."

He said the insurgents who survived the incident were found guilty by a court of law and sentenced to 10 years imprisonment.

Referring to an incident which Nofemela said had taken place in Kuruman when a car was burnt out after it was stolen from an activist, Maritz said records showed the vehicle was in fact burnt out at Severn, 201km from Kuruman.

Maritz, as during two previous days of cross-examination, said Nofemela had changed his evidence to suit his own ends.

HARMS COMMISSION F/M 16/3/90

More light needed

The pressure is intensifying on President FW de Klerk to expand the terms of reference of the Harms Commission to include violence perpetrated abroad, as more is discovered about the operations of SA's security community.

Among those who want the brief extended are important officials in the Department of Foreign Affairs.

A high-ranking foreign affairs official tells the FM that ever since the controversial Blowpipe missile affair, his department has demanded to be informed about the way all secret funds are put to use abroad. "What we want is a right to veto any such actions which may interfere with the department's work overseas and embarrass the country"

However, Justice Louis Harms is bound, by his instructions as set out in the extraordinary *Government Gazette*, not to hear evidence on acts of violence committed overseas. "In effect," says the foreign affairs man, "it means that we still do not know what they are up to overseas at the moment"

Judge Harms made the ruling before the condemned former security policeman, Almond Nofemela, was due to testify. This immediately prompted a reaction from Dennis Kuny, the advocate representing Nofemela. Kuny suggested that to put the hearing in perspective, it was important for that evidence to be led: "I think that it is highly relevant for you to know the full scope and ambit of this squad..." Most of the activities of the alleged hit squads relate to cross-border raids, said Kuny

In his reply Harms said that he would allow cross-examination on incidents which may have taken place overseas, but each incident would be dealt with as it came up during Nofemela's evidence.

The concern in foreign affairs underlines the acceptance in certain circles that there has always been tension between Foreign Affairs Minister Pik Botha and Defence Minister Magnus Malan. While both had been favourites of former President P W Botha, Pik's influence waned as P W relied increasingly on the advice of the hawkish Malan and his securocrats in determining foreign policy.

The Blowpipe affair illustrated this well. In April last year, French security services arrested Daniel Storm, at the time

identified as a SA diplomat in Paris. He had been caught redhanded in a Paris hotel completing the purchase of a Blowpipe missile from three members of the Ulster Resistance Movement and a Geneva-based US citizen

At the time, Armscor spokesman Bertrand Retief emphatically told the FM that Storm was a SA diplomat working for foreign affairs. A week later the FM reported a foreign affairs spokesman saying that Storm's name was not mentioned on the official diplomatic list and that he had fallen in the same category as locally enlisted officials (*Current Affairs* May 5 1989).

The Democratic Party's Tiaan van der Merwe, who attended Monday's proceedings of the commission, agrees that the terms of reference should be broadened "to enable the commission to reach a wider perspective on the activities of the so-called hit squads. Of course, I cannot see any moral differences between whether you kill someone over here or abroad."

Van der Merwe is confident, however, that De Klerk may still alter Harms's brief. "You must remember that De Klerk initially refused to refer the allegations to a commission. He only decided on this after it became clear that Malan had not been open with him. As things develop, and more damning evidence is heard, De Klerk may decide to go the whole way."

Van der Merwe says the most significant feature of De Klerk's rule is not that he has fundamentally changed his thoughts on racial matters (though he has). It is that he has weakened the position of the security family. "This is a senior Cabinet member who had for years been sidelined by the securocrats. He was the most senior Cabinet member who did not have a permanent seat on the State Security Council."

It seems as if the attitude of the Department of Foreign Affairs is echoed among most of Malan's colleagues. So far none of them has come to his rescue. Even Nat-supporting newspapers like *Die Burger* have run lead stories on the commission's hearings. "You can be sure that when *Die Burger* does that, they are sensing that Malan's position is uncomfortable in Cabinet," says Van der Merwe.

Die Burger's sister paper,



no" at word...
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Beeld, last week stopped short of calling for Malan's resignation, saying that he should immediately offer to testify. If he stubbornly refuses, we won't be surprised if *Beeld* calls for his resignation.

VIOLENCE F/M 16/3/90

The mob factor

"Who controls the townships?" The answer must surely be: "The mob"

Government and the ANC seem equally concerned about the continuing violence. It's a political threat to both President FW de Klerk and the ANC. The organisation's influence in many areas is being seriously questioned as repeated calls by its leaders for peace and a return to school are ignored.

The leaders of the mobs (if indeed there are leaders) are often as difficult to identify as their aims. No one seems to know who they are or what they hope to achieve. In an effort to break the back of the current wave of violence police have detained more than 150 alleged instigators

But violence continues

The concern of mainstream extraparliamentary leaders was highlighted in a weekend TV interview with UDF publicity secretary Patrick Lekota. In effect, he branded people involved in political violence as traitors to the liberation cause. He called them enemies who must be identified. He also acknowledged that there were limits within which political protest could take place.

This indicates growing concern in ANC/UDF circles that the unrest is beyond their control, notwithstanding their claims to have played a part in restoring relative calm to Ciskei.

Law & Order Minister Adriaan Vlok told parliament last week that the unrest situation was "extremely fluid" but under control "as far as is humanly possible."

Vlok also acknowledges public concern that the "shocking" events of the mid-Eighties are on the verge of being repeated. "I can understand it, but I appeal to one and all to stay calm and go on with their daily lives and not allow themselves to be intimidated. The police are in control of the situation and will do all in their power to protect the public."

That's easy to say when one doesn't live in a township, particularly if it's controlled by "the youth." Vlok sees them as a serious obstacle to ending the unrest

Many of the youngsters are the Lost Generation. Their crude political views were forged in the unrest fires of the mid-Eighties. Their allegiance to the mainstream of the

Two Qibla members appeal

252
By BOETI ESHAK

TWO members of the Qibla organisation have been granted leave by the Appeal Court in Bloemfontein to appeal against their convictions and sentences for terrorism. *S. Times 18/3/90*

Achmad Cassiem, a leader of Qibla, and Yusuf Patel, a member of its management executive, were convicted in the Pretoria regional court in October 1988. Cassiem was imprisoned for six years and Patel for five years. Qibla was described on the charge sheet as an organisation formed to motivate Muslims to work for a "just social order". The magistrate concluded that it was subversive.

COPS' FAMILY TOO SUE WILSON

Cl Press 18/3/90

152

Family reject police version of son's death

By SIBU MNGADI

THE family of the policeman who allegedly gunned down Pietermaritzburg Riot Unit commander Major Deon Terblanche plans to sue the police for what they perceive as "instant justice."

Interviewed by City Press yesterday, the mother of Constable Manda Roy Ngcobo, Mary-Jane Ngcobo, said her husband and local community leaders were consulting lawyers. It could lead to a lawsuit against Minister of Law and Order Adnan Vlok.

First, she said, they wanted to appoint a pathologist to be present during a post-mortem on Ngcobo. The family would instigate a lawsuit against the constable's burial, probably on Saturday.

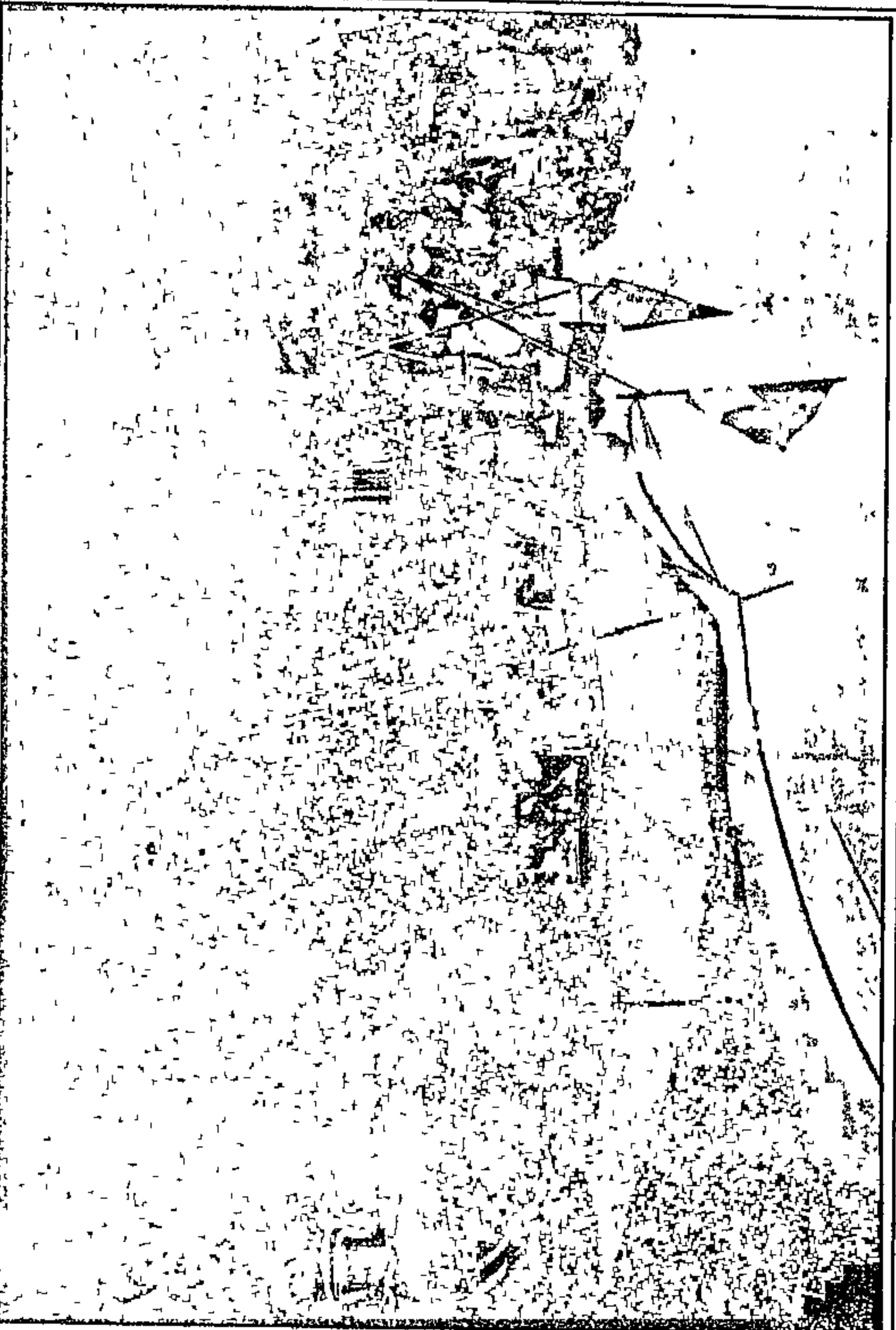
Li-Coi Charl du Toit, senior SAP liaison officer in Natal, said on Friday Ngcobo was shot by an unnamed police officer when he "tried to escape from custody while being transported in a motor vehicle."

Du Toit said "the detainee" disarmed one of the police officers in the vehicle. "In the ensuing events, the detainee was fatally wounded. He died instantly."

It has been alleged that Ngcobo, who was sitting at the back of the car, gained control of the service pistol of the officer in the passenger seat.

The policeman who was also armed with a shotgun, lifted the barrel of the firearm over his shoulder and fired two shots.

It is understood an internal board of inquiry will be convened to investigate.



Mass funeral... 14 of the 43 victims of Katiuhong's bloody taxi war were given a mass burial yesterday. PIETRANDRIES MCINENKA

Fear grips Bop as cops swoop

By CHARLES MOGALE

FEAR has gripped the said police had confiscated vast amounts of goods belonging to wholesalers in Boputhata following the disappearance of several activists.

It is believed as many as 50 people have been detained by Boputhata police in the wake of the disappearance.

There have also been reports of house to house raids. This follows last week's massive march by the residents. Cl Press 18/3/90

INSIDE today is our new supplement called City Scene, for hot entertainment news and interviews with the stars and sporting celebrities, among them new world champ Welgome Ntsha and controversial dancer Lucky Dialle.

...can be held responsible for what they perceive as "instant justice".

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Lt-Col Charl du Toit, senior SAP liaison officer in Natal, said on Friday Ngcobo was shot by an unnamed police officer when he "tried to escape from custody while being transported in a motor vehicle".

Du Toit said "the detainee" disarmed one of the police officers in the vehicle. "In the ensuing events, the detainee was fatally wounded. He died instantly."

It has been alleged that Ngcobo, who was sitting at the back of the car, gained control of the service pistol of the officer in the passenger seat.

The policeman who was also armed with a shotgun, lifted the barrel of the firearm over his shoulder and fired two shots.

It is understood an internal board of inquiry will be convened to investigate the constable's death.

The shooting occurred about lunch time while Ngcobo and two members of Pietermaritzburg's Murder and Robbery Squad were driving near Georgedale. The two detectives were taking Ngcobo to the scene of Terblanche's death to reconstruct events.

Ngcobo was hit twice — once above the eye and once under the chin.

But the Ngcobo family do not believe the police's version of the death. They claim it was a case of "instant justice".

Bongani Ngcobo, brother of the dead cop, asked, "Do they seriously hope we are going to believe them?"

He said, "They (the police) feared Mandla would reveal the truth about the activities of his Riot Unit when he was brought before a court of law. We knew he had sensitive information that could have serious consequences for the police."

He alleged this week special constables had in the past attempted to kill his brother.

He said his brother, a UDF activist, had recently contemplated resigning from the police force, but feared he would be "eliminated" if he did so.

Ngcobo said their house had been attacked by vigilantes last year. Only windows were broken by gunshots.

He denied knowledge of any links between his brother and the ANC after police investigators claimed Ngcobo had revealed that Terblanche's name was on the ANC hit list.

Happy M as artist pay tribu

A SMILING Nelson Mandela performed at the Human Rainbow yesterday as top South African formed a special song composed by imprisoned ANC leader.

Mandela watched the performance by Winnie, and fellow ANC leader Walter Sisulu.

As the song was performed and sang towards him.

The song, *The People We* composed by several artists and by such well-known artists as da Fassie, PJ Powers, Marci Mohatella Queens, Ray Phuzix" Mabusa, Bakithi Khum.

In a speech to the crowd, movement's demand that the Declaration be met before ANC could sit down to talk.

Six years i who could

By BASIL MTIMKULU

FOR THE love of cheese, Cleobus Ntima of Tembisa served six years in jail. He was convicted at Johannesburg Regional Court on a charge — his sixth — of a chunk of it.

Ntima was found guilty of district court earlier this month. His case was transferred for serious charges to a higher court because of his previous convictions.

On January 4, 1985 Ntima was found guilty of stealing cheese worth R13,92. He was given a 12-month sentence. On March 17, 1985 he was found guilty of stealing a television valued at R9,82.

give us an indication whether or not this specific type of aircraft, which was used on this flight, is one of the new acquisitions of SATS?

†The DEPUTY MINISTER: Mr Speaker, I do not have the information at my disposal. I do not know whether it is a new one or not.

†Mr J H VAN DER MERWE 00000001
00000001 Hansard 20/3/90

†Mr SPEAKER Order! The hon member for Overvaal does not have to agree or disagree with everything that happens in the House!

Botswana: two persons held captive

*13 Mr H J COETZEE asked the Minister of Foreign Affairs †

- (1) Whether two persons whose names have been furnished to the Minister's Department for the purpose of his reply, are being held captive in Botswana at present, if so. Hansard 20/3/90
- (2) whether they are South African citizens, if so, (a)(i) on what grounds and (ii) since what date have they been detained and (b) what are their names,
- (3) whether the Government is taking any steps to have them released and/or tried, if not, why not, if so, what steps? B507E

The DEPUTY MINISTER OF FOREIGN AFFAIRS

- (1) Yes
- (2) Yes
- (a) (i) and (ii)

They were detained on 21 June 1988 on various counts in terms of the National Security Act and the Penal Code of Botswana and were found guilty by the High Court of Law of Botswana on 8 December 1988 of assault with the intention to cause grievous bodily harm and sentenced to 10 years imprisonment and 8 strokes each. The sentence was confirmed by the Court of Appeal of Botswana on 4 July 1989 with the 8 strokes being set aside.

