PUBLIC SECTOR GOVT. - JUSTICE

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JULY — SEPT.

Legal system's future to be debated

Star 11/7/91

Own Correspondent (252)

DURBAN — The hotly-debated issue of the future of South Africa's legal system will be one of the topics covered by local and international attorneys and judges at the General Council of the Bar's National Bar Conference starting in Durban this week

The keynote address will be delivered by Madam Justice Louise Arbour of the Ontario Court of Appeal, who has published widely in criminal law and on constitutional matters

Other speakers include Mr Justice D Ipp of the Supreme Court of Western Australia and the Chief Justice of South Africa, Mr Justice M M Corbett

Sweden pledges R2,5m for Alexandra 'court'

WILSON ZWANE

SWEDEN has pledged R2,5m for the establishment of a dispute resolution centre in Alexandra township, Alexandra Civic Organisation (ACO) official Ben Dhlomo said yesterday.

Plans to set up the township's dispute resolution centre or a "community court" — the first of its kind in SA — were at an advanced stage and "depending on the availability of funds the centre will open its doors to the public within two weeks", Dhlomo said Btday 2/7/91

US support

"The 11 people being trained in mediation mechanisms by a team of legal experts are almost ready to begin their work at the centre

" The only obstacle to opening the centre to the community is a lack of funds.

"But Sweden has pledged R2,5m to the project and other countries, including the US and Canada, have indicated they would support the venture," Dhlomo said

The centre would mediate in community disputes, he said

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

Mayekiso said these community courts would be unlike the notorious kangaroo courts, which "were often constituted at a whim of individuals".

The Justice Department has said the establishment of a dispute resolution centre in Alexandra had much in common with its desire to make the administration of justice accessible to all people of all levels

The Wits Centre for Applied Legal Studies, the National Association of Democratic Lawyers and lawyers in private practice are contributing to the Alexandra project by training people in dispute resolution mechanisms

A spokesman for the Wits centre, Edwin Molahlehi, said if the project was successful it could be used in other communities which "want this kind of assistance"

'Drip' deaths no prosecutions

252

ARG 27/7/91

JOHANNESBURG — Attorney-General Mr Klaus von Lieres has decided no one will be prosecuted for the deaths of 13 babies at private clinics after suspected bacterial infection from drips

But there will be inquests into the deaths which occurred in October last year

Mr Von Lieres said although there would be no prosecutions, there was prima facie evidence the babies died from other than natural causes

Evidence and documentation would be forwarded to magistrates in whose area of jurisdiction the babies died

The inquests would determine what the causes of the deaths were and whether anyone was criminally responsible for them, he said

An investigation into the possibility of 10 adults having died from similar circumstances would be completed soon

The deaths of the babies were blamed last year on intravenous drips from medical products manufacturer Sabax

Most of the deaths occurred after babies contracted klebsiella septicaemia at the Morningside and Park Lane clinics

After being treated for largely minor complaints, the babies' conditions suddenly deteriorated and many ended up with lung collapse or renal failure

Parents were left owing up to R30 000 to the clinics — The Argus Correspondent, Sapa

Lawyers must pay back

Own Correspondent (252) CT 3/7/91

JOHANNESBURG — Three Pretoria advocates acting for the Minister of Defence, General Magnus Malan, in a Civil Cooperation Bureau matter have been ordered to repay about R190 000 of the R289 000 they charged the state attorney's office for a three-day court appearance.

The advocates — Mr Willem Burger SC, Mr Piet Kemp and Mr Hennie Goosen — have been given 14 days to repay part of their fees which a Bar Council inquiry found "are so excessive that they are shocking".

The Bar Council last month ordered six advocates — including Mr Burger, Mr Kemp and Mr Goosen — who appeared for the state during the Harms Commission to repay a "substantial portion" of the fees paid to them.

Bar Council chairman Mr Brian Southwood yesterday also referred the instructing attorney in the case, Mr B Minnaar of the Pretoria state attorney's office, to the Law Society of the Transvaal for investigation and possible disciplinary action.

The council found during a two-day investigation last month that the state attorney's office paid the fees within five days of the account being rendered "without an attempt to agree upon the fees or a query being raised about the fees".

It found that Mr Burger charged R123 480 for consultations, drafting of affidavits, preparation and three days in court, while Mr Goosen and Mr Kemp charged R82 920 each. They were appearing for General Malan, the chief of the Defence Force and Colonel Malcolm Kinghorn in an action brought by three CCB members, Mr Derrick Farrell, Mr Riaan Bosch and Mr Daan du Toit.

"The three urgent applications were virtually identical. The three applications were heard together as one application on three days," Mr Southwood said.

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Lawyers (252) CT 3/7/91

The council said it was concerned about the refusal of Pretoria state attorney Mr G Genis to attend the two hearings.

Mr Genis said yesterday he would not at this stage disclose his reasons for not attending.

He said he had set the parameters within which fees could be charged at R360 an hour for consultations and up to R6 000 a day for a court appearance.

He said the State Attorney's office appeared in litigation on behalf of all State departments. It paid advocates and their fees were then claimed from the relevant State department.

Mr Genis could not say how much advocates were paid for appearing for the State each year but said it ran into millions of rands.

Mr Minnaar said he could not comment on the Bar Council statement as he could not understand why he was being referred to the Law Society for investigation.

Neither Mr Burger nor Mr Goosen were available for comment. Mr Kemp said he was prepared to accept the Bar Council's recommendations.

According to a Bar Council source, senior counsel were entitled to charge up to R12 000 for a first day's appearance in court and up to R6 000 for each subsequent day.

Public concern at advocates' charges involving public funds was highlighted earlier this year when General Malan told Parliament R2,25m had been paid to senior counsel representing the SADF at the Harms Commission.

Margo opts to retire from bench

CT 3/1/91 252

Own Correspondent

JOHANNESBURG — Acting Supreme Court Judge Mr Justice Cecil Margo said yesterday he has "had enough" and would retire aged 76 with effect from the end of next month

At least three other judges, Mr Justice B O'Donovan, Mr Justice J Levy and Mr Justice D Vermooten are also retiring

Mr Justice Margo said yesterday he would continue with his "exciting and interesting" work as chairman of the Securities Regulation Panel and the Standing Committee on Company Law

TO QUIT ..
Cecil Margo

Margo initially retired in 1985 but was re-appointed as acting judge in the Witwatersrand division of the Supreme Court

He chaired the commission of inquiry that laid the foundations for the implementation of VAT later this year

He headed several major airline disaster investigations, including the 30-month probe into SAA's Helderberg crash.

He recently granted a controversial order prohibiting the Sunday Times from publishing an article about Sicilian immigrant Mr Vito Palazzolo

● **Residence for Palazzolo? — Page 3**

Advocates ordered to pay back part of CCB case fees

The Argus Correspondent

PRETORIA — The Bar Council of Pretoria has ordered three advocates who represented the Defence Force against three CCB members to repay part of the "shockingly excessive" fees they charged for their services

The council yesterday announced this action against Mr S W Burger SC, Mr P Kemp and Mr H Goosen

The fees were paid out by the SADF's instructing attorney, Mr B Minnaar of the Pretoria State Attorney's Office

Mr Minnaar's conduct in paying the fees without ascertaining the reasonableness of the charges is to be referred to the Law Society of the Transvaal for investigation, and if necessary, disciplinary action will be taken

Fees charged by the three advocates to defend the SADF against claims by CCB operatives Mr Derrick Farrell, Mr Riaan Bosch and Mr Daan Du Toit amounted to R123 480, R82 920 and R82 920 respectively

The CCB members claimed in urgent applications during February and March that the SADF had breached an employment contract when the covert organisation was ordered to disband

"The Bar Council has decided to reduce the fees to what it regards as reasonable in all the circumstances," a Bar Council statement said

The fees were therefore reduced to R42 300, R28 200 and R28 200 respectively

The three advocates had been instructed to repay the difference between what they had charged and the council's reviewed amounts within 14 days

"The Bar Council is also deeply concerned about the fact that such excessive fees were paid by the State Attorney's Office to the three advocates and the circumstances under which these fees were paid

"No attempt was made by the attorney concerned to ascertain the reasonableness of the fees and they were paid within five days of the account being rendered, without an attempt to agree upon the fees or a query being raised about them," the Bar Council statement said.