(b) Mr Theodorus Hermansen and Mr Johannes Basson Hansard 20/3/90
(3) No, in the interest of the two persons not at the present time.

Pietermaritzburg: alternative highway by-pass route

*14 Mr M A TARR asked the Minister of Transport Hansard 20/3/90

- (1) Whether steps have been taken to study an alternative highway by-pass route for Pietermaritzburg, if so, (a) who is undertaking the study and (b) when is the report on the study expected, if not,
- (2) whether he or his Department has been approached to undertake such a study, if so, (a) when, (b) by whom and (c) what was the response thereto? B509E

†The MINISTER OF TRANSPORT

- (1) (a) The consulting engineers Brunette Kruger Stoffberg Incorporated, in conjunction with a team of environmental specialists from the University of Natal under leadership of Professor Breen is undertaking the study on an alternative highway by-pass route for Pietermaritzburg, on behalf of the South African Roads Board,
- (b) The report is expected during April 1991
- (2) (a), (b) and (c) Fall away

*15 Mr R J Lorimer—Public Works and Land Affairs [Question standing over]

Atmospheric Pollution Prevention Act: amendments

*16 Mr R F HASWELL asked the Minister of National Health and Population Development

- (1) Whether her Department intends motivating amendments to the Atmospheric Pollution Prevention Act, No 45 of 1965, during the current session, if not, why not, if so, Hansard 20/3/90
- (2) whether she will consider introducing amendments providing for (a) stricter

national and regional regulations and (b) economic schemes, if not, why not? Hansard 20/3/90 B511E

†The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

- (1) No, the Department of National Health and Population Development is still awaiting recommendations from the National Air Pollution Advisory Committee regarding amendments to the Atmospheric Pollution Prevention Act, 1965,
- (2) (a) yes,
- (b) yes

SADF: contact with publication/person

*17 Mr S S VAN DER MERWE asked the Minister of Defence

Whether there has been any contact between him and/or the South African Defence Force and a certain (a) publication and/or (b) person, whose names have been furnished to the Defence Force for the purpose of the Minister's reply, if so, (i)(aa) what was the nature of such contact and (bb) when did it take place and (ii) what are the names of the publication and person concerned? Hansard 20/3/90 B512E

The DEPUTY MINISTER OF DEFENCE

The Minister of Defence has no knowledge of the publication "Adage News" and has had no contact with the said person, Dr A Guenon. There was contact between Dr Guenon and the SA Defence Force regarding the making of a feature film on the security situation in the RSA in which SA Defence Force scenes would have appeared. The contact took place during December 1987 and early in 1988.

One department of health

*18 Mr M J ELLIS asked the Minister of National Health and Population Development

- (1) Whether her Department has taken any steps to consider the administrative, financial and national health implications of one department of health for South Africa, if so, what steps, if not, why not,

(2) whether she will make a statement on the matter? Hansard 20/3/90 B513E

†The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

- (1) No, the Department of National Health and Population Development have fully evaluated the relevant implications under the present constitution. Extensive measures to co-ordinate and eliminate duplication of health services already exist. At present the Department of National Health and Population Development is busy creating measures to ensure the optimal utilisation of resources
- (2) no

*19 Mr M J Ellis—Administration and Privatisation [Withdrawn]

Heidelberg, Transvaal: autopsy

*20 Mr L FLUCHS asked the Minister of Justice (1) Whether, with reference to information furnished to the Minister's Department for the purpose of his reply, an autopsy was held into the death of a certain person on 13 February 1990 near Heidelberg, Transvaal, if so, (a) when, (b) by whom and (c) on whose orders, 252

†The DEPUTY MINISTER OF JUSTICE

- (1), (2) and (3)

The Magistrate of Heidelberg (Tvl) authorised on 21 February 1990 the performance of a post mortem examination on the body of an adult Blackman who as far as could be ascertained was the body of the late Thomas Mavimbela Thikitha. The South African Police is at the moment busy to investigate the matter and since a docket has as yet not been submitted to the Attorney-General or Public Prosecutor concerned I am not in a position to furnish any further information.

252
Hansard 20/3/90

*21. Mr K M Andrew—Planning and Provincial Affairs [Question standing over]

Regent Road, Sea Point: satellite police station

*22 Mr C W EGLIN asked the Minister of Law and Order. Hansard 20/3/90

(1) Whether the South African Police is considering closing down the satellite police station in Regent Road, Sea Point, if so, why, 251

(2) whether he will give an assurance that the station will not be closed down until adequate and effective alternative crime prevention and policing facilities exist in that part of Sea Point B518E

†THE MINISTER OF LAW AND ORDER

(1) and (2)

This matter is at present receiving attention. As soon as a final decision has been taken I will inform the hon member accordingly.

*23 Mr E W Trent—Defence [Withdrawn]

Strand, factory: retrenchments

*24 Mr R R HULLEY asked the Minister of Defence

Whether any workers have been retrenched at a certain factory in the Strand, the name of which has been furnished to the South African Defence Force for the purpose of the Minister's reply, if so, (a) how many, (b) on whose orders, (c) for what reasons and (d)(i) when and (ii) by whom were these workers advised that they were to be retrenched? Hansard 20/3/90 B520E

†THE DEPUTY MINISTER OF DEFENCE

Yes

(a) 252.

(b) The Board of Directors of the company

(c) The decision was taken as a result of cuts on the workload of the company which followed cuts in the 1990/91 SA Defence Force budget

(d) (i) On 27 and 28 February 1990

(ii) The Management of the company

*25 Mr P G SOAL—Planning and Provincial Affairs [Question standing over]

Orange Farm settlement camp: schools

*26 Mr P G SOAL asked the Minister of Education Hansard 20/3/90

(a) How many schools are there at the Orange Farm settlement camp, (b) what is the name of each such school and (c) how many pupils can they accommodate? B522E

†THE MINISTER OF EDUCATION

(a) 5

(b)

Names of schools

(c) Number of pupils that can be accommodated

Orange Farm Public 920

Primary School

Qoquiswe Primary (Private) Particulars not available

School Mpanza Primary (Private) Particulars not available

School Tsakane Sizwe Pri- (Private) Particulars not available

mary School Black Forest Sec- (Private) Particulars not available

ondary School available

Inward industrialisation

*27 Mr H H SCHWARZ asked the Minister of Trade and Industry and Tourism

Whether any steps are contemplated to implement, encourage and further the policy of inward industrialisation, if not, why not, if so, what steps? Hansard 20/3/90 B523E

†THE MINISTER OF TRADE AND INDUSTRY AND TOURISM

Inward industrialisation is not so much a strategy as a process; the government is not in a position to "implement" it by fiat, but should rather be seen as removing obstacles to what is actually a perfectly "natural" process in any industrialising country

The essence of inward industrialisation, in the South African case, is a growing mass demand for basic goods and services with high labour-intensity but a low import coefficient in particular, housing. Inward industrialisation is the flipside of urbanisation, and, to the extent that government is promoting or encouraging

urbanisation, it is advancing inward industrialisation Hansard 20/3/90

Indeed, the provision of physical and social infrastructure on the periphery of the metropolitan areas is itself part of the initiating impulse of inward industrialisation. This opens up the whole vista of government's housing and education policies, or, at a wider remove, of its social spending as a whole

Inward industrialisation naturally rests also on a broad base of small-scale economic activity in both the formal ("small business") and informal sectors. The former is being promoted through various bodies, notably the Small Business Development Corporation, an institution that has been and is receiving substantial financial support from government (including R60 million in the Budget of 14 March 1990). The informal sector is growing appreciably, and is being promoted by means of deregulation and training programmes

A macro element in inward industrialisation is the raising of labour-intensity in production. As was stated in the Budget speech, government is seeking to bring about a situation where the relative prices of labour and capital better reflect their relative scarcity. The pursuit of positive real interest rates (accepted as a guiding principle by government) will contribute to this

Inward industrialisation can also be said to rest on a redistribution of income towards those with a high propensity to consume. The latest Budget involves just such a shift

The government's dramatic R3 billion upliftment and development fund is bound to accelerate the whole process of inward industrialisation

Prison labourers: tariff paid by employers

*28 Mr D J DALLING asked the Minister of Justice

With reference to his reply to Question No 17 on 20 February 1990, what is the current daily tariff paid to the Government by private employers of prison labourers? Hansard 20/3/90 B525E

†THE MINISTER OF JUSTICE

(Reply laid upon the Table with leave of House)

TARIFF SCALE A (URBAN AREAS, DEVELOPING TOWNS AND INDUSTRIAL COMPLEXES) Hansard 20/3/90

Weekdays Prisons Ser-vice guard : Salary of special guard per day plus R1,40 per prisoner per day to a maximum of five (5) prisoners per guard

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†The DEPUTY MINISTER Mr Speaker, there are no rules of this Parliament which compel me, when the CP put a silly CP question, to give them a silly answer [Interjections] I have just explained clearly the policy of the SA Defence Force in respect of the handling of housing for all its personnel *Hansard 20/3/90*

†Mr S C JACOBS Mr Speaker, arising out of the hon the Deputy Minister's reply, can he tell the House whether it is the policy that members of the ANC or members of the SA Communist Party may live in residential units of the SA Defence Force?

†The DEPUTY MINISTER Mr Speaker, I suggest that this question bears no relation whatsoever to the question under discussion and that the hon member place that question on the Question Paper

†Mr J H VAN DER MERWE Mr Speaker, further arising out of the reply of the hon the Deputy Minister, does he now already know that there exists such a thing as the CCB?

*4 Mr M A Tarr—Justice [Withdrawn]

The State v W H Rabe

*5 Mr L FUCHS asked the Minister of Justice Whether, with reference to the case of *The State v W H Rabe*, he will furnish particulars of the prosecutor involved, if not, why not, if so, (a) what is the name of the prosecutor and (b) what are his qualifications?

Hansard 20/3/90

B438E

The DEPUTY MINISTER OF JUSTICE :

Yes

(a) E G H JONKER

asa

(b) He obtained the degrees B Jurs (1983) LLB (1985). He was admitted as an advocate of the Supreme Court of South Africa on 8 November 1988

International agreement/convention/instrument:

SA signatory

*6 Mr R M BURROWS asked the Minister of Foreign Affairs *Hansard 20/3/90*

(1) Whether South Africa is a signatory to any international agreement, convention or instrument initiated under the auspices of the United Nations (UN) or the United Nations Educational, Scientific and Cul-

tural Organization (UNESCO); if so, to which agreements, conventions or instruments,

(2) whether there are any such international agreements, conventions or instruments initiated under the auspices of the UN or UNESCO which South Africa has not signed, if so, (a) which agreements, conventions or instruments and (b) for what reasons in each case,

(3) whether he will make a statement on the matter? *Hansard 20/3/90* B447E

The MINISTER OF FOREIGN AFFAIRS

(Reply laid upon the Table with leave of House)

(1) It is assumed that the Honourable Member uses the expression "signatory" in the wide sense of the word to include adherence to a multilateral treaty by one of the internationally accepted means: signature, ratification, acceptance or accession South Africa has adhered to a number of international undertakings, agreements, conventions, protocols and amendments to conventions (hereafter for the sake of convenience called "treaties") initiated under the banner of the United Nations

On 31 December 1988, there were in all 277 multilateral treaties (including optional protocols and amendments) deposited with the Secretary General of the United Nations Of these South Africa had signed, ratified, accepted or acceded to the following

- (i) Charter of the United Nations 1 of 8
- (ii) Pacific Settlement of Disputes Nil of 1
- (iii) Privileges and Immunities, Diplomatic and Consular Relations etc 2 of 13
- (iv) Human Rights Nil of 10
- (v) Refugees and Stateless Persons Nil of 5
- (vi) Narcotic Drugs and Psychotropic Substances 13 of 22
- (vii) Traffic in Persons 12 of 12
- (viii) Obscene Publications 6 of 6

(ix) Health 2 of 9

(x) International Trade and Development 1 of 19

(xi) Transport and Communications

(a) Customs Matters 1 of 17

(b) Road Traffic 3 of 35

(c) Transport by Rail Nil of 3

(d) Water Transport Nil of 3

(e) Multimodal Transport Nil of 1

(xii) Navigation Nil of 7

(xiii) Economic Statistics 4 of 4

(xiv) Educational and Cultural Matters Nil of 8

(xv) Declaration of Death of Missing Persons Nil of 3

(xvi) Status of Women Nil of 3

(xvii) Freedom of Information Nil of 1

(xviii) Miscellaneous Penal Matters 3 of 5

(xix) Commodities 12 of 47

(xx) Maintenance Obligations Nil of 1

(xxi) Law of the Sea 5 of 6

(xxii) Commercial Arbitration. 1 of 2

(xxiii) Law of Treaties: Nil of 3

(xxiv) Outer Space Nil of 2

(xxv) Telecommunications Nil of 4

(xxvi) Disarmament: Nil of 2

(xxvii) Environment 2 of 6

(xxviii) Fiscal Matters: Nil of 2

A list of all the United Nations Treaties indicating those treaties which have been adhered to by South Africa is available at the Department of Foreign Affairs

(2) (a) and (b)

In view of the number of treaties involved, it is not feasible to furnish a reason why South Africa has not adhered to any particular treaty. In general national interest is the benchmark for adherence to any particular treaty. In certain cases Government policy, domestic legislation or regulations may have conflicted with certain provisions of the treaties. In other instances a number of treaties have

been purely regional in nature, thus not involving South Africa for geographical reasons. In still other instances South Africa has adhered to the main treaty but not to certain of the numerous optional protocols or amendments to the main treaty—for example, in the cases of the Vienna Conventions on Diplomatic and Consular Relations, the Constitution of the World Health Organization and the General Agreement on Tariffs and Trade (GATT)

The South African Permanent Missions to the United Nations are kept fully informed by the United Nations of international treaties deposited with the Secretary General. All relevant information is sent to the South African Government Departments concerned to consider whether it is in the Republic's interest to adhere to any particular treaty.

To determine to what degree the Government can meet the stipulations of treaties in the field of human rights and the environment is a continuing process

(3) No, not at the present time

Education Laws Amendment Act

*7 Mr A GERBER asked the Minister of Education + *Hansard 20/3/90*

(1) Whether all the provisions of the Education Laws Amendment Act (Education and Training), Act No 31 of 1988, have been put into operation by proclamation in the *Gazette*, if not, (a) which provisions have been put into operation and (b) (i) which provisions have not been put into operation, and (ii) why not, in each case, (2) whether any persons and/or bodies have made representations to the Government to the effect that the provisions concerned should not be put into operation, if so, what persons or bodies, (3) whether he has made any recommendations to the State President about the commencement of these provisions, if not, why not; if so, with what result?

B452E

The MINISTER OF EDUCATION.

(1) No

252

WYE WETS TO TO TO SHOOT - Nofemela

ALLEGED former SAP assassin Butana Almond Nofemela told the Harms Commission yesterday that policemen in a shooting incident in Chesterville, Natal, had all come from Vlakplaas, where he had been based.

He was being cross-examined by Mr Bob Nugent, SC, for the Independent Board into Informal Repression.

Nofemela said a Major de Kock had told the policemen involved they should shoot people at Chesterville.

Nugent said five men died from multiple bullet wounds in an incident that was the subject of a current inquest.

Nofemela said he had been

with the police when they were on their way, but stopped at a bridge and they went further.

Mr Justice Louis Harms - who is chairing the commission - said he would intervene if Nugent's cross-examination prejudiced the inquest.

Nofemela said yesterday he had found a scar on his former colleague Mr Geoff Bosigo's left ankle which Nofemela alleged Bosigo had sustained during a cross-border raid into Swaziland.

Counsel for individual policemen, Mr Sam Maritz, SC, said the mark resembled a small pock mark and he submitted evidence from medical experts who had examined Bosigo and had found no evidence "that Bosigo had ever been wounded in either

foot or ankle".
Nofemela said: "I dispute that".

Nofemela earlier told the commission the squad from Vlakplaas had been stealing and burning activists' vehicles in a bid to intimidate them.

One of these vehicles had been a red and white minibus he stole in Johannesburg.

Maritz questioned this, and suggested Captain Dirk Coetzee had merely headed a gang of car thieves.

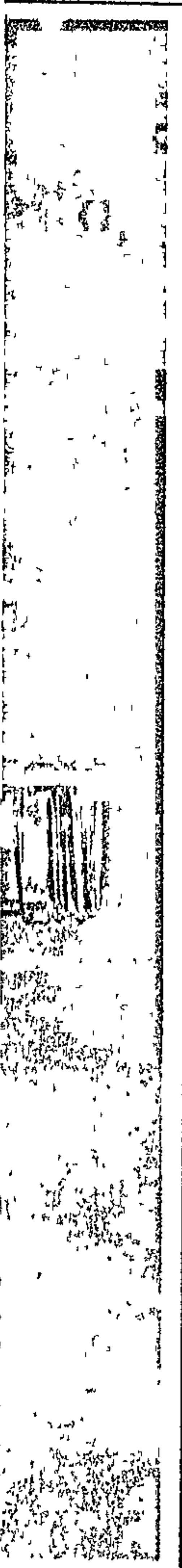
But Nugent yesterday submitted evidence from a Mr Fred Sauts of the National Automobile and Allied Workers' Union that his red and white minibus had been stolen in Johannesburg.
Sauts said he had been stopped

at a police roadblock where his car was searched for three hours. It was later stolen in Johannesburg.

Nugent also handed in a statement from Sauts' insurance broker who said he had refused to pay out the claim after he received an anonymous phone call implying the theft had been contrived.

Yesterday counsel for the Mxenge family, Mr T L Skweyiya, SC, questioned Nofemela and said he was satisfied Nofemela had correctly described the location of murdered human rights lawyer Mr Griffiths Mxenge's house.
Police counsel earlier questioned Nofemela's claims that he had been involved in the murder of Mxenge. - Sapa.

BUTANA ALMOND NOFEMELA



Mum sues SAP for R100 000

THE mother of a Pretoria schoolboy who died two years after being paralysed by a police bullet, is claiming R100 000 damages from the Minister of Law and Order, Mr Adriaan Vlok.

Miss Joyce Mafuya, of 29 Komane Street, Atteridgeville, submitted in an affidavit before Mr Justice Preiss in the Pretoria Supreme Court yesterday that her son, Godfrey, was unlawfully, intentionally and with bad faith, shot by a member of the South African Police on December, 1985.

At the time of the shooting, Godfrey was a 15-year-old Standard 5 pupil at the Walton Jameson Primary School. He was shot by a policeman in Ratshoeunyane Street - a few metres away from his home.

Paralysed

As a result, Godfrey became paralysed from the waist downwards.

Dr Marquard de Villier, a physician who examined Godfrey before he died in 1987, submitted that he sustained seven penetrations by gunshot pellets in the body. The pellets were lodged in the brain and in the upper end of the thoracic spine.

Mafuya broke down in the witness stand while giving evidence. The judge adjourned the proceeding and requested lawyers representing the two parties to agree on what Mafuya was going to tell the court.

"I do not want to see her go through that ordeal again," said the judge.

Both lawyers later submitted a joint state-

By MONK NKOMO

ment in which Mafuya said her son suffered from severe depression after the shooting.

Sowetan reporter, Monk Nkomo, testifying for the plaintiff, yesterday

told the court that he was sitting in a house on December 7, 1985, when he saw police block a funeral procession from the cemetery at Ramushu and Komane streets.

Later he heard that a young boy had been shot at Ratsoanyane Street

Nkomo said he found Godfrey lying face down on a grass path. He enquired from a Captain McLoughlin why the boy had been shot.

The policeman told him he was hampering their investigation and ordered that he be escorted away from the scene.

(Proceeding)

is the seat of the KwaZulu Legislative Assembly.

Chief Buthelezi told the Assembly yesterday that he had strong reservations about the venue. — Sapa

CHIEF BUTHELEZI 20/3/90 (252)
Strike: Magistrates detained

JOHANNESBURG. — Two magistrates and a prosecutor have been detained as a strike over salary increases and political freedom escalated at the Garankuwa's Odi Magistrate's Court, Bophuthatswana.

Chief magistrate Mr A C Greyling said by telephone yesterday that the strike by legal staff and cleaners had entered its seventh day.

However, a few employees trickled back to work yesterday, he said.

465 29/3/90 (10) 252

Row brewing over warrant of arrest for Winnie

By Craig Kotze

A legal battle is looming over a warrant issued for the arrest of Mrs Winnie Mandela, wife of ANC leader Mr Nelson Mandela, for allegedly failing to pay unemployment insurance fees for her workers.

The Mandela family denies that a summons to appear in court was received by Mrs Mandela.

But Johannesburg's chief magistrate, Mr O A de Meyer, said today that a warrant for Mrs Mandela's arrest would never have been issued unless a summons had been duly served in terms of the law. He said it was served at a business owned by Mrs Mandela.

Mr de Meyer said there was still time for Mrs Mandela to approach the court prosecutor to have the warrant rescinded.

FISH AND CHIPS

The warrant was issued on Friday after Mrs Mandela failed to appear in court.

According to documents before the court, Mrs Mandela has failed to pay Unemployment Insurance Fund contributions for employees at a business owned by her, Richmond Fish and Chips.

A spokesman for the Mandela family, Mr Dali Mpofu, said no warrant, summons or any other form of legal notice whatsoever informing her of any court appearance was received.

"Clearly there is more to this than meets the eye. Lawyers have been instructed to attend to this matter and rectify the situation," said Mr Mpofu.

Witwatersrand police spokesman Colonel Frans Malherbe said police would become involved in the matter only if the court authorities sought help.

Youth tried to throw petrol bomb - cop

252

Sowetan 21/3/90

MOMENTS before he was shot and paralysed from the waist down, a 15-year-old youth screamed and begged for mercy while being assaulted by a policeman inside a house in Atteridgeville, the Pretoria Supreme Court was told yesterday.

By MONK NKOMO

Mrs Margaret Pule said she and two friends had just returned from a funeral on December 7, 1985, when three white policemen burst into Mr Jonas Poto's house.

Two policemen armed

with rifles entered through the front door and the other through the kitchen.

One searched the bedrooms and inside a wardrobe. The policemen said they were looking for someone who had run into the house.

"I then heard blows and someone screaming and begging for mercy in the bedroom. The person was taken out of the room by a policeman. His face and clothes were full of blood," said Pule.

She was told later the person was Godfrey

Mafuya and that he had been shot and paralysed by a bullet.

Mafuya was confined to a wheelchair from that day until his death in December 1987.

His mother, Miss Joyce Mafuya, is claiming R100 000 in damages from Minister of Law and Order Mr Adriaan Vlok.

Sergeant Eugene Halliday, who admitted having shot at Godfrey on December 1985, yesterday told the court that he had fired with a rifle when Godfrey "sprang into the air" and tried to hurl a petrol bomb at him and two constables inside a police van.

People then stoned the van and Halliday said he pressed his rifle through the window's mesh wire and opened fire.

"He fell to the ground and was carried away by people who disappeared into nearby houses," the policeman said.

(proceeding).

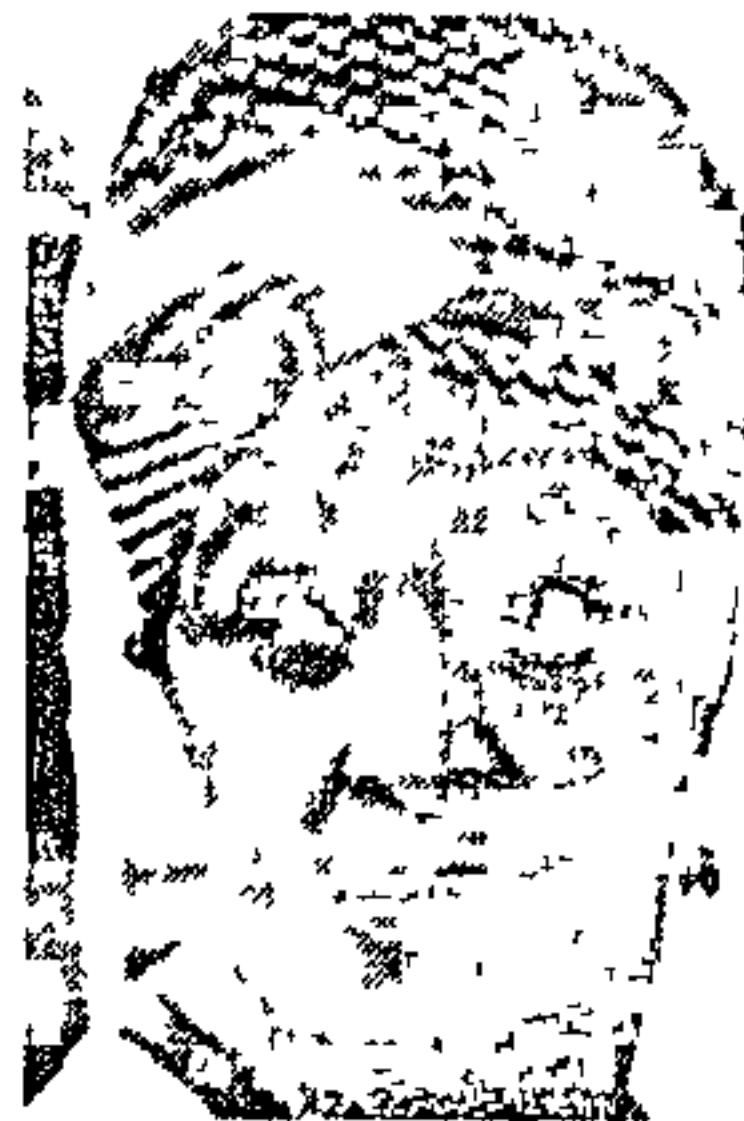
No warrant, says Mandela family

THE Mandela family reacted late on Monday night to earlier reports that a warrant had been issued for the arrest of Mrs Winnie Mandela.

She allegedly failed to appear in court on Monday on charges of failure to pay and render statements in connection with Unemployment Insurance Fund contributions on behalf of employees at her fish and chips business. Sowetan 21/3/90

A spokesman for the family, Mr Dali Mpofo, said no warrant, summons or any other form of legal notice was received by Mrs Mandela informing her of any court appearance.

"Clearly there is more to this than meets the eye. Lawyers have been instructed to attend to this matter and rectify the situation," Mpofo said. - Sapa.



WINNIE MANDELA

CONTROL

DES MARCH 24, 1990
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ATTENTION ALL

Attorneys *Sowetan* prepare for *21/3/80* a new SA

THE Association of Law Societies has resolved to contact all parties who will participate in a negotiated settlement. ~~(S)~~

The move, ALS said, was suggested "so as to equip the attorneys' profession to contribute to the maintenance and structuring of the legal system". *252*

Resolution

A communique from the ALS said that the resolution was taken during a debate held after the association's annual general meeting in Cape Town last week.

"The debate was organised to discuss the profession's role within the legal structure of the new South Africa," the communique said.

Cops suspect, judge is told

252

THE mysterious disappearance of photographs taken by police revealing blood stains on the walls in a room in which a young schoolboy was assaulted before being shot and paralysed by a policeman in 1985 cast suspicion on police investigations into the matter, the Pretoria Supreme Court heard yesterday.

Mr Bill Scales, submitted during argument that Godfrey Mafuya, of Atteridgeville, had suffered tremendous strain, pain and suffering after being "unlawfully and in bad faith" shot by the policeman on December 7, 1985.

Godfrey was 15 years

Damages claim case on shot boy told of missing police photos

By MONK NKOMO

old and a Standard Five pupil at the time. He died in 1987.

His mother, Miss Joyce Mafuya, is claiming R100 000 for damages from the Minister of Law and Order, Mr Adriaan Vlok.

Scales, who represents Mafuya, said that evidence by police witnesses was unsatisfactory and should be disregarded.

He said the absence of a statement made by an

eye-witness, Mr Jonas Poto, on December 7, 1985 and the disappearance of police photographs revealing blood stains on the walls of the room in which Godfrey was assaulted by a policeman, "leaves much to be desired".

Godfrey was allegedly assaulted in Poto's house in Sehloho Street.

Scales also said that Godfrey, who according to the police, was shot while trying to throw a petrol bomb at them, was never charged for this serious crime.

"The whole thing is unsatisfactory and the conduct of investigating officers in this matter is suspicious", Scales told Mr Justice Preiss.

He asked the court to accept evidence of Poto, Mrs Margaret Pule and Mr John Mafuya, who testified that Godfrey was assaulted inside Poto's house, dragged outside and ordered to run away by a white policeman who then shot him in the back.

Captain George Kellerman yesterday testified that he found Godfrey lying on his back on a vacant plot in Ratshoeunyane Street that afternoon. "His clothes were torn and his face and shirt were bloodied", Kellerman said.

On investigation, Poto told him that Godfrey was assaulted in his house.

Mr Johan Viljoen, who represents Vlok, asked the court to dismiss the application and submitted that Mafuya's witnesses contradicted themselves. He said policemen had to protect themselves to quell arrest in the townships.

Police had to face groups of people attacking them with stones and petrol bombs.

Judgment will be given today.

Asvat's killer granted leave to appeal

252

THULANI Shelela
Johannes Nicholas
Dlamini, of unknown
address, has been
granted leave by the Ap-
peal Court in Bloem-
fontein to appeal against
his convictions for the
murder and robbery of
Dr Abu Baker Asvat, at
Rockville, Soweto, on
January 27, 1989.

Dlamini has also
been granted leave to
appeal against the find-

ing that there was no ex-
tenuation for Asvat's
murder.

The court, however,
refused him leave to ap-
peal against his convic-
tion for the robbery of
Mr Ephram Mdlalose,
at Ekubuzeni in the
Nongoma district on
June 28, 1988.

Dlamini and Zakhele

Nhlelakisana Cyril
Mbatha, of Soweto,
were convicted by Mr
Acting Justice R A
Solomon in the
Witwatersrand Local
Supreme Court on No-
vember 2, 1989. Mbatha
was also guilty of un-
lawful possession of a
firearm and ammunition.

They were both

sentenced to death for
Asvat's murder and ef-
fectively imprisoned for
12 years on the other
charges.

Last month the Ap-
peal Court in Bloem-
fontein refused
Mbatha's application for
leave to appeal against
the finding that there
was no extenuation for
his part in the murder.
Sapa

March 22 1990

COMPANIES

Industrial Commercial Holdings to be re-listed

Blom 22/3/90

252

INDUSTRIAL Commercial Holdings (ICH) is to be re-listed this morning as a simplified counter, with its major asset a 6.25% stake in the after-tax profits of the giant developing Veneta diamond mine.

According to leading diamond analysts, the restructured ICH represents the most direct stake the public can acquire in a diamond mine. ICH was suspended on February 28 at a price of 8 000c, reflecting a market capitalisation of about R110m.

Analyst's figures suggest that the after-tax profits of Veneta in 1990 money terms will be R6bn over its estimated 20-year life, giving ICH a notional R375m in return for its stake.

ICH is to sell its non-mining interests for a consideration of R51,9m cash

BARRY SERGEANT

ICH says the restructuring is a R140m package involving two other JSE-counters, Issues & Investments, ICH's parent (which will be delisted), and ICH's 93% subsidiary Sinclair Holdings, which is to become a cash shell.

The result of the streamlining will be a much-simplified ICH with its Veneta stake as its major asset. It will also hold certain essentially dormant mineral rights.

Urqhart & Co, a private investment company, will acquire 76.3% of Issues & Investments from its controlling shareholder for R300 a share. In terms of the scheme of arrangement it will acquire all other shares in Issues & Investments at the same price. The non-mining interests of ICH,

worth an estimated R51,9m, will be sold in bulk to Issues & Investments, which will become a wholly-owned subsidiary of Urquhart & Co, for cash. The assets, ranging from motor dealerships to property and a share portfolio, will be disposed of as going concerns by Issues & Investments.

ICH minorities have the option of either receiving the value of their proportionate slice of the non-mining assets via a special dividend, or can elect to retain their stake in the assets for the time being by foregoing dividends in favour of newly created unlisted Issues & Investments preference shares.

These pref shares will be redeemed as and when cash accrues from the sale of ICH's non-mining assets. The preference shares will be fully redeemed

within 24 months

Minorities in Issues & Investments can elect to receive 36 sub-divided ICH ordinary shares instead of cash in respect of a portion of the purchase consideration and can also elect to receive Issues & Investments preference shares in respect of a portion of the purchase consideration.