Mr Justice Margo lays down his gavel

ACTING Supreme Court judge Mr Justice Cecil Margo, 76, said yesterday he had "had enough" and would retire with effect from the end of next month 252

At least three other judges, Mr Justice B O'Donovan, Mr Justice J Levy and Mr Justice D Vermooten, are also retiring

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He initially retired in 1985 but was reappointed as acting judge in the Witwatersrand division of the Supreme Court

JONATHON REES

He chaired the commission of inquiry that laid the foundations for the implementation of VAT B1 Day 3/7/91

He also headed several air disaster investigations, including the 30-month probe into the Helderberg tragedy and an inquiry into the crash that killed Mozambican president Samora Machel

From 1977 to 1982, Mr Justice Margo chaired a commission into civil aviation

He recently granted an order prohibiting the Sunday Times from publishing an article about Sicilian immigrant Vito Palazzolo

State's advocates ordered to repay fees

THREE Pretoria advocates acting for Defence Minister Gen Magnus Malan in a CCB matter have been ordered to repay about R190 000 of the R289 000 in public funds they charged the State Attorney's office for a three-day court appearance

The advocates — Willem Burger SC, Piet Kemp and Hennie Goosen — have been given 14 days to repay part of their fees which a Bar Council inquiry found "are so excessive that they are shocking"

Last month the Bar Council ordered six advocates — including Burger, Kemp and Goosen — who appeared for the State during the Harms Commission to repay a "substantial portion" of their fees

Bar Council chairman Brian Southwood said the advocates faced possible disciplinary action He also referred the instructing attorney in the case, B Minnaar of the Pretoria State Attorney's office, to the Law Society of the Transvaal for investigation and possible disciplinary action

PATRICK BULGER

The council found during a two-day investigation last month that the State Attorney's office paid the fees "without an attempt to agree upon the fees or a query being raised about the fees"

It found that Burger charged R123 480 for consultations, drafting of affidavits, preparation and three days in court, while Goosen and Kemp charged R82 920 each They were appearing for Malan, the Chief of the SADF and Col Malcolm Kinghorn in an action brought by three CCB members

☐ To Page 2

Advocates

☐ From Page 1

"The three urgent applications were virtually identical The members of the Pretoria Bar were required to consult with their clients and their witnesses, draw answering affidavits in each of the applications and appear in court The three applications were heard together as one on three days," Southwood said

The council said it was concerned about the refusal of Pretoria State Attorney G Genis to attend the two hearings

Genis said yesterday he would not at this stage disclose his reasons for not attending He said he had set the parameters within which fees could be charged at R360 an hour for consultations and up to R6 000 a day for a court appearance

He said the State Attorney's office appeared in litigation on behalf of all state departments which then reimbursed the office after it paid advocates their fees

Minnaar said he could not comment on the Bar Council statement as he could not understand why he was being referred to the Law Society for investigation

Neither Burger nor Goosen were available for comment but Kemp said he was prepared to accept the recommendations

A Bar Council source said senior counsel were entitled to charge up to R12 000 for a first day's appearance in court and up to R6 000 for each subsequent day

Public concern at advocates' charges involving public funds was highlighted earlier this year when Malan told Parliament R2,25m had been paid to the SADF's senior counsel at the Harms Commission

SADF paid too much

By Helen Grange
Pretoria Bureau

The Bar Council of Pretoria has decided to take disciplinary action against three advocates who represented the SA Defence Force in a view against the Co-operation (CCB) Bureau (CCB).

The council resolved yesterday to charge them with unprofessional conduct.

It is alleged that the three advocates charged by the SADF, Mr Gerrit Munnik, SC, Mr Gerrit Munnik, SC, and Mr Gerrit Munnik, SC, had been paid excessive fees by the SADF.

The CCB was established by the SADF to investigate allegations of misconduct by members of

Harms lawyers face discipline

(252)

Dowfax 4/7/91.

THE Pretoria Bar Council will take disciplinary action against three of its members who, it said, charged "excessive and shocking" fees when they appeared for senior Government officials during the Harms inquiry into hit squads.

In a statement on Tuesday, chairman of the Pretoria Bar Mr BR Southwood SC said a council-appointed inquiry into the fees had found they were excessive and shocking.

The council had ordered the fees be reduced and had instructed the three members to refund the difference to the State Attorney within 14 days, according to Southwood.

Mr SW Burger SC will have to pay back R81 180, while Mr P Kemp and Mr H Goosen will have to pay back R54 720 each.

The initial fees paid by the State Attorney to Burger amounted to R123 480, and to Kemp and Goosen R82 920 each.

The council also decided to refer the conduct of the instructing attorney, Mr Minnar of the State Attorney's Office in Pretoria, to the Law Society of the Transvaal for investigation and disciplinary action if necessary.

The three members of the Bar were appearing on behalf of the Minister of Defence, the Chief of the SA Defence Force and Colonel Malcolm Kinghorn in urgent applications during February and March by members of the Civil Co-operation Bureau

The inquiry panel comprised members of the Bar Council and Mr J Marais, a senior attorney and member of the Law Society of the Transvaal.

The Council further expressed its concern about the refusal of the State Attorney, a Mr Genis, to attend the inquiry or to permit his deputy, a Mr Wagner, to do so. - *Sapa*

Neethling can appeal ruling

252

Sowetan 4/7/91 -

Police forensics chief Lieutenant-General Lothar Neethling was yesterday granted leave by the Appeal Court in Bloemfontein to appeal against the rejection of his defamation action against *Vrye Weekblad*

Neethling had claimed R1 million from editor Mr Max du Preez, Caxton Ltd, Wending Publications, reporter Mr Jacques Pauw and the newspaper itself for reports on November 17 1989 and December 1, 1989.

The reports were based on allegations by former police captain Mr Dirk Coetzee about murders and terror attacks by the South African Police special unit at Vlakplaas

The claim, together with one for R500 000 against the *Weekly Mail* for a report in the November 24-30 1990 edition, was rejected by Mr Justice JC Kriegler in the Witwatersrand Local Supreme Court on January 19

Kriegler subsequently granted Neethling leave to appeal against the decision in the case of the *Weekly Mail* on the basis that the point of law by which the claim had been rejected was still "unexplored territory". The judge had found that justifiability was a defence without the truthfulness proved of the allegations published

He, however, rejected the application to appeal against the finding regarding *Vrye Weekblad* - *Sapa*

CCB advocate may appeal on repayment

The Argus Correspondent

PRETORIA — An advocate who has been ordered by the Pretoria Bar Council to repay R54 720 in fees he charged to represent the SADF in a CCB matter is considering appealing against the order

Mr Piet Kemp, along with another two advocates, Mr Willem Burger SC and Mr Hennie Goosen, is facing disciplinary action by the Pretoria Bar Council, which found that the three advocates had charged "shockingly" excessive fees amounting to over R200 000 in total

The action is likely to take the form of a formal disciplinary hearing, in which a maximum penalty of a R2 000 fine or a month's suspension can be imposed

Mr Kemp said yesterday that he would consider whether to appeal against the finding to the general Bar Council within the next week If he did appeal, the order would have to be suspended pending the outcome, he added

Mr Kemp was one of six advocates who appeared for the state during the Harms Commission who were ordered earlier this year to repay a "substantial portion" of their fees

Advocate may face action after outbidding ANC

(252)

Star 4/7/91

By Helen Grange
Pretoria Bureau

The conduct of Danie Heyns, an advocate in the Transvaal Attorney-General's office, in outbidding the ANC in the sale of Grootvlei mining village may lead to disciplinary action by the Attorney-General's office if deemed political.

John Welsh, Deputy Attorney-General of the Transvaal and Mr Heyns's controlling officer, said yesterday he was unaware of Mr Heyns's participation in the auction of Grootvlei — but that it was understood that civil servants had to refrain from political activities.

Mr Heyns on Tuesday bought the East Rand village for R4,6 million on behalf of a consortium of farmers and businessmen called Grootvlei Ontwikkellings.

Although he said after the auction that he had appeared on behalf of a close corporation and had no political motives, the close of the sale was greeted by cries of "Op die boere!" and "Mooi so!" from residents.

The ANC's attorney, Ismail Ayob, was outbid by R100 000.

"If one of our officials is perceived to have acted politically and not in the interests of justice, we will not hesitate to take steps," said Mr Welsh.

The relevant incident would be judged accordingly, he added.

Fees-row advocate considering appeal

Star 4/7/91

252

By Helen Grange
Pretoria Bureau

An advocate who has been ordered by the Pretoria Bar Council to repay R54 720 in fees which he charged to represent the SADF in a Civil Co-operation Bureau matter is considering appealing.

Piet Kemp — with Willem Burger, SC, and Hennie Goosen — is facing disciplinary action by the council, which says they charged "shockingly" excessive fees amounting to more than R200 000.

The action is likely to take the form of a formal disciplinary hearing, in which a maximum penalty of a R2 000 fine (or one-month suspension) can be imposed.

Mr Kemp said yesterday he would consider within the next week whether to appeal against the finding to the general council.

If he did appeal, the order would have to be suspended pending the outcome, he added.

Mr Kemp said he was extremely upset that the Pretoria council "did not have the courtesy" of informing him of its decision. He had heard of it through the press.

He indicated that the two-week period given in which to pay back a large amount of money would be difficult.

"I would have to take out a second bond on my home or get a bank loan in order to pay it back in this time," Mr Kemp said.

He was one of six advocates who appeared for the State during the Harms Commission.

They were ordered earlier this year to repay a "substantial portion" of their fees.

Mr Burger was also one of the six. The other four were advocates P J de Jager, S J Maritz, L J Visser and M D du Preez.

Neither Mr Burger or Mr Goosen was available for comment

Advocate's purchase of village queried

ARG 4/7/91

(252)

The Argus Correspondent

JOHANNESBURG — The conduct of Mr Danie Heyns, an advocate in the Transvaal Attorney-General's office, in outbidding the ANC in the sale of Grootvlei mining village, may lead to disciplinary action by the AG's office if deemed political

Mr John Welsh, Deputy Attorney-General of the Transvaal and Mr Heyns's controlling officer, said he was unaware of Mr Heyns's role in the auction of Grootvlei, but it was understood that civil servants must refrain from political activities

On Tuesday, Mr Heyns bought the East Rand village for R4,6 million on behalf of a consortium of farmers and businessmen called Grootvlei Ontwikkelings

Although he said after the auction he had appeared on behalf of a closed corporation and had no political motives, the sale was greeted by cries of "Op die boere" and "Mooi so" from residents

The ANC's attorney, Mr Ismail Ayob, was outbid by R100 000

"If one of our officials is perceived to have acted politically and not in the interests of justice, we would not hesitate to take steps," said Mr Welsh

The incident would be judged accordingly, he said

Mr Welsh said Mr Heyns was now on leave

Heyns acted 'above board'

THE TRANSVAAL Attorney-General's office had no information that a staff member, state advocate Mr Danie Heyns, was acting politically when he bought the East Rand mining village of Grootvlei on Tuesday, deputy attorney-general Mr John Welsh said yesterdasy.

Earlier reports said Heyns, who paid R4,6 million for the village, may be disciplined if his actions were found to be political.

Civil servants are not allowed to take part in political activities.

Welsh said Heyns' action had been above board.

"He discussed the matter with the director-general and he took leave. Whatever he did was not in his official capacity and was not as a member of staff." = *Sapa*

A lesson in the 'ultimate exercise of democratic power'

w/mat 5(7-11/7/91:

252 (8)

LAW & THE COURTS

Carmel Rickard

For a First World country in the northern hemisphere on the other side of the world, Canada has a surprising amount to offer to many of South Africa's current legal debates. Perhaps most pertinent is the experience gained in the not quite 10 years since Canada adopted a constitutionally entrenched charter of rights

Since it seems certain a similar bill of rights will be part of the constitution under a new order in South Africa, dialogue on the issue could be valuable

Delegates to the national Bar conference, taking place in Durban on Thursday, will be joining in that dialogue with guest speaker Madam Justice Louise Arbour of the Court of Appeal for Ontario.

A legal academic until her appointment to the Supreme Court of Ontario in 1987, she has particular expertise in criminal law and constitutional matters.

One of the most intriguing observations made by the judge is that the successful introduction of an entrenched charter of rights in Canada was partly due to the fact that it was implemented in two stages

The final draft of the charter was adopted in its entirety and introduced in 1982, but the sections dealing with equality and affirmative action became effective only in 1985

Judge Arbour is convinced that this had two major benefits.

It allowed the various legislatures three years to get their houses in order They could scrutinise existing legislation and, knowing equality and affirmative-action clauses would take effect not far down the road, could act beforehand to remove discriminatory language, provisions and practices.

It also gave the law-makers time to anticipate grey areas and decide whether to stand by existing statutes or change them.

This prevented the courts from being immediately clogged with equality-based actions challenging laws ear-marked for change anyway Much discriminatory legislation was thus changed through self-examination rather than litigation.

The moratorium had a second major advantage in preparing the judiciary for the role it would have to play

Some judges were uneasy about the powers they were given by the charter, particularly since when it was introduced, few had much expertise on issues likely to be raised before them in anti-discrimination actions

During the three-year moratorium equal rights and affirmative-action issues were researched by legal academics, conferences were held at which competing views were aired, and the legal community was prepared for the demands which lay ahead

While this was happening, the judges began to use their powers under the charter but in fields where they already had expertise and felt comfortable extending rights, such as criminal procedure

According to Judge Arbour, the decision to phase in some rights gave the judiciary time to prepare for equality actions by steeping themselves in current debates and forming sophisticated opinions on the issues involved This meant that from the start, the quality of decisions on these matters was high, and the courts were saved from a period of reversing initial decisions delivered without enough experience.

The experience of introducing a charter of rights also taught Canada that the consequences of such a step are often not anticipated by the drafters

For example, different groups may use the rights in different ways In English-speaking parts of Canada, charter litigation has focused on legal rights and fundamental freedoms, while in Quebec the focus has been on language and education rights

Judge Arbour says that once judges have to adjudicate on a constitutionally entrenched charter of rights, there can no longer be any doubt of their "activist" law-making role

"Under a bill of rights, a judge's job is very often to defeat the will of the duly elected majority, vindicating the rights of the minority when those fundamental rights have been abused."

For a judge who believes in democracy, this conflict may be difficult to reconcile. But her view is that a bill of rights is the "ultimate exercise of democratic power. It is the choice of a democracy to say to the judiciary, 'keep us under control'.

"If judges can do this in a morally persuasive way, their judicial pronouncements should eventually form part of the political culture of the majority

"In that way, democracy is ultimately vindicated"

Bill of rights won't ensure better society, says judge

Star 5/7/91

Own Correspondent (252)

DURBAN — The most difficult task for the drafters of a bill of rights was to recognise that it would be used in the future to meet a social and political reality unimagined by its framers

This was said yesterday by Madam Justice Louise Arbour of the Ontario Court of Appeal, delivering the keynote address at the general council of the National Bar Conference in Durban.

Hundreds of members of the legal profession, including local and overseas judges, are attending the conference at Durban's Elangeni hotel

Madam Justice Arbour, who has published widely in the field of criminal law and constitutional matters, said that in her view a bill of rights was not a universally acceptable document, capable, merely by the force of its language, to bring about a better society

Disputes

Rather, a bill of rights was a product of its own culture, and its popular reception was somewhat unpredictable, as was the enthusiasm potential litigants would show for taking their political disputes to court

The more the document spelt out the scope and operation of judicial review, the more it would alleviate potential problems of legitimacy in the exercise of constitutional power, she said

She said the independence of the judiciary would be enhanced by putting in place a system for the articulation and policing of judicial ethics

"Equally essential to the legitimacy of a properly composed judiciary is the need to reconcile independence and accountability

"However, just as impartiality and diversity are not incompatible, I believe that the independence of the judiciary is not threatened by putting in place a system responsible for the articulation and policing of judicial ethics"

There had to be a discipline forum administered by judges, as there was for other professions, to hear complaints from the public of unprofessionalism, bias or abuse of authority

Tough task faces those drafting rights bill for a better society

252

ARG 5/7/91

The Argus Correspondent

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Madam Justice Arbour, who has published widely in the field of criminal law and constitutional matters, said in her view a bill of rights was not a universally acceptable document, capable merely by the compelling force of its language to bring about a better society

Rather a bill of rights was a product of its own culture and its popular reception was somewhat unpredictable as was the enthusism potential litigants would show for taking their political disputes to the courts

The more the document spelt out the scope and operation of judicial review, the more it would alleviate potential problems of legitimacy in the exercise of constitutional power, she said

In an interview, she said there had not been capital punishment in Canada for decades and the subject was a "non-issue"

Altogether nine judges will speak at the conference

Making the law serve interests of powerless

~~246~~ 252

Star 5/7/91

JO-ANNE COLLINGE reports on a sustained experiment in taking legal services beyond the islands of privilege.