The current controlling shareholder of Issues & Investments has elected to follow its rights to receive ICH ordinary shares in respect of at least 22.7% of its Issues & Investments shareholding. The current controlling shareholders of Issues & Investments will thus retain control over ICH although its exact stake is dependant on how many of the Issues & Investments minority shareholders decide to take shares instead of cash.

Nofemela 'not concerned about the legality of acts'

2/23/90

SUSAN RUSSELL

FORMER security policeman Butana Almond Nofemela told the Harms Commission yesterday he was not concerned about the legalities of acts he committed as a member of a police hit squad because he believed that what he was told to do by his superior officers was right. During re-examination, his counsel Denis Kuny SC asked him whether the task of the police hit squad of which he claims to have been a member was simply to assassinate people.

He said the squad was also involved in the burning and theft of cars owned by people identified as ANC activists or who had connections with the organisation, as well as the kidnapping of ANC members. Most kidnappings were cross-border missions, he said.

The former security policeman reached the rank of sergeant before he was convicted and sentenced to death for the murder of a Brits farmer for which he was due to hang on October 20 last year. He received a last-minute stay of execution when he made an affidavit in which he claimed to have been a member of a police hit squad which assassinated civil rights attorney Griffiths Mxenge in Durban in November 1981.

'No ordinary policeman'

Questioned by Kuny, Nofemela said he was not concerned about the legality of his actions because "I believed that what my superiors instructed me was right because (they) knew more than me".

"As a security policeman based at Vlakplaas I knew I was not going to work like an ordinary policeman. It would be very different."

Asked by Kuny how it was different, Nofemela said an example was the way traffic offences and accidents involving policemen like himself were dealt with as opposed to those involving ordinary policemen.

Once, he explained, he was once involved in a car accident in Soweto where he struck a municipal truck in the back. When the matter came to court, Capt Jan Coetzee told him not to worry about it. He was eventually found not guilty and discharged, although he had caused the accident, he said.

Last week Nofemela publicly admitted for the first time that he had in fact killed the Brits farmer.

He said he had lied about the incident during that trial because his commanding officer, Maj Eugene de Kock, had told him not to disclose anything about his activities at Vlakplaas as a member of a hit squad.

Nofemela said De Kock also told him to deny everything and he would be assisted. "I lied on those grounds," he said.

Nofemela said he had lied in an affidavit made while still a policeman in connection with an assault on a detainee because "I was told to agree with what had been written".

Inquest

In many instances, he said, they were told not to tell the truth.

He also told the commission yesterday that he had been with a group of policemen the night they shot and killed five men in Chesterville, Durban, during June 1986.

The incident, which is currently the subject of an inquest in Durban, was raised by advocate Bob Nugent who represents the Independent Board of Inquiry into Informal Repression at the commission.

Nugent put it to Nofemela that according to an affidavit made by a Maj Pretorius, who investigated the incident, the policemen responsible were all stationed at security headquarters in Pretoria. Nofemela identified the policemen named by Pretorius as all coming from Vlakplaas.

He said he had accompanied the group on their mission as far as a bridge in Durban where he waited for them until their return.

The commission continues today with the cross-examination of CCB member Abram "Slang" van Zyl.

Yengeni terror trial postponed

Sto 22/3/80
Cape Town Correspondent

CAPE TOWN — The Supreme Court trial of the remaining six Yengeni terrorism accused has been postponed until next month after an application by the State prosecutors

Mr Justice S Selikowitz postponed the hearing to April 9, but said he was willing to reconvene the court at any time to hear a bail application on behalf of Mr Tony Yengeni, Ms Jenny Schreiner, Mrs Lumka Yengeni, Mr Michael Lumbambo, Mr Mbutu Nduku and Mr Wellington Nkwandla.

Mr Dawid de Villiers, QC, for the defence, told the court the Attorney General had been requested to withdraw his certificate refusing bail to the ac-

252
cused. A reply was expected yesterday. Mr H Klem, for the State, asked for the adjournment to allow the prosecution time to consider and prepare evidence still to be led in the case

Witnesses had to be subpoenaed

Formal admissions by Ms Schreiner, relating to her hiring of a flat in Wynberg, the whereabouts of two trunks and their contents, a printout from a computer floppy disk, her ownership of a car and documents in her handwriting, were handed in to the court

Mr Klem said the end of a trial within a trial on alleged confessions had shortened the trial by "about 1½ years" Ms Schreiner's admissions had further shortened the trial.

Shot boy's mother is awarded R34 000

A PRETORIA Supreme Court judge yesterday described two senior police officers as unreliable witnesses before awarding R34 000 damages to a mother whose son was paralysed by a police bullet in Atteridgeville in 1985.

Mr Justice Preiss made the remarks when he delivered judgment in a lawsuit brought by Miss Joyce Mafuya against the Minister of Law and Order, Mr. Adriaan Vlok.

Mafuya initially claimed R100 000 damages following the

**SOWETAN
Reporter**

shooting of her son, Godfrey, on December 7, 1985. Godfrey, a Standard Five pupil at the time, had since been confined to a wheelchair until his death in 1987.

The judge awarded Mafuya R30 000 in damages for pain and suffering and R4 247,86 special damages for funeral expenses and costs towards the erection of a tombstone.

He said evidence by doctors revealed that Godfrey had suffered

tremendous pain and depression as he was also confined to a lying position for two years and also suffered from bed sores.

"He was reduced to a motionless wreck and incomplete despair", Preiss said.

Sowetan 23/3/90
Judge

Referring to witnesses, the judge described the evidence of Captain George Kellerman as unreliable and that of Sergeant Eugene Halliday - who shot at Godfrey - as untruthful. Halliday could not even explain discrepancies between statements he made at the inquest and Supreme Court hearings.

The judge said he was concerned about the disappearance of photographs taken by the police revealing bloodstains on the walls and wardrobe inside Mr Jonas Poto's house where Godfrey was assaulted by a policeman, then ordered to run away before being shot in the back.

"The taking of these pictures is not a concocted story. There must have been something that happened inside that room that necessitated the taking of these pictures," the judge said.

content

the six months to end-December
10c as forecast.

Lloyd's capacity rises to £11bn

LINDA ENSOR

LLOYD'S has the capacity to accept insurance business totalling £11,07bn this year. *BJD 23/3/90*

Chairman Murray Lawrence welcomed the increase in capacity at a time when growth figures for the industry seem to indicate an opportunity for a considerable increase in Lloyd's business over the next five years.

Last year, 4 975 members increased their underwriting commitment by an average of £160 000 each.

BJD 23/3/90 Aida chairman has 83% stake

CHARLOTTE MATHEWS

A REPORT in Business Day yesterday on Aida Holdings rights offer incorrectly stated chairman Aida Geffen presently held 60% of the group's shares. In fact she holds just over 83% and will hold just over 60% after the rights offer, so will remain majority shareholder. Business Day apologises for the error.



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CAPITAL PUNISHMENT

Death in the balance

■ F W's moratorium defers the crucial decision on judicial executions

For Shucks Sefanyetso and the Pretoria Central Prison Death Row prisoners he works to save, the euphoria surrounding President F W de Klerk's moratorium on executions has faded "They want to know what next," says Sefanyetso, execution monitor for Lawyers for Human Rights. "I have to tell them I don't know. Government must decide"

Which way will SA move? By doing away with the death sentence, SA would join the likes of Australia, France and The Netherlands, all of which abolished it in the past decade. If it keeps administering death, SA will remain right up there with Iran, Iraq, China and Nigeria, capital punishment's prime practitioners.

In the Harare Declaration, the ANC demanded the release of all political prisoners. If the State again sends ANC members to the gallows, negotiations will fall apart.

The issue is crucial. If talks are to begin, executions must continue to be halted. And if one price of political reconciliation is the end of capital punishment, it's worth it — even apart from other arguments against the death penalty.

"We can't afford the death penalty if it'll be a stumbling block," says Heather Regensass, branch director of the National Institute for Crime Prevention and Rehabilitation of Offenders.

There appeared to be a moratorium last year because no executions took place from mid-July until September, when De Klerk gave his inaugural address and commuted seven death sentences. But he proved he was no abolitionist when, just over a week later, he signed his first warrants and two men were put to death on September 29.

One was Mangena Jeffrey Boesman, an ANC member convicted of necklacing a female schoolteacher, a suspected police informant, in the eastern Cape in 1985. While he went to the gallows, his two co-accused each had their sentences commuted to 25 years in prison.

Boesman's case highlights two of the stickiest points raised by capital punishment: the execution of "political prisoners" and the seemingly arbitrary nature of the penalty.

Just who can be considered a political prisoner is "up for debate," says Dennis Davis, a UCT law professor and national director of the Society for the Abolition of the Death Penalty. He points out that, in the US, killing a police officer is viewed as especially heinous and often prosecuted more harshly than other murders. But in SA, killing a cop is not always viewed as a crime, at least in some political circles.

Regensass says about 25% of Death Row inmates are political prisoners, based on the assumption that they considered themselves

members of a legitimate army "following instructions." Some supporters of that line of thinking believe ANC guerrillas should be accorded prisoner-of-war status.

The State has been reluctant to put the "political" tag on any prisoner. Until De Klerk's glasnost campaign, the Prison Service regarded inmates as either criminal or security. Only recently has the term "political" become more common in government usage.

Re-assessment of the "common purpose" doctrine could free some, including the lone woman on Death Row, Evalina de Bruin. She and her husband are among the Uppington 14, sentenced for being present at the 1985 murder of a municipal policeman.

Abolitionists acknowledge that absolving sickly grandmothers who did no more than throw stones is a lot easier than drumming up support for prisoners who set bombs that

robbery and housebreaking or attempted housebreaking with intent to commit an offence. Murder, however, is the crime in about 90% of executions.

De Klerk said leave to appeal should be automatic, the death sentence should be optional and limited to extreme cases and the judiciary should be given discretion when imposing sentences. But in the six weeks after his speech, 12 more condemned men joined the 302 already on Death Row.

"There is a great deal of confusion over what De Klerk recommended," Davis says. "The speech was very vague."

Parliament is expected to implement F W's reform proposals as an interim measure until a full commission of inquiry into capital punishment (the first since 1947) can do its work. Meanwhile, the moratorium could be lifted — but that puts MPs in the awkward position of putting the hangman back in business at a time when negotiations remain tentative. The moratorium, therefore, may remain indefinitely.

Reagan Jacobus, chairman of the Johannesburg branch of the abolition society, believes that parliament won't get around to new legislation before next year. That gives abolitionists hope that they can use the time to compile statistics that prove "society can do without the death penalty."

SA is responsible for 90% of all executions in Western nations. In 1988 alone, it executed 117 prisoners. It took the US a decade to kill that number.

SA has always had the death penalty and employed it with vigour. Torture and mutilation of prisoners before killing them was not unknown, though it was common practice in most of the world at one time. Public hangings were abolished in the Cape in 1869, but the gallows remain the State's method of execution, despite the move in the US to more clinical methods, such as lethal injection.

Now all executions are carried out at Pretoria Central, where seven can hang at once. "Life is taken cheaply," Jacobus says. "It's part of government day-to-day thinking."

Between 1911 (when statistics were first kept) and 1988, there were 4 278 executions, nearly half taking place in the last 20 years. The record was 1987, with 164, nearly one every other day. The number fell to 53 last year. The last man to go to the gallows was Solomon Ngobeni, on November 14, for murder during an armed robbery.

Why the downtrend? Violent crime has not waned. In 1988, there were 10 631 murders, up more than 7% from 1986.

Facing the hangman

Year	Sentenced to death	Executed	Committed
1980	157	130	27
1981	141	95	36
1982	167	100	28
1983	182	90	40
1984	168	115	35
1985	189	137	35
1986	207	121	22
1987	248	164	20
1988	213	117	49
1989	170	53	63

Source: Dept of Justice

killed civilians. At the negotiating table, government will undoubtedly speak up for whites terrified of Nelson Mandela's call for a continuation of the armed struggle. No doubt the ANC will counter that members in exile should be able to return without fear of being prosecuted for acts of violence.

Even the ANC, strongly in favour of abolition for its cadres, is divided on the issue for the "common criminal."

For instance: is Barend Strydom, self-proclaimed Wit Wolf who gunned down eight blacks in 1988, a political prisoner? Some rightwing supporters say, most certainly. After all, he was only doing his part for the folk's struggle, says his wife.

Until De Klerk's February 2 address, death was compulsory for convicted murderers over the age of 18, unless extenuating circumstances — such as belief in witchcraft — could be proved. Political involvement could not mitigate a sentence. The death penalty is discretionary for rape, kidnapping, child-stealing, terrorism, robbery, attempted

Abolitionists chalk up the decline in executions to external pressure, including intervention by Pope John Paul in the well-publicised Sharpeville Six case, as well as internally from human rights organisations and lawyers' groups. They point to polls, such as the most recent by the National Institute for Crime Prevention, which show that support for abolition is growing in all quarters, especially among blacks, coloureds and Asians.

The institute's January survey of Reef blacks and whites shows that 38% favour abolition, 42% favour retention and 20% don't know. Whites still don't favour abolition in large numbers. A 1975 Rapport poll showed that only 7% of Afrikaans-speaking whites and 22% of English-speakers favoured abolition. The institute's study shows 9% of Afrikaans-speaking whites and 26% of English-speakers in the pro-abolition camp.

Traditionally, supporters of capital punishment cite its value as a deterrent and tool of retribution. An eye-for-an-eye carries tremendous weight in a country founded on strong Calvinistic beliefs.

Abolitionists cite four main reasons: lack of proof of a deterrent effect, fallibility of justice and irreversibility of the deed; the element of chance; and the barbaric nature of any murder, even if State-sanctioned. To back up the deterrence argument, abo-

	Males	Females
Whites	12	0
Blacks	252	1
Coloureds	44	0
Asians	5	0
Total	314	1

As of March 18, 1990

litionists point to Florida, one of 13 US states which executes prisoners. Florida's high rate of execution has not kept it from also having one of the highest rates of violent crime, including murder.

For fallibility and irreversibility, they also point to the US, where a study showed that since 1900, 343 people were wrongly convicted of capital crimes; 25 were executed.

Menzi Thafeni spent 770 days on Pretoria's Death Row before having his conviction for a necklace killing overturned on appeal last year. "I will never, ever be the same person," he says. "The smell of death is all around you. That smell I won't forget. It is as if I am still waiting for death."

Some judges are more likely to find extenuating circumstances than others, which adds an element of chance. One two-year study found that three judges heard 15% of capital cases in the Cape, but imposed 51%

of the death sentences.

"Why should a man's life depend upon the chance of which judge he appears before?" asks one abolitionist ex-judge.

As 97% of the executed are black and all the judges white, the racial factor cannot be ignored. Since all trials take place in English or Afrikaans, black defendants are not prosecuted in their home language, though they have the services of interpreters.

The *pro deo* system — where the State pays attorneys about R200 a day to represent indigents — also has vitriolic critics.

SA's execution policy is not unusual in Africa, where only Namibia has outlawed the death penalty. Transkei has imposed a moratorium on executions and has asked abolitionists to provide information on alternatives to capital punishment.

Life imprisonment, perhaps on Robben Island, has been put forward. So has the more liberal use of 25- or 30-year sentences, with parole determined by a board of criminologists and psychologists. But it all takes money — it already costs more than R16m a day to keep the prisons running.