LAWYERS can only be persuaded to abandon their "enclaves of privilege in a wasteland of misery" if legal institutions are radically refashioned

This is the view of the Legal Resources Centre following the remarks of Mr Justice Johan Kriegler, who levelled the "enclaves of privilege" accusation against his profession recently

LRC spokesman Geoff Budlender says the very existence and the astonishing growth of the LRC underscores the judge's accusation that the cost of representation by lawyers in conventional private practice means the vast majority of South Africans are denied access to the law

But it is not the LRC's mission to exist as a rebuke to the profession, its purpose is to explore mechanisms for making the law serve the interests of the powerless

In just more than a decade, the organisation has expanded from one small office to a national office and six regional offices employing about 100 staff members, of whom a third are lawyers In a single year, the LRC sees about 20 000 people

The LRC's regional offices also service 100 independently sponsored regional advice offices — training staff, liaising by telephone, taking more difficult cases on referral

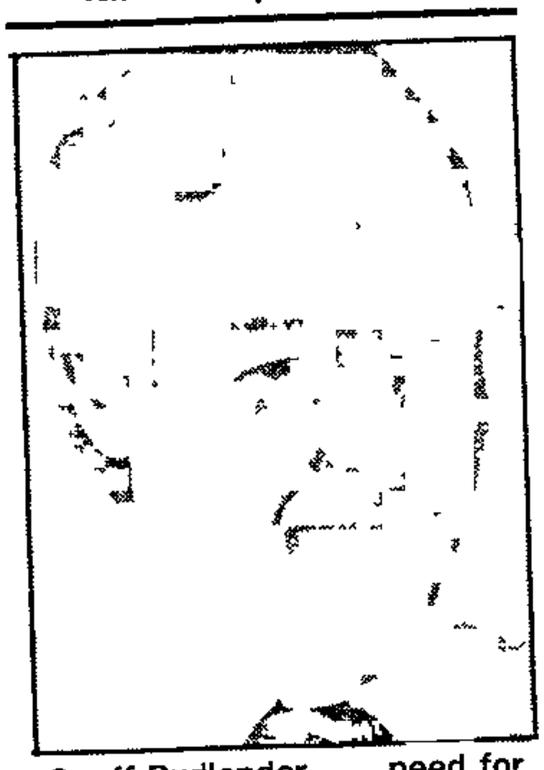
The pattern of demand is as telling as the volume The LRC is not a legal aid bureau, geared to defending the poor in criminal matters Much of its work is a response to people who want to use the law to assert their fundamental rights

It stands, for instance, by the jobless, the landless, the homeless and victims of State-sponsored violence in their quest for social justice

Until recently the bulk of this work was a defence against the ravages of apartheid — finding legal loopholes to stop forced removals, check shack demolitions, counter pass laws and prevent landlords exploiting Group Areas Act "illegals"

With the demise of key apartheid statutes, blacks may no longer be hounded on the grounds of race — but most remain poor and often powerless

Argues Mr Budlender "Public-interest legal services are needed in societies which have never known apartheid In a South Africa where institutionalised discrimination is set aside,



Geoff Budlender . need for a proper legal aid scheme.

there will be a continuing need for the poor to have access to focused legal services"

The word "development" features prominently in his scenario for the LRC It has a twofold application the development of the law itself, through test cases, and the employment of law in the service of socio-economic development

"A bill of rights will open up vastly new areas for the development of the law The LRC is well placed to make a vital contribution as it is likely to see the cases which can potentially be dealt with through the application of a bill of rights

"For rights to prove effective, the direction in which the courts are guided should be correctly set in early cases"

The role of lawyers within development is not unrelated It focuses on securing "second generation" constitutional rights — social and economic benefits — for society s poorest

The LRC has always sought "maximum impact cases", where large groups may benefit from a single judgment It has often served entire communities This focus is likely to be sharpened in the future

Hopefully this will take place in a context of expanded public assistance for the more routine legal problems Mr Budlender believes that a "proper State-funded legal aid scheme, working through community advice offices and a legal aid board," holds hope for significantly improved access to the law under a democratic government

Publicly funded projects could harness the vast pool of academically qualified lawyers barred from practising by restricted opportunities for serving articles Law graduates' applications for articles outnumber available positions five to one

At present there is a cautious loosening of the articles' stranglehold to accommodate law clinics such as those run by the LRC and on various campuses It may be further relaxed in respect of the public defender programme planned by the Legal Aid Board

Without conceding to the primacy of State-funded legal assistance, Mr Budlender argues there will always be an absolute need for institutions like the LRC, which is funded by non-governmental bodies and is fully independent of the State

He points to the experience of the US Legal Services Corporation, which is State-funded and contracts with various bodies to represent those who cannot afford private legal representation

One of its partners, California Rural Legal Assistance, acted for farm workers against powerful land-owning interests Ronald Reagan was governor of California at the time Protracted battles ensued when Mr Reagan became president and tried to close down the Legal Services Corporation — first by attempting to stop funding and then by installing hostile members on its board

"You've got to have people outside the system to keep the system honest," comments Mr Budlender

Not that the relationship needs to be one of unrelieved antagonism The independent Legal Assistance Centre in Namibia acts in some matters as a consultant to the Namibian government In others, it represents members of the public against the government "There is some tension involved, but it works," says Mr Budlender

While foreign funding for political trials in South Africa is surely drying up, the LRC's developmental orientation has won the support of foreign funding agencies, and no drastic cuts are likely

Nevertheless, Mr Budlender remarks that the South African legal profession has not developed the tradition that exists elsewhere of private-sector practitioners assisting public-interest law programmes □

race for executive positions

They include foreign affairs chief Thabo Mbeki and ANC's other crown prince, Umkhonto we Sizwe chief of staff Chris Hani, that he — which would include the

● To Page 2

3 shot dead at squatter camp

Star 5/7/91

Three men were shot and killed when they arrived at the Westonaria squatter camp late yesterday afternoon apparently looking for accommodation

Captain Henriette Bester of the West Rand Police said the men, identified only as Douglas, Steven and Whitey, arrived at the camp on Rheeder's Farm in Rietfontein at about 4 30 pm

They entered the squatter camp and several shots were heard

Police were called and they found the bodies of the three men The motive for the killing is not yet known — West Rand Bureau

Africa group formed to promote human rights

Star 5/7/91

By Mike Siluma
Star Bureau

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LONDON — As the pressure for democracy grows across the African continent, a new pan-African organisation, aimed at promoting the establishment of democratic rule and multipartyism, is to be formed in London this weekend

The body, called the International Institute for Human Rights in Africa, will be founded by pro-democracy activists from countries as disparate at Mozambique, Nigeria, Zimbabwe, the Ivory Coast, Tanzania and Kenya

Among those expected to participate in the two-day conference are the exiled King Moshoeshoe II of Lesotho, Nigerian leader and prominent anti-apartheid activist General Olusegun Obasanjo and veteran opposition Kenyan politician Oginga Odinga

The organisers said their initiative was aimed at supporting Africa's "new struggle" for liberation and independence from both economic stagnation and political repression

Police killers set free

PRETORIA — Two policemen killers, Jack le Grange and Robert van der Merwe, were among those released under the President's remission of sentence, a Correctional Services spokesman confirmed last night

The two murder and robbery detectives murdered drug-dealer Mr Bennie Ogle, and were sentenced to death The sentence was later commuted

A Correctional Services spokesman said last night that 4 200 prisoners had benefited from President De Klerk's announcement

However, it was policy not to divulge their identities

An organisation identifying itself as the "White Wolves" yesterday released a letter addressed to "the authorities" calling for the release of racist killer Barend Strydom

Copy to Bush

The former SA policeman and insurance company debt collector was sentenced to death eight times for killing blacks in Pretoria His sentence was commuted to life

The letter, typed against a drawing of a wolf, said the organisation would try to pursue peaceful means to "achieve" its goals

It said a copy of the letter would be sent to US President George Bush

The US administration has been expressing reservations about lifting sanctions against South Africa on the grounds that not all "political" prisoners eligible for freedom have been released to date, despite assertions to the contrary by the South African Department of Justice — Sapa

LRC takes up Teffo case

6/11/91

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PAT DEVEREAUX

THE case of Aaron Teffo, the black man who was savagely beaten up on June 7 by a Florida resident for allegedly exposing himself to a white woman while urinating, will be taken up by the Legal Resources Centre

"We agreed to take on the case of Mr Aaron Teffo of Meadowlands, Soweto, after his brother approached us," said the LRC's Geoff Budlender this week.