But is the execution of a tiny segment of the population — probably poor, illiterate and poorly defended, though not necessarily innocent — the only course? A country can either degrade the sanctity of life by sponsoring executions — in turn ratcheting up the level of violence — or it can stop the killing in the hope of aiding the prospect of peace. ■

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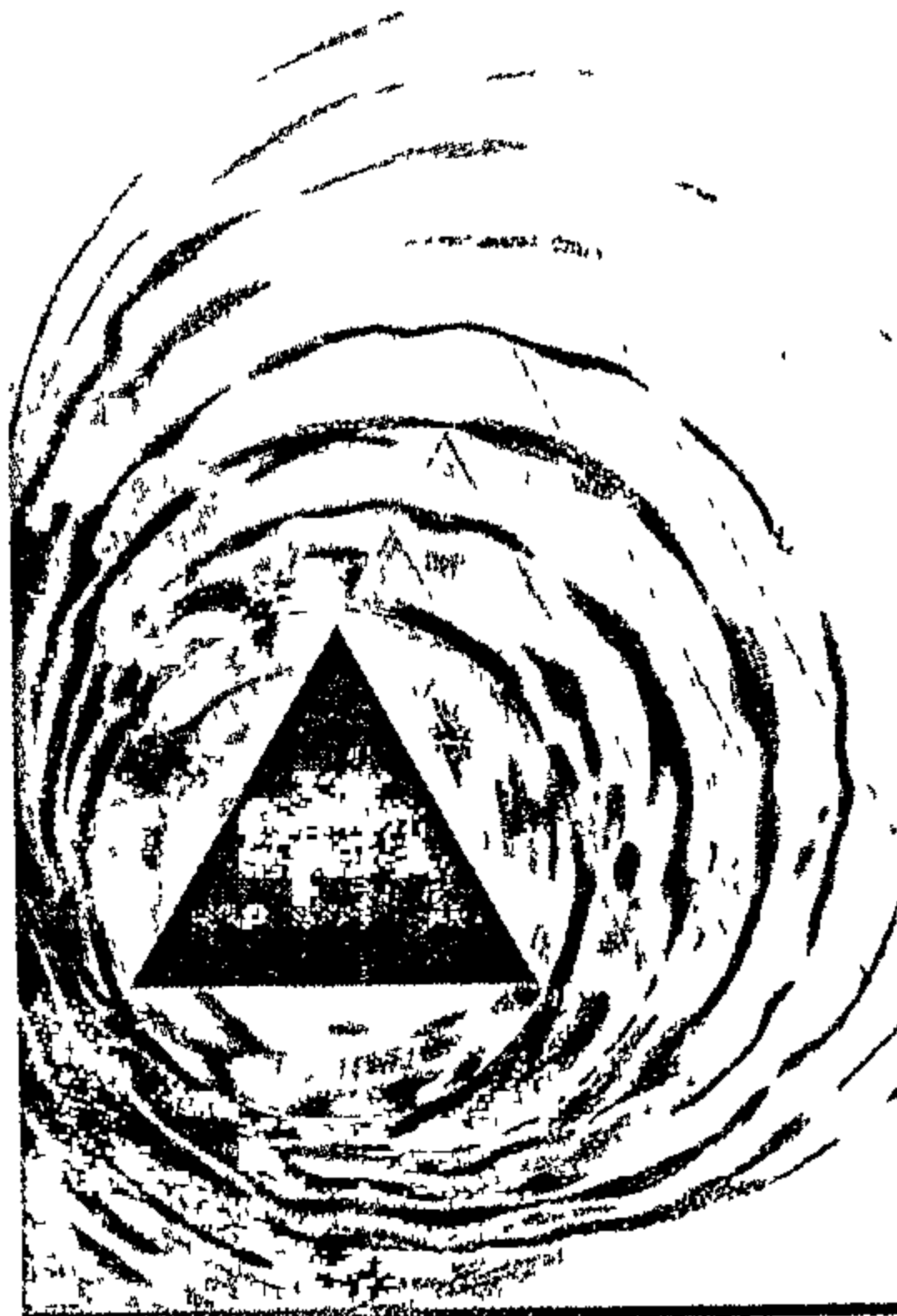
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LUBOWSKI FIM 23/3/90

More secrets ~~252~~ 252

The SA Defence Force has silenced Nedbank, which now may not divulge any information on the financial matters of slain Swapo member Anton Lubowski. The SADF invoked the same legislation used by former President P W Botha when he exempted four SADF members from prosecution in a Windhoek murder case some years ago.

Serving the bank with a "Section 118 (1)a certificate", the SADF has ensured that Lubowski's lawyers are unable to investigate a trust account which Lubowski controlled while on the Swapo executive in Namibia (This section of the Defence Act provides for a certificate prohibiting publication of any information regarded as sensitive)

Johannesburg advocate Martin Luitingh, representing the Lubowski family, has appealed to Judge Louis Harms to intervene. The Lubowski family has retained Luitingh to counter claims made by Defence Minister Magnus Malan that Lubowski was a paid agent of Military Intelligence.

The FM learnt this week that Lubowski controlled an account, the "Paradiso Trust Bond Account". The account number is 10094 28 144 and the registered address is: A T E A Lubowski, PO Box 3714, Windhoek. A Nedbank head office spokesman has confirmed to the FM that the bank has been prohibited by Section 118 (1)a from making any statements or divulging anything about Lubowski's affairs.

However, it does seem that Lubowski controlled big sums of money through Paradiso Trust. While no one at Nedbank can divulge the information, reports before the injunction was served speculated that money was constantly being moved in and out of the trust account before Lubowski's death. Apparently the account contained about R200 000.

In his submission to Judge Harms, Luitingh said he was alarmed at the lack of detail presented by the SADF in their *in camera* evidence to the commission. Luitingh was given access to the evidence by

FIM 23/3/90

Harms.

The attitude of the Lubowski family has always been that they would like to assist the commission, said Luitingh. "You have referred us to certain accounts and investigations," said Luitingh. However, when he approached Nedbank to inspect the Paradiso trust account, he was told that a certificate had been served.

Luitingh added that the Lubowski family will challenge the validity of the certificate in court, should Harms not be empowered to intervene. "I do not accept that the SADF has the right to do this," he said. "I regard it as high-handed conduct... contrary to President De Klerk's speech on March 1 that the commission would open the allegations to the bone."

Meanwhile, a Nedbank source has denied allegations made to the FM that the branch manager in Windhoek was instructed to destroy all records of deposits to the account. The source has also denied that Nedbank has been investigating possible forex contraventions amounting to R100 000.

□ The FM reported two weeks ago that a mysterious man had visited Lubowski's sister, well-known TV presenter Joleen du Plessis, three weeks after her brother's assassination.

He claimed that Lubowski had been murdered by Swapo and alleged that misappropriation of funds had been one of the reasons for Lubowski's death.

Eddie Botha



Luitingh

The Coetzee connection

If Dirk Coetzee, the former security police captain and confessed "death squad" commander, testifies before the Harms Commission, he could expose for the first time an alleged secret world of extortion, telephone bugs, oil deals and diamond concessions. Coetzee is in self-imposed exile in Lusaka.

The FM learns that behind-the-scenes negotiations are currently taking place with the ANC to get Coetzee to the witness stand at the Harms Commission. It is understood that Free State Attorney-General Tim McNally, who is leading evidence for the commission, is involved in the negotiations.

Coetzee's evidence on the alleged "death squads" is seen as potentially vital corroboration of the statements by condemned killer Almond Nofemela (the former policeman who triggered the investigations with a confession from death row).

Coetzee faced a police departmental inquiry in 1985 after he had warned Frans Whelpton, the private secretary of former Manpower & Mines Minister Fanie Botha, that Whelpton's telephone had been tapped by the police.

The police subsequently raided the northern Transvaal farm of Johannesburg arms dealer Jan Blaauw — a former Air Force brigadier — who became a central figure in an extensive investigation into allegations of extortion relating to Fanie Botha. The police also seized (at Blaauw's farm) documents relating to oil deals and diamond concession negotiations. At the same time, the SAP's Maj "Suiker" Britz (now a brigadier), who has been involved with the investigation into the death squads, seized documents at Whelpton's Pretoria home.

Botha resigned all his political positions in November 1983, amid the controversy after Blaauw threatened to take him to court over cash allegedly owed to Blaauw. At the time it was rumoured that the affair could involve several highly placed government ministers and officials.

In 1983, Blaauw demanded that Botha pay him almost R300 000, based on promissory notes signed by Botha and held by Blaauw. The letter was followed by a second

mysterious ultimatum that government should honour promises made by Botha.

In 1986, Botha was finally sequestered in the Pretoria Supreme Court. At the time he was R7,5m in debt, with assets totalling nearly R3,5m. In January of that year, Botha had the electricity to all his farms cut off after he had been unable to pay an electricity account of R7 000 to the Louis Trichardt municipality. Botha also owed thousands of rands to Trust Bank and SA Transport Services at the time.



Coetzee



Botha

Sources say it was Blaauw who introduced government to Italian businessman Marino Chiavelli. Chiavelli, it is said, played a major role to alleviate the oil crisis which faced SA in the Seventies. The sources say that Blaauw also lent money to Coetzee, when Coetzee faced legal proceedings after he had warned Whelpton about the phone tapings.

Coetzee also sent a confidential memorandum to two senior PFP MPs, leader Frederik Van Zyl Slabbert and Helen Suzman. At Slabbert's request, another PFP MP, Tian van der Merwe (now the DP chairman) met Coetzee and Whelpton in Johannesburg to discuss the memo (a copy of which is in the possession of the FM).

The memo, dated January 13 1985, is headed *Ongeoorloofde meeluistering in stryd met artikel 118(a) van die Poswet* ("unlawful tapings contrary to Section 118(a) of the Postal Act"). It includes various allegations by Coetzee. He describes himself as a captain in the SAP with 14 years' service, who was suspended from the force after he tried to expose the "serious misuse" of the telephone system.

Coetzee, who worked for the Post Office before he joined the police, describes how he discovered that taps had been authorised on Whelpton's phone. He also mentions the names of various high-ranking police officers and a Post Office official whom he claims was in charge of phone tapings. He also claims there were efforts to trap Whelpton in diamond dealings.

In an aftermath to the Fanie Botha saga, a criminal case involving charges of extortion and fraud, and others under the Nuclear

Act, was held *in camera* in the Cape Supreme Court.

Should Coetzee take the stand at the Harms Commission, he could relate in full his allegations of phone tapping, to counter any claims that he had been a disloyal policeman. We could be in store for more surprises yet.

Eddie Botha

LUBOWSKI F/M 23/3/90

More secrets

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Harms Commission

W/Mail 23/1 29/3/90
A REPORT on the Harms Commission in last week's Weekly Mail headed "When an ankle is not a foot", described the examination of a witness, alleged Askari-member Jeff Borsego, for gunshot wounds in the leg and implied that senior counsel Sam Maritz had misled the court in this regard.

(252)
The Weekly Mail regrets that it impugned the character of Mr Maritz. The report was based on incorrect information from our source.

The Weekly Mail apologises to Mr Maritz for any unfortunate inferences which could be drawn from the article.

Lubowski 'got money in a secret fund'

BY IVOR POWELL

THE storm around the reputation of murdered Swapo lawyer Anton Lubowski blew up again this week as Mr Justice Louis Harms alluded to evidence submitted by the South African Defence Force supporting claims that Lubowski had been a paid agent of South African Military Intelligence.

Harms cited SADF evidence to the effect that Lubowski had received money from South African Intelligence funds. The money, he said, had been paid through the accounts of intermediaries — who may not even have known their accounts were being used in this way.

But Harms did not make any finding on the status of this evidence and said the commission would not launch any detailed inquiry until contradictory facts had been submitted to the commission.

This week SADF lawyers withdrew an application to preserve the secrecy of the Lubowski bank account.

The identities of the intermediaries used by the SADF may therefore become accessible to family lawyers. And some of the unanswered questions about Lubowski's life may finally be laid to rest.

It remains uncertain at this point whether Lubowski was a traitor to his country or the victim of an elaborate frame-up. Harms did however state that the SADF claimed in documentation that "certain counterperformances" had been received from Lubowski.

Harms confirmed in Pretoria yesterday that his commission received evidence last Friday to substantiate SADF claims that Lubowski was a paid agent of the SADF.

He noted that sums of money had been recorded as having been paid out of secret SADF funds and into the accounts of intermediaries.

23/3 - 29/3/90
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252

Request to
contest Act
is refused

By Celeste Louw

A Johannesburg magistrate yesterday refused a request to have a case referred to the Rand Supreme Court to contest the validity of the Group Areas Proclamations.

The magistrate, Mr H Verhoef, ruled that One One Five Prosepine (Pty) Ltd, Mr Clive Keppler of Bryanston and Mr Ismail Mayet of Mayfair West would stand trial in the Johannesburg Magistrate's Court.

Mr Keppler and the company are accused of illegally allowing Mr Mayet to live in a whites-only area.

The hearing was postponed to May 8.

Before walking up a red carpet to his waiting jet, Mr Pienaar urged Mr Nujoma to "look after this beautiful country". A chuckling Mr Nujoma

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Mother of dead boy wins action against police

23/3/90 Pretoria Correspondent

The Minister of Law and Order was ordered to pay R34 247,86 in damages to the mother of a young boy of Atteridgeville who was shot in the back due to unlawful action of the South African Police.

Mrs Joyce Mafuya of Komane Street, Atteridgeville, who acted in her capacity as the natural guardian and mother of Godfrey Mafuya (16), who died on December 6 1987, was yesterday awarded R4 247,86

The balance was awarded to the Chief Magistrate who was the second plaintiff in the action.

The Chief Magistrate was cited in terms of the law as he was responsible for the proper administration of the estate of Godfrey, who died intestate. Court papers stated that Godfrey possessed certain movable properties.

Mrs Mafuya claimed that her son was unlawfully and intentionally shot in the back with a shotgun on December 7 1985 by a member of the SAP.

His injuries caused him to become a paraplegic.

The defendant's plea stated that the boy was not assaulted or shot unlawfully, and that he was shot by a member of the SAP while he threw a petrol bomb at the policeman.

"The shooting was a reasonable step to ward off the attack to prevent injury to the member," papers said

HIDING

Mr Justice Preiss accepted the evidence by witnesses of the plaintiff who claimed that after attending the funeral of an activist, they gathered at a home in the area where police apprehended one of the witnesses.

A policeman found Godfrey hiding under a bed and took him outside, where he was shot after he was told to "Run away and go home".

Mr Justice Preiss rejected the testimony of Sergeant Eugene Haliday, a constable at the time of the shooting, saying he did not believe the sergeant was frank with the court.

Sergeant Haliday said he was on patrol in Atteridgeville and confronted by a stone-throwing mob.

While assessing the situation he saw an adult male in the process of hurling a petrol bomb at his vehicle.

He then fired a shot, the man fell and was carried away by the mob before medical assistance arrived.

Mr Justice Preiss said the testimony did not correspond with the medical reports which stated that Godfrey was shot in the back.

"It was logical that if the man Sergeant Haliday said he shot was about to throw a petrol bomb, he would have sustained wounds on the front of his body," he said.

Mr Justice Preiss found another policeman who corroborated the sergeant's evidence to be an honest witness, but said his testimony was unacceptable.

Mr Justice Preiss said he had no doubt that the liability of the police had been established

Cop's death: 3 men not yet charged

By CHARLES MOGALE

C/Press 25/3/90 (252) (252)
THREE white policemen allegedly involved in a fatal assault on a black colleague at Jeppe Police Station have not yet been charged.

The Attorney-General has not yet decided whether the three men will be charged with killing Const Elias Sangweni, who died after a brutal assault, allegedly by Jeppe station commander F Kriel and two other policemen.

The incident, which took place over the New Year weekend, shocked the black staffers because of the "reluctance" by the authorities to prosecute.

Sangweni was assaulted in the charge office, allegedly after an argument over his guard duty. He was left bleeding profusely and his black colleagues called an ambulance to take him to Hillbrow Hospital. He died the next day.

The family's lawyers announced they would institute a private prosecution if the AG refused to charge the policemen. Lawyer Jabu Sibiya said this week there had been no response from the AG's office.

Sibiya has resisted threats to subpoena him to reveal evidence contained in affidavits in his possession. He said he would be happy to be taken to court for refusing to disclose the information.

CHIT JAMT

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252

Lawyers criticise ruling on abuse of children

Own Correspondent

PORT ELIZABETH —
The Grahamstown
Supreme Court's rejection of a magistrate's finding that indecent acts with children were rife, has been criticised by lawyers, including an academic lawyer

One lawyer suggested that a magistrate could take notice of "anything that is of general knowledge to the public"

Another said, "I don't believe that child abuse itself is on the increase, but child abuse cases (in court) are clearly on the increase"

Professor Ivan Schafer of the faculty of law at Rhodes University said the criticism of the magistrate had left him with a sense of grave disquiet.

The magistrate was criticised in a judgment handed down by Mr Justice Jansen, with Mr Justice Cooper concurring, in an appeal against the magistrate's sentencing of child molester Guy Morris, 22.

Not clear

The magistrate had said that child abuse was rife and on the increase and that a strong sentence, which would act as a deterrent, was needed

The judges said it was not clear from the trial record how the magistrate became aware that indecent acts with children were on the increase

The judges halved the effective prison sentence imposed by the magistrate and sentenced Morris to an effective jail term of 18 months for six counts of indecent acts with two boys aged 11 and 12. He was fined R200 (or six months) for another four counts involving two consenting adult men

Prof Schafer said yesterday "Child abuse is very much before the public eye through media reports. It would be very ignorant for a judicial officer not to be aware of this fact."

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Council asks for judicial inquiry into spy network

By Louise Burgers,
Municipal Reporter

The Johannesburg City Council management committee has decided to ask the Administrator of the Transvaal to appoint a judicial commission of inquiry into the controversial spy network

At an urgent meeting yesterday, a proposal by the only independent on the National Party-controlled management committee, Mr Eddy Magid, that a judicial commission be appointed was accepted unanimously by the committee

The meeting was also attended by security chief Mr John Pearce, town clerk Mr Manie Venter, the leader of the Democratic Party in the council, Mr Ian Davidson, the leader of the Conservative Party in the council, Mr Jacques Theron, independent councillor Professor Harold Rudolph, and department heads

Mr Pearce, identified as one of the spy masters, refused to comment on his involvement in the so-called council information network. "I have absolutely no comment whatsoever," he said

Earlier, the three opposition councillors invited to listen to Mr Venter's report on the whole affair were asked to leave while the management committee debated the issue further

They all expressed surprise at having been invited to attend as "nothing new" had been brought to their attention

'INTERESTING INFORMATION'

Mr Davidson said "Very little new information came to light. We're not sure why we were invited in the first place. All it was, was a regurgitation of what he (Mr Venter) had said to newsmen last week

"I did ask the director of traffic and security, now director of public safety (Mr John Pearce), whether spying on the End Conscription Campaign and the Five Freedoms Forum was legitimate. His reply to me was that they had 'got some interesting information' from the two organisations."

Mr Davidson said he would reserve further comments for the council meeting tomorrow.

"I'm still waiting for a tour of The Fort," Mr Theron said, referring to the headquarters of the spy ring

The chairman of the management committee, Mr Jan Burger, said once the commission of inquiry was completed, a decision would be made on what to do with the dossiers collected on various political organisations and prominent people

Mr Burger said there was no question of suspending Mr Venter. "At the moment we just want to get the inquiry over as soon as possible"

The Minister of Local Government, Mr Amie Venter, last week asked Transvaal MEC Mr Olaus van Zyl to investigate the spy scandal.

A tale of two tree murders

Was justice colourblind in passing sentences?

BRIAN CURRIN (right) of Lawyers for Human Rights writes on the sensitive issue of Equality before the Law.



The chairman of the Pretoria Bar Council, Advocate William de Villiers, SC, recently took issue with me for suggesting our courts discriminate on racial grounds when convicting and/or sentencing.

My comments which attracted the wrath of Mr de Villiers were in relation to the so-called "Witbank Tree Murder" I think it would be both interesting and telling to compare this case, which involved black on white violence, with the infamous Louis Trichardt Tree Murder Case which involved white on black violence

In the Witbank case, two black men "picked up" a white woman, had sexual intercourse with her, tied her to a tree and then stole her motor vehicle which they drove to Swaziland Bar the two thieves who were later arrested and charged with robbery, rape and murder, the woman's domestic employee was the last person to see her alive.

The deceased had bought a bottle of vodka and according to the testimony of the domestic employee, she appeared to be unhappy and drunk. Nine days later, she was found dead and tied to a tree. The probabilities are that she had been "picked up" by the two accused four days after having disappeared

The two accused were subsequently arrested and charged with robbery, rape and murder. They were both sentenced to 10 years' imprisonment for robbery. With regard to the alleged rape, the only evidence against them were confessions by each of the accused that they had intercourse with the deceased. According to them, she had consented to the act.

In spite of the circumstances in which she disappeared the trial

judge found beyond reasonable doubt she had been raped. It must also be emphasised that there was no medical evidence to support such a conclusion. They were both given 15 years' imprisonment for rape.

They were also found guilty of murder and sentenced to death. This sentence was passed in spite of the court's finding that there was no direct intention to kill her. The court found indirect intention, that the accused must have foreseen the deceased may not be found timeously, in which event she would die and in spite of this, left her tied to the tree, regardless of the consequences.

It is relevant to mention that the tree was 50 m from a gravel road, about 30 m from a plantation used as a dumping ground, 20 m from a number of bee hives and a few hundred metres from seven houses.

The accused testified they thought she would be found soon after having been left and they had

no intention of killing her.

The fact that they did not kill her also has a bearing on the charge of rape, considering that rape can also attract the death penalty. Fortunately, both the rape and murder convictions were set aside by the Appellate Division in November last year.

It should be noted the Supreme Court judge who initially sentenced the accused refused leave to appeal. Had the accused not been represented by lawyers, which is the norm, there would have been no petition to the Chief Justice and they would have been executed.

In the Louis Trichardt Tree Murder Case, evidence was led how two white farmers tied a black man to a tree. Unlike the Witbank woman, his destiny was not left to nature or to chance. He was brutally assaulted until he died.

Both accused admitted tying the deceased to a tree and assaulting him. However, they denied they intended to kill him or that they foresaw he would die as a result of the assault.

The first State witness, a medical practitioner, handed in a post-mortem examination report containing a list of the most horrendous injuries found on the body of the deceased.

He described the incident as a "massive assault". The doctor testified that these injuries could not have been caused by slaps, but that blunt weapons must have been used.

The second State witness, a co-employee of the deceased, testified that both the accused had kicked the deceased with booted feet. During the course of this evidence-in-chief, the court suddenly adjourned.

On re-convening, prior to any cross-examination of the second State witness, the prosecutor indicated he had reached agreement with the defence concerning the acceptance of pleas tendered by the defence, namely culpable homicide by the first accused and common assault by the second accused.

The next morning, the State and the defence presented to the court an agreed statement of facts described as "evidence upon which the court must make a finding".

This set of facts, described as common cause, bears hardly any resemblance to the evidence testified by the second State witness and appears to constitute a complete capitulation by the State. Both accused were given nominal fines.

The question is why did the judge accept this state of affairs when he was not obliged to? I believe he had a duty to query the preposterous statement by counsel for the defence that the facts on which the court was to find were those contained in the agreement and not as the witness had testified.

I venture to speculate that had two black men tied a white man to a tree, inflicted a massive assault causing his death, we may once again have been faced with application of the common purpose doctrine and death sentences.

Lawyers for Human Rights runs a project which monitors racial discrimination by our judiciary. These are certainly not the only two cases which lead us to believe our courts do sometimes discriminate on the basis of race when convicting and passing sentence.

Fortunately, there are many judges who do not allow the colour of either the accused or the complainant or deceased in murder charges to influence their decisions.

However, as long as there is even one judge who shows tendencies of racial discrimination and he is tolerated by fellow judges and the Minister of Justice, the entire judiciary will be tarnished.

'I have nothing to hide' — suspended town clerk

by Monica Nicolson

"I am not a criminal and have nothing to hide," says suspended Midrand town clerk Mr Philip Botha

Mr Botha is presently facing a commission of inquiry into alleged irregular activities during his service with the council

He was suspended without pay at the end of last year until the commission made its recommendations, but had his pay reinstated last week when he began industrial court action against the municipality

In an interview with *The Star*, he said "I will participate fully with the inquiry into alleged illegal actions by myself and other officials as I have done nothing wrong"

Mr Botha has been accused of

- Allegedly receiving half the profits from a developer, Mr Anton Lourens, who did work for the council. Mr Lourens, a close friend of Mr Botha's, was contracted to build a taxi rank and gave Mr Botha R43 000. Mr Botha said the money had been a loan.

- Allegedly buying a house in Port Alfred using his housing subsidy and living in his Midrand home rent free.

- Making investments of more than R1 million using council funds and sharing the profits with a friend

- Offering management of the municipality's canteen to council official Mr Henry Hughes and his wife, Roleen, but demanding 50 percent of the profits

- Over-spending on his department's budget without the council's permission or approval

- Arranging for the council to pay R12 780 for car repairs

- Allegedly writing two controversial reports recommending to the management committee he be exempt from paying rent for his house, and that the council stand collateral security for his house in Port Alfred

In his interview with *The Star* Mr Botha claimed that such an inquiry was unfair and one-sided as anyone could give evidence, true or false, and that he had no way of defending himself.

"It's a case of being found guilty until I manage to prove myself innocent, but I am not even given that chance," Mr Botha said.

"Someone is going to have to be the scapegoat to justify all the expense and upheaval, and it looks like they want it to be me," he said.

Mr Botha joined the Midrand Town Council in September 1981, and was appointed town clerk six years ago.

"When I started here, Midrand was a tiny rural village and there were only 12 officials. Now it's a burgeoning industrial area with over 600 officials

"Building Midrand up was a major task and I am proud of the work I have done here"

'Humiliating scandal'

Mr Botha said he refused to allow the bad publicity, humiliating scandal and negative feelings by certain councillors to force him out of the town

"I am going to resign as soon as possible from my position, but I will continue living here

"My loyalties lie in this town.

I have lots of good friends here and have had such marvellous support from hundreds of residents

"I believe there is even a petition going around asking to have me reinstated and the management committee fired

"I don't have any set plans once this commission ends, but I have numerous business options," he said

With his head slumped between his hands, Mr Botha said the whole ordeal was "a terrible, terrible nightmare

As we finished the interview, a policeman approached Mr Botha and said he was not allowed on the council premises and asked him to get out

The policeman said he was acting on the instructions of the acting town clerk, Mr Henry Lubbe

Council in uproar as insults traded

Judge Will Probe City Spy Scandal

4th 28/1/90
252

Staff Reporters

Amid insults and protests both within and outside the Johannesburg City Council chambers, The Star's exposé on municipal spies yesterday saw a commission of inquiry being appointed into the scandal, and a call from the entire council for the State President to appoint a judicial commission.

At a heated monthly council meeting, councillors traded insults, enraged ratepayers in the public gallery joined in the council row, and councillors arriving at council chambers were greeted by picketers

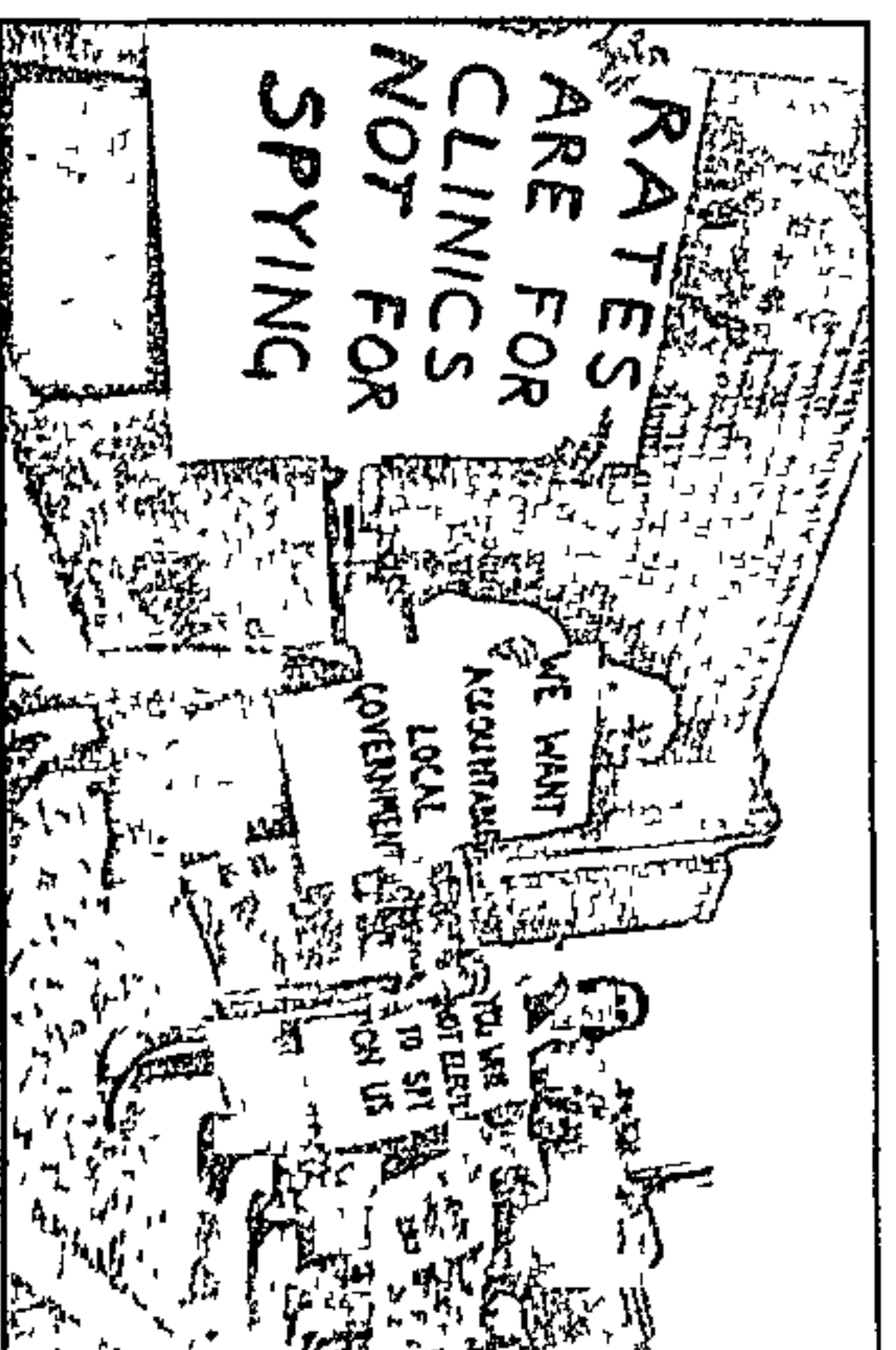
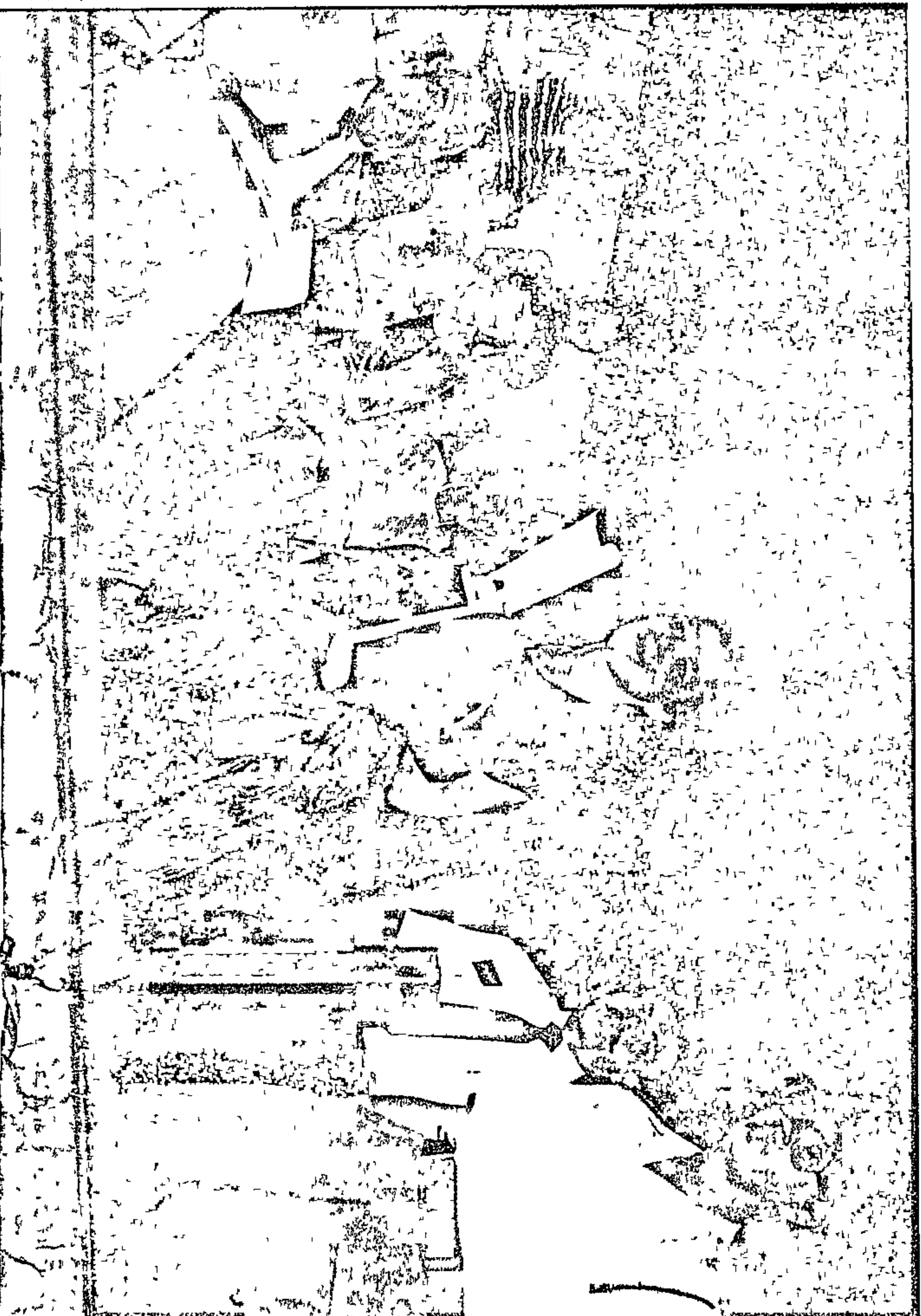
"Rates are for clinics, not for spying," read one of the banners paraded outside the chambers yesterday following The Star's revelation of a municipal spy ring funded by ratepayers' money