The case involved charges being brought against the assailant and a possible claim for damages if Mr Teffo failed to recover.

He is still suffering from disorientation and possible blood clots on the brain after the attack almost a month ago.

A journalist, Jan de Koning, spotted the injured Mr Teffo lying in a pool of blood near the Florida railway station

He called an ambulance despite being threatened by white residents

Legal fees reduction 'a precedent'

Star 6/7/91

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The Pretoria Bar Council has set an important precedent by ordering three advocates to repay the greater part of the fees they charged for appearing in a case that concerned the Civil Co-operation Bureau, says Professor John Dugard of the Centre for Applied Legal Studies at the University of the Witwatersrand.

"It's important especially for taxpayers. It has been the practice in the past for the State Attorney to brief counsel who have been well disposed politically to the State, and to allow them to charge high fees without query."

However, the Pretoria Bar Council ruling has changed that situation, says Prof Dugard

"An interesting feature of the Bar Council's ruling is that the instructing attorney in the CCB case was the State Attorney — and the Bar Council reprimanded him for acquiescing so rapidly in the fees the advocates charged"

The Pretoria Bar Council ruling, announced this week, was that Willem Burger SC, Piet Kemp and Hennie Goosen had charged too much for the work they did in defending the SA Defence Force against claims by CCB operatives

The fees they charged amounted to R123 480, R82 920 and R82 920 respectively, which the Bar Council reduced to what it regarded as "reasonable in all the circumstances" — R42 300, R28 200 and R28 200

The advocates were told to repay the difference within 14 days — Staff Reporter

Continued imprisonment of Sharpeville 6 queried

Star 6/7/91

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SUE OLSWANG

LAWYERS for Human Rights will expect the State to provide a "comprehensive motivation" for applying different criteria if it does not release the Sharpeville Six, who had their death sentences commuted at the same time as former Murder and Robbery Squad policemen Jack la Grange and Robert van der Merwe.

The two former policemen, who murdered two Reef drug-dealers in 1987, and Maureen Smith, who had her husband murdered in 1982, were this week released under the State President's offer of remission for first offenders. All three were initially sentenced to death for their crimes.

Colonel Danie Immelman, spokesman for the Department of Correctional Services, yesterday reportedly confirmed that Robert van der Merwe and Maureen Smith were released on Thursday and Jack la Grange yesterday morning.

Captain Hendrik Johannes (Jack) le Grange, former commander of the East Rand Murder and Robbery Squad, and Sergeant Robert van der Merwe, formerly with the Brixton Murder and Robbery Squad, received

FREE: Captain Jack la Grange

FREE: Maureen Smith.

double death sentences in March 1988.

They were found guilty of murdering Benny Ogle, of Ennerdale, in September 1987 and Peter Pillay, of Eldorado Park, in October the same year.

In November 1988 President P W Botha commuted the former policemen's death sentences and the death sentences of the Sharpeville Six Jack la Grange's death sentence was commuted to 25 years' imprisonment and Robert van der Merwe's to 15 years. Both men served only three years.

Maureen Smith spent one year on Death Row before her sentence was commuted to 20 years' imprisonment She spent nine years in jail.

Lawyers for Human Rights yesterday said in a statement: "Since they (La Grange and Van der Merwe) are both first offenders, their sentences qualify for remission of one third of the period in terms of the recent presidential decree. With that in mind, a prisoner with a 25-year sentence would expect a sentence of approximately eight years less, namely 17 years.

"Not surprisingly, we were shocked to hear this morning that both La Grange and Van der Merwe had been released after spending three years in jail."

LHR said it made enquiries with the Department of Prisons and the Parole Board and established the Department of Prisons was also entitled to shorten any sentence by one third based on good behaviour.

Lawyers outraged while the political prisoners wait . . .

By DESMOND BLOW

THE release of murderers Jack le Grange and Robert "Wonderwefeld" van der Merwe on Friday after only three years' imprisonment has outraged leading Johannesburg lawyers

One senior counsel described it as "a travesty of justice and a slap in the face of the South African judiciary"

The release of the two common-law prisoners also threatens to blow into a political row about the non-release of "political" prisoners who are treated as common-law prisoners

Le Grange and Van der Merwe, who had originally been sentenced to death, were released on Friday under State President FW de Klerk's remission policy which provided for a remission of one third of a sentence for first offenders

But former policemen Le Grange and Van der Merwe had only served three years of a 25-year and 15-year sentence respectively

The senior advocate pointed out that the two men were given an honest and expensive trial and were found guilty of committing cold-blooded and premeditated murders for monetary gain Judge Irving Steyn had found no extenuating circumstances.

Both were sentenced to death for two murders plus a further 10 years for an attempted murder

Le Grange had been a captain in the SAP and in charge of the East Rand Murder and Robbery squad Van der Merwe had been a sergeant with the Brixton Murder and Robbery unit

They had shot two men to death for payment in a drug war and wounded a third

The first to die was Bennie Alex Ogle who was shot outside his home in Ennerdale in September 1987 Three hours later they attempted to murder Ernest Molokoane when they shot and wounded him outside his home in Mapetla

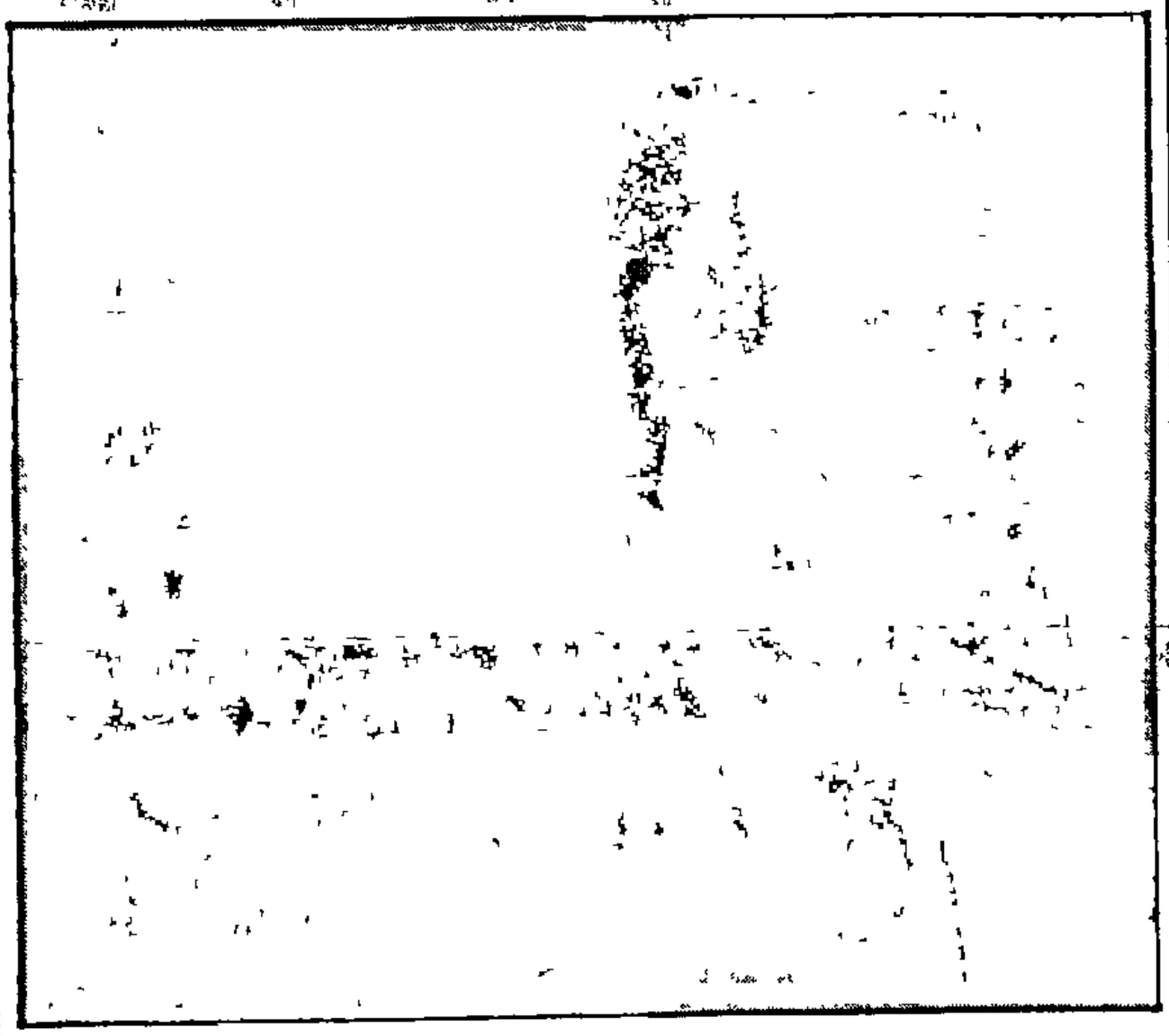
Five days later they gunned down Peter Godfrey Pillay, an Eldorado Park taxi owner on a dirt road near Riverlea