Individuals and organisations, including the slain Wits University academic Dr David Webster, were spied on by the municipality

Escorted out

As the stormy council meeting went ahead, with two protesters being escorted out of the chamber's public gallery for holding aloft posters decrying the City Hall spies, an announcement was made in Pretoria appointing a judge to head a commission of inquiry into the spy ring

The Administrator of the Transvaal, Mr Danie Hough, appointed Mr Justice V G Hienstrg to look into The Star's



Black Sash members picket outside Johannesburg City Council chambers yesterday. Picture by David Samson

demie Dr David Webster, were spied on by the municipality

Escorted out

As the stormy council meeting went ahead, with two protesters being escorted out of the chamber's public gallery for holding aloft posters decrying the City Hall spies, an announcement was made in Pretoria appointing a judge to head a commission of inquiry into the spy ring.

The Administrator of the Transvaal, Mr Danie Hough, appointed Mr Justice V G Hiemstra to look into The Star's revelations.

Mr Hough said Mr Justice Hiemstra (75) had been appointed to head the commission to conduct comprehensive investigations into, and report to him on, "alleged irregularities by the City Council of Johannesburg, its departments and officials as reported recently in the media".

His decision follows a request to the Transvaal Provincial Administration, made in Parliament by the Minister of Local Government, Mr Amie Venter, that "urgent and priority attention" be given to the matter.

Mr Hough said the terms of reference had been formulated in such a way that the commission would be able to investigate all aspects of "the alleged irregularities within or outside of the council and, if any irregularities occurred", in order to make a finding.

But last night the council voted to ask President de Klerk, to appoint another judicial commission of inquiry.

And today a senior official from the Auditor-General's office was due to start investigating the financial affairs of the City Council's spy ring.

The Auditor-General, Mr Peter Wronsley, said in Pretoria yesterday that Mr Chris Oosthuizen, the chief auditor in Johannesburg, had been briefed to investigate charges of improper payments relating to the financial affairs of the council's security department.

Firing line

Details of payments for spies were made in The Star's exposé.

The council's ruling National Party yesterday beat off a Democratic Party bid to have leading officials in the spy drama suspended.

The council's debate on the spy ring was heated and the mayor had to call for order on several occasions.

In the firing line were town clerk Mr Mamie Venter, public safety director Mr John Pearce and security officer Mr Frikkie Barnard.

The National Party, which opposed the motion on the grounds that it would pre-judge the officials concerned, won the vote with the help of two Conservative Party councillors and independent Mr Eddy Magid.

The NP was accused of telling lies when several speakers in the party, according to the DP, failed to address the allegations in the motion.

"Cover-up, cover-up," was the cry directed at the Nat benches.

Following the press conference, The Star revealed where town clerk Mr Venter had been wrong in a number of his statements on the spy ring.

At yesterday's council meeting the DP tabled a motion of no confidence in the management committee.

The town clerk has 21 days in which to call a special council meeting for the issue to be debated. The political parties in the council are expected to begin frantic lobbying for support in the days leading up to the meeting.

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Law Commission starts study of constitutional models for SA

bl Dam 29/3/90

252

BILLY PADDOCK

THE Department of Justice has started investigating constitutional models to be used by government for the forthcoming negotiations with the ANC and others and methods to safeguard and guarantee SA's future constitution.

In a statement the SA Law Commission said it was trying to identify the basic matters and institutions necessary in a new constitution for balanced protection of human rights.

Main types and models of democratic constitutions already in existence were being looked at.

It is also looking at how these models protect the rights of collective units, associations, minorities and nations.

The commission will accept suggestions and submissions until the end of May.

Meanwhile, Constitutional Development Minister Gerrit Viljoen told the New York Times one of the models being considered by government was a two-chamber parliament. One House

would be elected on the basis of one person one vote, regardless of race, while the other would represent racial groups and geographical regions.

He said the exclusion of citizens, and especially the biggest group, from political power "cannot be justified on any moral grounds".

Viljoen said the model being considered would let the second House block legislation affecting minority groups on "important political issues".

He said the the second House would need to guarantee regular elections, the nature of the economic system and that there would be no tampering with a Bill of Rights "which in our view would certainly have to be part of the constitution".

He said the present system would have to be replaced by one in which each person chose his or her racial group or chose to be in none.

Interest will however... growth continues...

Ex-magistrate blocked: Why? Coetsee asked

APR 29/3/90 (252)
The Argus Correspondent

DURBAN — The Minister of Justice, Mr Kobie Coetsee, will be challenged to establish if a former Verulam magistrate of long-standing is being denied reappointment to the Bench because he criticised the country's race laws.

Mr Steve Mundhree, 46, resigned as a magistrate at Verulam last July after 27 years in the civil service to become involved in politics.

He was chosen as leader of the National Federal Party and stood in the September 1989 elections for the House of Delegates but lost.

Since then Mr Mundhree has applied several times to be reappointed as a magistrate, but without success.

Now the Democratic Party's spokesman in the House of Delegates, Mr Mamoo Rajab, is asking why the Department of Justice in Pretoria has refused to re-employ Mr Mundhree, who won a merit award for diligence in 1986.

In an interview with a weekly newspaper shortly before the elections Mr Mundhree spoke about his reasons for deciding to give up his first love, law, and said he had great difficulty upholding racist legislation.

"It was no easy decision but my conscience would not allow me to continue upholding certain laws which were in keeping with the country's racist statutes," said Mr Mundhree, who in 1978 was appointed the country's first Indian senior public prosecutor.

Mr Rajab said: "I hope Mr Mundhree's criticism was not held against him when his applications for reappointment to the Bench were considered."

It was "sad and regrettable" if Mr Mundhree, "a man of some considerable experience, is being punished for having the guts to denounce racism publicly."

"President De Klerk has already conceded that racist legislation will have to go."

Mr Rajab planned to meet Mr Coetsee urgently to discuss Mr Mundhree's situation.

'Slang' tells of PAC 3 killing

252
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Sowetan 29/3/90

DETECTIVES of the Brixton Murder and Robbery Squad led by former Civil Co-operation cell member Mr Abram "Slang" van Zyl had shot and killed three PAC members in Corlett Drive, in Johannesburg, before May 1988, the Harms Commission heard yesterday.

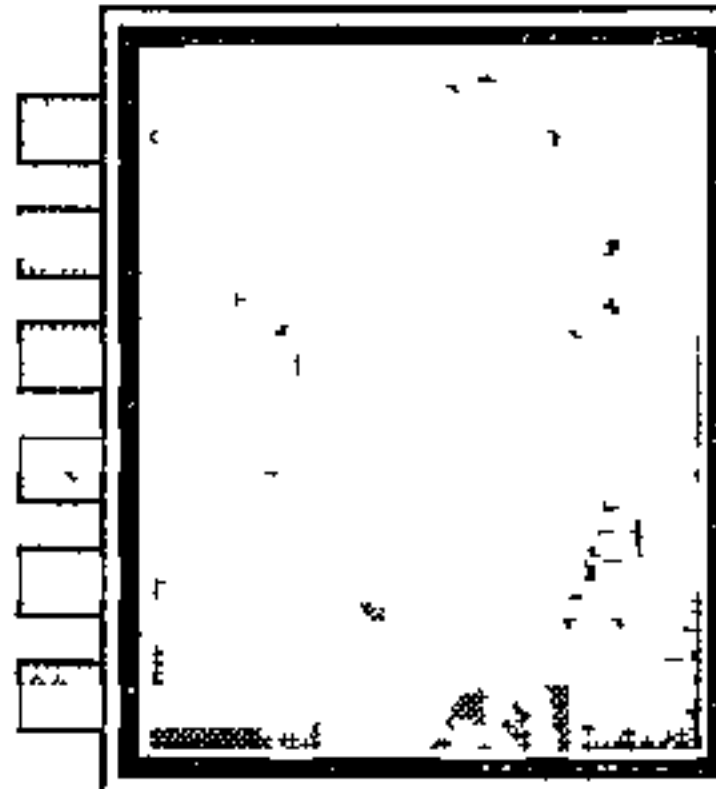
Under cross-examination by Mr Martin Luitingh, representing the Webster Trust, Van Zyl admitted

SOWETAN
Correspondent

that he had personally shot "some" of the PAC members after receiving information from the Security Police that they had been on their way to Alexandra.

The incident occurred while Van Zyl was a Brixton Murder and Robbery Squad lieutenant, before joining the CCB in May 1988.

Luitingh said evidence would be given that the Brixton Murder and Robbery Squad, like the CCB,



had an "inner circle" which had been responsible for murdering people. Van Zyl had been a member of that circle.

This was denied by Van Zyl.

Van Zyl said the so-

HARMS
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called "skuur", referred to in earlier evidence as the place where a car bomb would always be available to CCB members, was about 40km from Pretoria.

Mr Justice Harms ruled that the exact location of the "skuur" should not be made public.

While in detention in Secunda under Section 29 of the Internal Security Act, Van Zyl had asked a fellow-detainee, a Mr Hardien, not to disclose certain information about the CCB, Luitingh said.

This included the fact that Van Zyl had asked that the Early Learning Centre be evacuated before a bomb was detonated - given in his evidence in chief.

Hardien, in an affidavit handed to the commission, said there were people left inside the building and Van Zyl had intended to injure or kill them. This was denied by Van Zyl.

Asked about the reasons for his resignation from the CCB, Van Zyl said he had thought it would become difficult to identify enemies of the State in future.

He said after President de Klerk had become State President he (Van Zyl) had thought internal actions by the CCB would not be approved anymore.

DAY, Friday, March 30 1990

Slang tells of task watching Lubowski

SUSAN RUSSELL

FORMER CCB member Abram "Slang" van Zyl told the Harms Commission yesterday that he understood authorisation for the "elimination" of individuals to have come from the unit's chairman.

According to evidence before the commission, CCB chairman Maj-Gen Eddie Webb took over from his predecessor Maj-Gen Abraham Joubert in December 1988.

Van Zyl also disputed statements by CCB MD Joe Verster and Joubert that his cell's task was to collect specialised information inside SA.

He said both Verster and Joubert had described the cell's task as operating against the enemy inside SA — including acts of violence.

Van Zyl said while the cell's work had been mainly internal both regional manager Staal Burger and Chappie Maree had worked outside SA.

He also revealed during cross-examination yesterday that he was ordered to monitor Swapo lawyer Anton Lubowski on August 25 last year while the attorney was in Cape Town and Johannesburg.

He said he was not told the purpose of the monitoring and had used former policeman Ferdi Barnard to do it.

He denied he and Burger had been at Cape Town airport together on September 12 last year — the day on which Lubowski was murdered.

Van Zyl said that at that stage the last time he saw Burger was in Cape Town on September 11.

Van Zyl said a project involving Lu-

bowski had not been discussed in his presence, but the name of cell member Chappie Maree had come up which, he believed, had been in connection with Lubowski.

Counsel for the Lubowski family Martin Luitingh submitted that the murdered attorney had shared the same criteria which had made UDF lawyer Dullah Omar a CCB candidate for elimination.

Mr Justice Louis Harms refused an application by lawyers acting for the Lubowski family to allow cross-examination on the lawyer's murder as it did not fall within the commission's terms of reference.

Counsel for the Independent Board of Inquiry into Informal Repression Bob Nugent cross-examined Van Zyl about a R3 000 production bonus he received last May for what his superiors described as "outstanding work".

Van Zyl denied that he had received the bonus for the assassination of Wits academic David Webster.

Cross-examined by police counsel Sam Maritz SC, Van Zyl said he was not ordered by SADF MI chief "Witkop" Badenhorst and SAP Brigadier Krappies Engelbrecht to keep silent about CCB activities.

He said both men had come to his home during the internal investigation into the CCB and the suggestion he remain silent was made by one of them.

The hearing has been postponed until next Wednesday.

with pleasure

Conflict in Croucamp's

B/Dom 30/3/90

~~251~~ 252 ~~253~~

Peaches tells of assassination bid

SUSAN RUSSELL

TWO men identified by Abram "Slang" van Zyl as the "unconscious" members he co-opted to execute CCB projects in Cape Town submitted statements to the Harms Commission this week.

The first was from Edward James Gordon, named as "Peaches" by Van Zyl, who was paid to carry out the planned assassination of UDF lawyer Dullah Omar.

A statement from Isgak Hardien, who assisted Van Zyl in the bombing at the Early Learning Centre in Athlone last September, was submitted yesterday.

Gordon, who received various sums of money for the operations Van Zyl instructed him to carry out, said he had cheated Van Zyl to obtain money.

When instructed to obtain some of Omar's heart pills he told Van Zyl he got

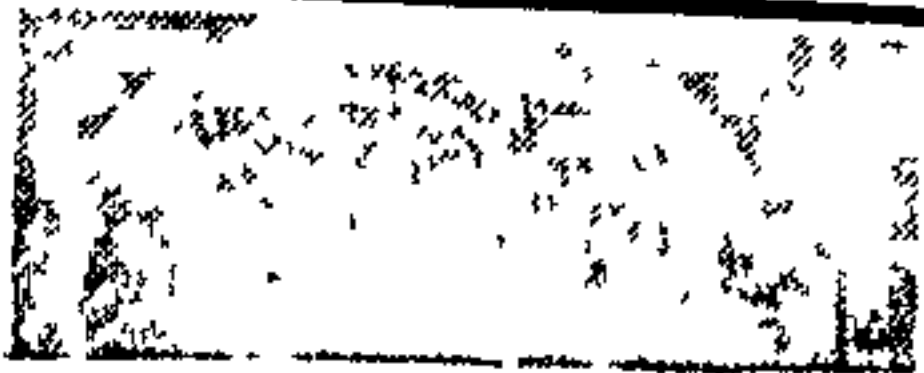
them from the lawyer's secretary when in fact took them from his sister-in-law.

Gordon said he had thrown away the powder he subsequently received from Van Zyl to sprinkle on Omar's food, as he was not prepared to kill Omar.

Hardien said he had helped Van Zyl plant a bomb at the Athlone centre.

He said he had met Van Zyl at the airport and Van Zyl had given him a bag and told him to place it in the centre. He had asked what was in the bag and Van Zyl said it was a bomb.

Hardien said after making sure everyone was out of the building the limpet mine was detonated.



MACHINE — and won a 100 000 car

Court back-to-work *Call 7215 20/3/90 (252)*

PIETERSBURG: — Venda magistrates who have been on a sit-in since Tuesday, returned to work yesterday to handle cases of detainees allegedly beaten by police.