Judge Irving Steyn refused the two killers the right to appeal against their death sentences, but several months later State President FW de Klerk commuted their sentences to imprisonment after a petition had been presented to him by sympathisers of the killers

Lawyers for Human Rights have compared the release of the two former policemen to the non-release of the Sharpeville Six who were sentenced to death for the killing of Vaal councillor Jacob Dhlamini in September 1984, although there was no direct evidence to link them with the killing

The judge sentenced them to death because he found there had been "a common purpose"

They were later reprieved to serve sentences between 18 and 25 years following legal and international pressure on De Klerk



ASSASSINS ON THE LOOSE . . . An artist's impression of Sergeant Robert van der Merwe (left) and Captain Jack le Grange in the dock.

Terre'Blanche not charged

By DAN DHLAMINI

THE Transvaal Attorney-General has not yet decided whether to prosecute [illegible] black [illegible] go

Terre'Blanche is alleged to have assaulted William Mashiya near Ventersdorp on March 9 this year, after accusing him of stocktheft

But Mashiya denies that he was assaulted for stealing He claims the trouble started when he refused to sell a goat to Terre'Blanche

Mashiya alleged that after the assault, when he told Terre'Blanche he was laying a charge, the AWB leader told him the police would do nothing to him

Mashiya's lawyer Aubrey Khanyile told City Press that policemen at the Ventersdorp police station initially refused to lay a charge against Terre'Blanche

Only after a strong-worded letter to the Ventersdorp police station commander was his client's case registered

Police denied these allegations, saying the case had been thoroughly investigated and the docket sent to the A-G for his ruling

Transvaal A-G Don Brunette told City Press he had referred the docket back to the police after questioning certain aspects of the statement

This means Terre'Blanche's docket has been shunted between the A-G's office in Pretoria and the Ventersdorp police station since early last month

Western Transvaal police spokesman Petrus Ramatswele said the docket would be sent back to Brunette tomorrow

Meanwhile Mashiya, who appeared in court last month on a charge of possession of dagga, said he realises Terre'Blanche meant what he said when he boasted that the police would not touch him

"I laid a charge but police came to my home and arrested me for allegedly possessing dagga," said Mashiya

"They were quick to take me to court, but it seems they are too afraid to touch Terre'Blanche"

As protests grow over amnesty which lets rogues go free

KILLER COP: NO REGRETS

(252)

By HERMAN JANSEN and CHARIS PERKINS

ST Times 7/7/91

FORMER police sergeant Robert van der Merwe walked out of prison a free man this week — with no regrets about murdering two drug dealers and shooting a Soweto businessman less than four years ago

His boss and partner in crime, former East Rand murder and robbery squad chief captain Jack la Grange, was also freed — prompting a storm of protest

Both were given a double death sentence in March 1988, but they were saved from the gallows the same year by President PW Botha

Van der Merwe s sentence was reduced to 15 years in prison, Le Grange s to 25 years

Van der Merwe s release from Johannesburg's Diepkloof Prison on Thursday night came just three years and three months after he and La Grange, 44, were sentenced

A smiling Van der Merwe, 33, sporting a Hagar The Horrible T shirt, was unrepentant yesterday

If someone can convince me I acted wrongly when the crimes were committed I d be sorry about it

'I believed they were members of the ANC and the orders to kill them came right from the top — from SAP headquarters in Pretoria — otherwise I would never have done it"

Incredible

But according to evidence during the pair s controversial trial, they had acted as hit men for a rival drug dealer who was a close friend of La Grange s

Reacting to the release, Mr Peter Soal, DP law and order spokesman, said there appeared to have been a perversion of justice

"It is strange that the men should walk free after so few years for such heinous crimes," he said

National director of Lawyers for Human Rights Brian Currin was aghast at the news.

This is incredible If former policemen can be released for murdering men in cold blood, we must expect thousands of other people to be freed if the government applies the same criteria to all cases.'

If that happened he said, as many as 30 000 convicted criminals — 30 percent of South Africa s prison population — would have to be set free

Right

'The Sharpeville Six must be released, and if they are not we demand to know why he said

'As we understand it, even after the reduction of sentence, La Grange should have served at least 11½ years.

"It is an absolute disgrace that he is back on the streets after little more than three years"

ANC spokesman Saki Macozoma said the release of the policemen was an attempt by the government to placate the right wing

JACK LA GRANGE
Also walked free

A spokesman for the Department of Correctional Services said last night the four ex-policemen had not been unconditionally released, but were on parole

"This should be understood as serving a sentence outside prison walls If conditions are not complied with, parole — which does not exceed five years — can be revoked

"The very innuendo of preferential treatment in the case of the policemen is rejected completely," he said

Speaking this week about his co accused, Van der Merwe said Jack and I were friends but from the start of the trial he went his way and I went mine

'There is no chance of us ever being friends again

Although he admitted in court he had pumped five bullets into each of three victims, Van der Merwe still maintains he did so because "my orders at the time were to bring the ANC to book"

'I have come to terms with the new South Africa, including the unbanning of the ANC, and as long as they leave me alone, I will do the same"

His wife, Amanda, divorced him in August 1989 and has since remarried

Commuted

Two more policemen convicted of murder were also released this week

Former Eastern Cape unrest unit members warrant officer Leon de Villiers, 40, and constable David Patrick Goosen, 30, were sentenced to death in May 1988 for the murder of Mr Mlungisi Stuurman, 18, on the banks of the Fish River near Cradock on July 26 1986

Another murderer released this week was Maureen Smith 49, who spent a year on Death Row before her sentence was commuted to 20 years imprisonment.

Smith was found guilty of hiring a hit man, David Mnguni, and her chauffeur, Jack Ramogale, to murder her husband, Roger, at their Sandton home in November 1982 The two blacks are still in jail

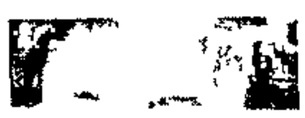
FREE AGAIN Robert van der Merwe in central Johannesburg yesterday Picture PIERRE OOSTHUYSEN

Fox Street killer Protter goes free

FOX STREET siege killer David Protter was freed from Pretoria Central

By HERMAN JANSEN

Protter spent part of his



ANC has R655m in foreign assets

ST Times 7/7/91

By EDYTH BULBRING

THE ANC has external assets worth R655-million, including cash reserves of R41-million and property of R600 million

This was revealed in the report of treasurer general Thomas Nkobi to the ANC conference in Durban

The report said the ANC owns a house in Bonn, an office and a house in Belgium, an office a printing works, a vacant plot and two flats in London, flats in Oslo, Stockholm and Toronto, 31 houses in Har-

Tutu paid R25 000 in damages

ARCHBISHOP Desmond Tutu has been paid R25 000 in damages by the publishers of the Transvaler and the Citizen in an out-of-court settlement of defamation actions, the church said

Lawyers acting for Archbishop Tutu issued letters of demand to Perskor, owners of the newspapers, arising out of reports claiming that he was party to financial irregularities and that he had advocated violence.

In October 1989, the Transvaler published a report claiming that church money received from abroad had not been accounted for

In August last year, the Citizen claimed that Archbishop Tutu told a funeral that "we are fighters" and that "the struggle" had to be taken "into white areas"

The Transvaler published a similar report

The newspapers had mistakenly attributed another funeral speaker's words to Archbishop Tutu — Sapa

Cops' release unfair — LHR

Sowetan 9/7/91

LAWYERS for Human Rights have objected to the recent release of four policemen jailed for criminal offences.

LHR was reacting to statements by Deputy Justice Minister Mr Dannie Schutte that he found it surprising "those who had recently argued for the unconditional release of among others, murderers, objected to prisoners being released under strict parole conditions"

LHR said they had called for the unconditional release from prison of all those who qualified for release in terms of the agreement reached between the Government and the ANC

"Such people certainly include people convicted of murder . this is clearly stated in the Pretoria Minute," the LHR said

The agreement was a political one, which was quite different from the normal process of prisoner releases, remissions and parole

"Indeed, with the recent releases of political prisoners, our call has been vindicated

"In addition to this, we have no objection to either enlightened sentencing or early parole - we see such advances as important in our moves towards democratising society," said LHR

"We cannot believe that coincidentally four policemen all qualified for parole on exactly the same day.

"It should be remembered that all four policemen were sentenced to death in 1988 and were reprieved by (then President) Mr PW Botha after spending approximately six months in jail"

The policemen's release came two days before another bulk release of ANC members, "and to us the conclusions are obvious"

"All we are asking for is equal treatment for criminal offenders The Ministry of Justice has in past months been at great pains to ensure that its criminal justice system is not subverted through the release of political prisoners in terms of an agreement to which it is party Where is that caution now?" it asked - *Sapa*

Lawyers say killer policemen's release was no coincidence

PRETORIA — Lawyers for Human Rights (LHR) yesterday reiterated its objection to the recent release of four policemen jailed for criminal offences

The LHR was reacting to Deputy Justice Minister Danie Schutte saying it was surprising "those who had recently argued for the unconditional release of among others, murderers, objected to prisoners being released under strict parole conditions"

The LHR said it had called for the unconditional release of all who qualified in terms of the agreement between government and the ANC. "Such people certainly include people convicted of murder."

The agreement was a political one, quite different from the normal process of prisoner releases, remissions and parole "Indeed, with the recent releases of political prisoners, our call has been vindicated," the LHR said

It had no objection to enlightened sentencing or early parole — "we see such advances as important in our moves towards democratising society"

The LHR said its objection was to what it perceived as unfair and preferential treatment being given to, "in this case", policemen sentenced for violent and criminal activities "We cannot believe that coincidentally four policemen . qualified for parole on the same day"

The policemen's release came two days before another bulk release of ANC members, "and to us the conclusions are obvious"

"All we are asking for, is equal treatment for criminal offenders The Ministry of Justice has in past months been at great pains to ensure that its criminal justice system is not subverted through the release of political prisoners in terms of an agreement to which it is party Where is that caution now?" it asked

DP spokesman Dave Dalling said in Cape Town the prisoner release programme appeared to be going "drastically wrong"

It was one thing to release political prisoners, but it was quite another to release "dangerous and murderous criminals into the public midst" "Whether it be 'on parole' or otherwise, it is manifestly a perversion of justice to release such killers as Jack la Grange and Robert van der Merwe, after having served only three years"

The other two former policemen in question were W/O Leon de Villiers and Const David Goosen, sentenced to death in 1988 for a Cradock murder — Sapa

● Comment. Page 8

Policemen's parole unfair, say lawyers

Star 9/7/91 252

By Helen Grange and Sapa

Lawyers for Human Rights (LHR) has dug in its heels over the release of former policemen Jack la Grange and Robert van der Merwe — slating the Government again yesterday for its "unfair and preferential" treatment of prisoners

LHR said the political agreement reached between the Government and the ANC regarding release of prisoners was "quite different" to the normal process of prisoner releases, remissions and paroles

"We have no objection to either enlightened sentencing or early parole Our objection is to what we perceive as unfair and preferential treatment being given to, in this case, policemen sentenced for violent and criminal activities," said LHR director Brian Currin

La Grange and Van der Merwe, who were sentenced to death after being convicted of the murder of two drug dealers and the attempted murder of a Soweto businessman, had their sentences commuted President de Klerk ordered their release last week under amnesty

"We cannot believe that, coincidentally, four policemen who received varying sentences all qualified for parole on exactly the same day .. Coincidentally, they were reprieved at the same time as the Sharpeville Six, around whom an international storm of protest had arisen," Mr Currin said

"That was then — in the old South Africa This is now — in the new South Africa Their release came two days before another bulk release of ANC members, and to us, the conclusions are obvious"

The Department of Correctional Services said yesterday it was not customary to release prisoners' parole conditions

However, it stated "Parole must be understood for what it is, namely the serving of a sentence outside prison walls If the strict conditions set for parole are not complied with, the parole can be revoked"

The Justice Ministry says the Government is releasing prisoners on parole in a responsible manner with the interests of the public taken into account

Deputy Justice Minister Danie Schutte, reacting to sharp criticism from the Democratic Party, said those freed on parole "will be under strict supervision for the remainder of the time for which they would have been imprisoned"

DP justice spokesman Dave Dalling said the prisoner release programme appeared "drastically wrong" and that the Government's moves would further criminality.

But Mr Schutte said there was no credibility to the accusation. "Just as the Government's release of political prisoners was not intended to solicit political crime, even so the amnesty granted to first-time offenders is not intended to solicit further crime"

● The other two policemen released on parole are former eastern Cape Unrest Unit members Leon de Villiers and David Goosen, who were sentenced to death in May 1988 for the murder of Mlungisi Stuurman

Lawyers hit at selective release of prisoners

Sowetan 16/7/91

252

THERE is no parity in the way the authorities are releasing prisoners in terms of the State President's announcement of remission of sentences, Lawyers for Human Rights (LHR) told a news conference in Pretoria yesterday

LHR national director Brian Currin said police murderer Jack le Grange had been released after serving three-and-a-half years of a 25-year sentence, while a man who had murdered a policeman, Henry Burt, was still in prison and would serve an eight-and-a-half-year sentence.

LHR said it would be irresponsible to "open prison doors to all", but the Government should, to be fair, apply the same criteria to all when it came to paroling prisoners

To be consistent, it should, therefore, release all "three-and-a-half year out of 25-year category" prisoners

Black Sash spokesperson Ms Kerry Harris said the way prisoners were being released was "apartheid at its worst"

Currin accused the Correctional Services Parole Board of applying the State President's remission provisions in an "obscure and dishonest" way

He asked why the Sharpeville Six had not yet been released

As far as the LHR knew, the six convicted murderers released from Death Row as common law prisoners so far had all been whites - four policemen, Maureen Smith, and Fox Street return to international football - if the go-ahead was given - a tour to this country by a top overseas team would probably take place before the year was out

"It's been a long time coming and we are now more confident than ever that we'll get back" - *Sapa*

Death row releases 'inconsistent'

DARIUS SANAI

GOVERNMENT was inconsistent in its release of death row prisoners, Lawyers for Human Rights (LHR) national director Brian Currin said yesterday.

Currin told reporters government should be reconsidering the cases of about 300 common law prisoners on death row who committed crimes "while living under the appalling conditions of the political situation".

The LHR was not calling for prison doors to be thrown open, but felt iniquities of apartheid meant that even common law crimes could be seen as politically motivated.

He called for last year's moratorium on death sentences to be reimposed pending the formation of a new government, and criticised government for releasing policemen convicted of murder.

All six former death row inmates he knew to have been released following President F W de Klerk's announcement of a limited remission were white, and four were former policemen.

The LHR also released a petition yesterday signed by common law prisoners on death row appealing for the death sentence to be abolished and for their cases to be reconsidered.

Currin said there were about 320 death row inmates in SA's jails.