CCB agent shadowed Lubowski

Southern 30/3/90

252

FORMER Civil Co-operation Bureau member, Abram 'Slang' van Zyl, yesterday told the Harms Commission he had been given instructions to monitor the movements of slain Namibian lawyer Anton Lubowski.

He had been instructed to monitor Lubowski's movements and meetings with people in Cape Town and Johannesburg.

Van Zyl told the commission - chaired by Justice Louis Harms - he was given the order on August 25 last year.

Van Zyl repeatedly said he had no information regarding the motivation of the order he had received, and as far as he knew none of his cell colleagues in the CCB was involved in Lubowski's murder.

It was put to him by



**HARMS
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Martin Luitingh, SC, for the Lubowski family and the Webster Trust, that on September 1, 1989, he had been asked to leave an 'in-house meeting' at the Rosebank Hotel which was to be addressed by CCB managing director, Col Joe Verster, on "the Lubowski project".

Van Zyl said he did not know about this and also denied knowledge that former CCB regional manager Staal Burger had flown to Windhoek under the name of 'Gagiano', on September 12, 1989, the night Lubowski was killed.

Bert Bertelsman, SC, also for the Lubowski family, entered into argument with Justice Harms, requesting that he allow evidence surrounding Lubowski's murder.

He told the judge his terms of reference for the inquiry were much wider than he was allowing.

He admitted, however, that in a statement he had made in terms of Section 29 of the Internal Security Act -- which Justice Harms ruled could not be disclosed -- he had admitted he had been told the meeting was about Lubowski.

FIM 30/3/90

THE LUBOWSKI AFFAIR

252



The swirl of money

FIM 30/3/90

252



The Pretoria Standard Bank account from which slain Swapo executive member Anton Lubowski was paid on three occasions by Military Intelligence has been closed. It was in the name of Global Capital Investments, a close corporation, of which Pretoria attorney Ernst Johan Victor Penzhorn was the sole member.

Global had been the front company, identified as the creditor of.

□ Two cheques totalling R60 000 to the Paradiso Bond Trust (which has an account at the St George's Street branch of Nedbank in Cape Town), and

□ One cheque of R40 000 to Lubowski's personal account at Nedbank in Windhoek.

Lubowski controlled the Paradiso account — which was originally registered by Nedbank as a home loan account, starting with overdrafts of R150 000. At one stage R186 000 was in the Paradiso account.

A Standard Bank source says the account (No 010252215, at the bank's Pretoria head office) was closed as soon as the Harms Commission started its probe. (The commission has been investigating claims by Defence Minister Magnus Malan that Lubowski was a paid Military Intelligence agent.)

Penzhorn was also involved in the Jalc affair, which was investigated by another commission, also headed by Justice Louis Harms.

He was found to be the sole member of Global after the *FM* investigated documents lodged at the Registrar of Companies in Pretoria.

However, the corporation was started in 1976 as Goudoes (Pty) Ltd, registered by three other Pretoria attorneys — Pieter Gerhardus Gouws, Rene du Plessis and Hendrik Stephanus Schoeman, all of United Building in Pretorius Street.

According to its description, Goudoes (Reg No 763745) was founded mainly to do business as a property company. It started with prescribed capital of R4 000. According to its founding document, directors could "from time to time appoint persons living in a foreign country as a foreign committee." It further states directors could also appoint "agents in a foreign country."

Gouws, Du Plessis and Schoeman were also directors of three other companies — Goulet, Judgement and Decca Contractors respectively. According to the documents,

eight other attorneys, all from the Southern Life Building in Pretoria, joined Goudoes in May 1980. They were Susanna de Vries, Frans Gustav Radloff, Gordon Keith Hay, Karl Eugene Weiss, Johannes Petrus du Buisson, Petrus Lutsch, William Patrick Niven Sceales (secretary) and Penzhorn.

Goudoes' auditors, NF Albert (Sr) & Co, resigned in 1980, the firm of Ernst & Whinney were appointed auditors. In September of that year, the Registrar of Companies Office wrote that Goudoes had neglected on two occasions to lodge certain forms within the prescribed period. In August 1981, Goudoes also requested an extension of time, after it was found that its annual financial statements had been incomplete.

In October 1984, Goudoes applied for a change of name. After a special resolution, which was signed by Penzhorn, various names were suggested to the Registrar which were all rejected. Among them were Internatiol (*sic*) Investment Pty, International Capital Investments, Invesiments International, Foreign Capital Investment International and Global Financial Services. Finally the name Global Capital Investments was approved.

Also in October 1984, 10 directors resigned and Penzhorn remained the sole di-

rector. A year later, Penzhorn applied for Global Capital Investments to be converted to a close corporation. The application was signed by Penzhorn on September 13 1985.

According to the description filed at the Registrar's office, Global was founded to act as "consultants in financial investment matters on an international basis."

In a letter to the Registrar, auditors Ernst & Whinney write that in terms of the Close Corporation Act, there is "no reason to believe that in the conduct of abovementioned company's affairs, a material irregularity has taken place as contemplated by Section 26(3) of the Public Accounting and Audit Act of 1951." In a further amended founding statement it is stated that Penzhorn held 100% of the corporation's shares.

□ In 1986, Penzhorn, who has close professional contacts with MI, turned down proposals by a top officer for the formation of a bogus company to deal with SA's isolation.

The suggestion was put forward by Brig Johan Deyzel who, during that time, acted as a cover at the Jalc company in Transkei. Jalc

and Deyzel's involvement were later subjects of the investigation into cross border activities by SA companies in the homelands.

Eddie Botha



Anton Lubowski

CCB in an agent's eyes: Hulle was f***** dom

IT is a wonder that Abram "Slang" van Zyl kept his job in the Civil Cooperation Bureau for 16 months, if evidence before the Harms Commission is to be believed.

In an extensive affidavit presented to the commission, Van Zyl, who was once a rising star in the Brixton Murder and Robbery Squad, reveals his operation within the "elite" CCB as a mixture of ineptitude and misinformation — all spiced with unbelievable gullibility.

Between October of 1988, when he recruited "unconscious agent" Edward James Gordon — nicknamed Peaches — and when he left the unit in October 1990, Van Zyl was led on the kind of merry dance which must have left prospective sellers of the Eiffel Tower queuing up at his door. Peaches himself is pretty blunt about the relationship between himself and his handlers: "Ek het hulle verneuk. Hulle was f***** dom," he declared in a sworn affidavit submitted to the commission.

During the year of his association with Van Zyl (and later with fellow CCB agents Staal Burger and Ferdi Barnard) Peaches took well over R15 000 from the CCB and delivered nothing but lies and confidence tricks in return.

- Ordered to steal heart pills from Cape lawyer and activist Dullah Omar so they could be substituted with poison pills, Peaches simply took two pills from his sister-in-law (also a heart disease sufferer) and handed them over.

Later Van Zyl returned bearing a small glass bottle filled with a white powder — turning the powder into pill-form had apparently defeated the forensic capabilities of the CCB — and instructions to throw the powder into Omar's food.

"On the way home from the airport (where he had met Van Zyl), I opened the glass bottle and threw the powder out of the window. A little distance further on I threw the bottle away too," Peaches said.

- Asked to monitor the movements of Congress of South African Trade Unions general secretary Jay Naidoo in Cape Town, Peaches reported that Naidoo was driving a Volkswagen kombi and produced the registration number.

"This was false information. The registration number belonged to a stationary kombi on a vacant lot in Cornflower Street, Bridgetown, Athlone Cape."

Days later Peaches was instructed

A rising star in the police force tells the Harms Commission a tale of bumbling ineptitude. IVOR POWELL reports

to see that the kombi was burnt (Burning vehicles was, along with breaking people's windows, a favoured method of fighting the battle for a secure South Africa, according to Van Zyl.)

At this point an accomplice called Irvin was called in with instructions from Peaches not to burn out the kombi, but merely to pretend he had. Irvin was paid R4 000 for his efforts, at this stage Peaches was still on a salary of about R1 500.

- When requested to monitor, amongst others, Archbishop Desmond Tutu and the Reverend Allan Boesa, Peaches just looked their addresses up in the telephone directory. This was one of very few instances where he supplied correct information.

- On one occasion Van Zyl paid R3 000 of CCB funds for repairs to a car that Peaches did not own, and did not know how to drive. The repaired car, Peaches told his handler, would help his work for the CCB.

During the year of his association with the CCB, Peaches seems to have done nothing of any value for the organisation. One of his colleagues, according to Van Zyl's testimony, took part in the bombing of the Early Learning Centre in Athlone, but this was only when Van Zyl himself took charge of the operation.

On the evidence presented to the commission, however, Van Zyl was hardly more enthusiastic than his gangland recruits. He only took charge of the Early Learning Centre bombing after his superiors had expressed dissatisfaction with the way the project was progressing.

For the rest Van Zyl seemed quite happy to simply abandon projects — such as the planned assassination of Dullah Omar — after months of being jerked around on a string.

During his employment by the CCB, Van Zyl was provided with a front business and was allowed to keep all the profits on top of his R3 500 monthly salary and fringe benefits. The project he was involved in, code-named Goldie, spent R97 742 50 during the course of 1989. When he resigned from the CCB he kept the private investigation front business.

252

252

Boksburg loses its case

WMA 30/3/90 - 4/4/90

Weekly Mail Reporter

A SUPREME COURT decision yesterday signalled what could be the end of the road for the Separate Amenities Act

The Pretoria Supreme Court yesterday set aside the decision of the Conservative Party-controlled Boksburg town council to reserve the town's lake and tennis courts for whites only.

Mr Justice SW McCreath said the council decision was grossly unreasonable and the only conclusion that could be drawn was the decision to reintroduce petty apartheid had been taken mainly for political reasons

He said the majority of the town council members supported an existing political philosophy and wanted to express it without considering whether it would be in the interests of all the residents.

The judge said the council had clearly not considered other measures to relieve congestion at the lake and the existing rights of a large number of people, including whites, had been affected

A local authority had to exercise its

●To PAGE 3

2 WEEKLY MAIL, March 30 to April 4 1990

252

Boksburg appeal over-ruled

powers in the interests of its residents of the municipal area as a whole and should not act so unreasonably that its decision proved to be in bad faith, he said.

He added that the council should have foreseen that members of races excluded from the facilities would feel offended

The application was brought by former chairman of the Reiger Party management committee, Buchanan

●From Page 1

Jantjes, the Boksburg-based Colgate Palmolive company, and Boksburg businessman Roy Mountjoy

The decision was hailed by Brian Currin, national director of Lawyers for Human Rights.

He said it signalled, for all practical purposes, the end of the road for the reservation of Separate Amenities Act

Gr 30/3/90

252

CP furious as court opens Boksburg Lake to all

By Helen Grange

The Conservative Party is outraged over the "overruling of the Separate Amenities Act by the courts", following a judgment yesterday setting aside the Boksburg Town Council's decision to ban coloureds and blacks from Boksburg Lake.

The judgment, handed down by Mr Justice McCreath in the Pretoria Supreme Court, is the second court ruling overturning the implementation of separate amenities.

In October, Mr Justice C F Eloff struck down the segregation of parks in Carletonville. His judgment was motivated by the same legal arguments as was put forward by Mr Justice McCreath.

However, CP mayor of Boksburg Mr Gert Pretorius claimed yesterday that with the State President's new reform initiatives, South Africa's legal system was simply "overruling the laws of the country".

Mr Butch Jantjes, former Reiger Park management committee chairman and one of the parties in the action, said he was very happy about the decision and the fact that CP councils countrywide could now come under increasing legal pressure.

In his judgment, Mr Justice McCreath said the council had not considered alternatives to prevent congestion at the lake. The local authority had to consider the needs of all its residents without bias or prejudice.

The council had, in fact, imposed the ban to achieve political gains. In Mr Justice Eloff's Carletonville judgment, it was found that the council had pursued its racially exclusive policy to the detriment of its duties to the community.

It would be interesting to see exactly how Mr Justice McCreath came to his ruling, because Mr Justice Eloff had to do quite an egg dance to get around the constitutional Separate Amenities Act, said Professor Etienne Muremk, acting dean of the University of the Witwatersrand School of Law.

"The Boksburg judgment would appear to be based on good, sound reasoning in common law — but common law is subordinate to parliamentary law," he said.

For many years, the existence of the Separate Amenities Act would have ruled "challenges like these out of the question", the professor added.

After the Carletonville judgment, Professor Marinus Wiechers, professor of constitutional law at Unisa, said such a ruling meant that public municipal facilities had to be opened to all races.

"The effect, legally, is that local government cannot and should not be ruled by partially or by political philosophy."

Spy network probe starts on April 11

By Louise Burgers (252)

The commission of inquiry investigating the spy network in the Johannesburg City Council will begin hearing evidence on April 11 at the civic centre.

This week the Administrator of the Transvaal, Mr Dame Hough, appointed Mr Justice V G Hiemstra (75) to look into The Star's revelations of the clandestine organisation within the city's security department

Advocates Mr D M Fine, SC, and Mr W I Wepener will be leading evidence before Mr Justice Hiemstra. The judge will act as chairman and will be assisted by Mr Willem van den Berg, a former Brakpan town council treasurer

The secretary of the commission, Mr Francois Malherbe, said yesterday that a "handful" of people had already come

forward to give evidence. Lists were also being compiled of people who would be subpoenaed to testify before the commission.

"The terms of reference of the commission are to inquire into the validity and justification of alleged irregularities in connection with certain security matters in the security department of the city council, as exposed in the press, and to further investigate the question whether any violation of any ordinance, regulation or other Act in regard to the safeguarding of the council's information in connection with security matters have occurred," Mr Malherbe said

Several city council officials implicated in the affair are expected to be called. The director of public safety, Mr John Pearce, and town clerk Mr Manie Venter have indi-

cated they are prepared to give evidence. The chairman of the management committee, Mr Jan Burger, said the council would "co-operate fully" with the commission. Mr Burger has denied any knowledge of the spy ring.

The Auditor-General is conducting a separate investigation into the funding of the spy network within the council security department

Those wishing to testify before the Hiemstra Commission have been asked to contact Mr Malherbe at (011) 472-1400 extension 323, or by writing to Private Bag X30, Roodepoort 1725

Mr Hough's decision follows a request, made in Parliament, by the Minister of Local Government, Mr Amie Venter, to the TPA

Star 30/3/90
252

CP man acquitted on election charges

A Boksburg Conservative Party town councillor, Mr T J Ferreira, was acquitted in the Boksburg Magistrate's Court yesterday on charges of failing to furnish the names and addresses of the compiler and distributor of his election posters in the municipal elections in October 1988.

The magistrate, Mr Bill Myburgh, said the State had failed to prove its case against Mr Ferreira beyond reasonable doubt. Mr Ferreira, chief whip of the CP caucus in the town council, had pleaded not guilty.
— East Rand Bureau.

Probe into new constitutional model begins

Stat 30/3/90 Pretoria Correspondent

252

The South African Law Commission has begun its investigation into possible constitutional models for a post-apartheid South Africa

The investigations follow a brief by President de Klerk, which he announced during his speech at the opening of Parliament on February 2

The brief includes

- The identification of basic matters and institutions to be provided for in a future constitution, with a view to protection of human rights,
- The identification of the main types of democratic constitutions to be considered,
- An analysis of the different ways of protecting

citizens' individual rights and rights of "collective units, associations, minorities and nations" in each constitutional model, and

- A discussion of the possible methods by which a future constitution can be safeguarded

The commission has invited written suggestions before May 31. Any person or body that wishes to make oral representations is requested to submit a brief resume of the proposal, with a request to be heard, in writing before May 31. Representations should be addressed to the Secretary, South African Law Commission, Private Bag X668, Pretoria, 0001. The investigation will be completed by December 31.

**Council spy
inquiry is
ready to roll**

Star 31/3/90
The commission investigating the spy network in the Johannesburg City Council begins hearing evidence on April 11.

Mr Justice V G Hiemstra has been appointed to look into The Star's revelations of the clandestine organisation.

Any of the public wishing to give evidence should contact commission secretary Mr F Malherbe at (011) 472-1400, Ext 323, or write to Private Bag X30.