Cape Town may shun local govt Act

LINDA ENSOR

CAPE TOWN — The executive committee of the Cape Town City Council decided yesterday to recommend to the council that it have nothing to do with the controversial Interim Measures for Local Government Act.

The Port Elizabeth City Council is also expected to reject the Act.

The executive committee's recommendation, if adopted, will mean the eight management committees under the council's jurisdiction will be at loggerheads with it over what structures should be used to negotiate a new system of local government.

The management committees recently asked the council to set up a joint negotiating forum to discuss a local government structure, as provided for by the Act.

But the executive committee believes that by providing for management committee representation on such a forum, the Act has given the committees a greater status than their community support deserves.

It is believed that the management committees are prepared for a fight and plan to appeal to Cape Provincial Administrator Kobus Meiring should the council refuse to establish a negotiating forum.

The Act does not empower the administrator to play an enforcing role — its provisions are not mandatory — but only a mediating one. Should the appeal to Meiring not bear fruit the management committees intend making representations to Planning, Provincial Affairs and National Housing Minister Hernus Kriel and possibly President F W de Klerk.

Councillor Clive Keegan said yesterday that the executive committee felt the Act had proved enormously divisive and had the potential to completely derail the negotiating process in urban areas.

Alexandra Civic Organisation official Ben Dhlomo.

Picture CATHERINE ROSS

A 'lawyer' with local standing

BEN Dhlomo has no legal background Yet his standing in Alexandra township — he is an official of the Alexandra Civic Organisation (ACO) — has landed him a leading role in the "community court" being set up

Dhlomo hopes to be equipped for his task by training offered by the Community Dispute Resolution Resource Committee (CDRRC), a committee formed by the Wits Centre for Applied legal Studies and the National Association of Democratic Lawyers

The court is the first of its kind to be established in SA and, the CDRRC says, it will precede similar courts in other townships where communities "want this kind of assistance"

"I will be the registrar or the intaker and my task is to assess the disputes which are brought to the centre by the community

"After assessing the nature of a dispute, I will then have to decide if it warrants mediation — which the centre will provide —, or if it merits being referred to the police or social welfare organisations," Dhlomo said

WILSON ZWANE

He stressed that the centre would not deal with criminal or serious cases

"The centre will deal with minor community disputes such as a quarrel over a shared washing line, for example And because mediation is voluntary, I as a registrar will have to ascertain if the parties involved in a dispute prefer it to a conventional judicial system

"Once it has been ascertained that the parties concerned prefer mediation, it will then be my job to get the process going," he said

Dhlomo, who was born in Soweto 30 years ago, said although he had no legal background, he was confident that the CDRRC training would equip him with skills necessary for his job

"I have been made to understand that (after) the training in mediation mechanisms, which I and 10 other people are receiving, I will get special training which will enable me to function as a registrar," he said

He said that as a member of a civic organisation, he had been involved in dispute resolution "on the ground" "But I have never been involved in the kangaroo courts"

Dhlomo matriculated from Alexandra High School in 1985 He has received no tertiary education "apart from a salesmanship course through correspondence"

"I'm not employed and the involvement in the dispute resolution centre will, I hope, provide me with a livelihood as I will be working full-time at the centre," he said

Black co-op 'on verge of buying coffin business'

AN ORGANISATION representing more than 00 000 black families is on the verge of buying a coffin-making firm, a deal which it believes will seal its efforts to garner the lion's share of he R300m-a-year funeral industry

The organisation — Letsema, which means 'togetherness" — was launched three months ago by the National Association of Co-operative Societies of SA (Nacssa), an organisation of black burial societies and women's clubs

Spokesman Sam Muofhe said at the weekend acquiring the manufacturing concern, or part of it, would enable Letsema to sell coffins to the

THAMI MAZWAI

scores of undertakers in black townships In return Nacssa members, a client base of at least 100 000 families, will give their business to these undertakers

Muofhe would not name the manufacturing company Letsema wants to buy, as it "would prejudice us"

"All I can say is that negotiations are 70% done, and at a sensitive stage"

At least 130 black burial societies and women's clubs, with membership varying from 50 to 5 000, are affiliated to Nacssa Some hold 1-million 1c ordinary shares in Letsema A futher 10 000 voting R1 redeemable preference shares are held by the Centre for Black Economic Development, a section 21 company set up by blacks to facilitate black economic empowerment Nthato Motlana is chairman of Letsema and the centre

Township funerals are big business A funeral costs at least R1 000 This includes the Hearse, family car, coffin, a tent and chairs, two buses, a cow and groceries for the wake

Hunger soars

Award a valuable yardstick

Business Day Reporter

ONE of the best reasons for entering the South African Non-Listed Company Award, says Rand-Air MD Brian Shekleton, is that it provides a measure of your company's performance against industry leaders

Rand-Air has been a finalist five times in a row — a feat matched by only one other company, Avroy Shlain

The contest is being sponsored again this year by Business Day, Arthur Andersen & Co and the Wits Business School It is open to companies not listed on the JSE and close corporations meeting eligibility criteria

Shekleton said that apart from encouraging the company to produce its best, success in the contest had won recognition for Rand-Air in industry, and financial recognition from corporate bankers and suppliers of credit

The award goes to the company which, in the opinion of

Africa lambasted on human rights

B\Day 10/7/91 B\Day

PATRICK BULGER

GABORONE — An international conference on African trade unions and development heard stinging criticism yesterday of African leaders, and praise for SA's trade union movement.

Observers described the criticism of African governments as among the most trenchant yet delivered in public from an African platform

SA and apartheid did not escape rebuke, but its trade unions were described as the source of hope to other countries

International Confederation of Free Trade Unions general secretary John van der Veken told the first day of a joint ICFTU/Botswana Federation of Trade Unions conference on democracy, development and trade union rights that the denial of human rights had not been restricted to SA

"In spite of restriction and immense repression, it was the independent trade union movement which brought about real change in SA

"The trade unions have been the locomotive force of the anti-apartheid movement," he told about 140 delegates from African trade unions, the ILO and a number of European and American trade unions

The confederation — which represents 144 affiliated organisations in 101 countries — maintained its hardline stance on sanctions and vowed to continue supporting the SA trade union movement

Van der Veken said sanctions would remain in place until trade union bodies Nactu and Cosatu called for their lifting.

The conference is examining and hoping to strengthen the role of trade unions in what delegates have described as Africa's move towards democracy and development.

"The denial of human rights . . has been commonplace in a large part of Africa A whole range of basic rights has been systematically violated The events of 1990 and 1991 show that the people of Africa are now asserting their rights to political choice," he said.

He said basic rights had been overlooked in the days of East/West rivalry. "African governments used the excuse of sovereignty and special circumstances."

There could be no development without democracy, he said, and the trade unions played a central role in this democratic process.

Bid to curb cross-border irregularities

Pretoria Bureau (252 (99) Star 10/7/91

A new corruption law eliminating current loopholes which have been used in cross-border irregularities has been proposed by the South African Law Commission

The proposal comes after the commission investigated the deficiencies of the present Prevention of Corruption Act of 1958 — exposed during the Harms Commission when evidence arose of cross-border irregularities which were largely left unprosecuted

"The most important shortcoming of the present legal position is that provision is not made for all categories of persons," a commission statement said

"There is also no criminal provision for acts of bribery that take place outside the borders but that adversely affect the interests of the country"

The commission has in addition made certain recommendations regarding the law of succession — including the relaxation of some formalities required to have a will or revocation of a will declared valid

It also makes recommendations regarding illegitimate children

Human rights abuse rife, says Amnesty

252

Star 10/7/91

LONDON — Human rights around the world fell victim to political expediency in 1990, with tens of thousands of people unlawfully executed, tortured or unfairly jailed, Amnesty International said yesterday

The London-based group's annual survey of human rights violations reported abuses in 141 countries, in some cases sharply worse than the previous year

Amnesty said the year opened against a backdrop of dramatic political change centring on greater respect for human rights, symbolised by the release of black nationalist leader Nelson Mandela in South Africa and the fall of the Berlin Wall

But mass executions and torture following Iraq's invasion of Kuwait showed the failure of other governments to tackle grave human rights abuses in Iraq in the past

"We've seen human rights often take a back seat to trade or diplomatic concerns and become the casualty of political expediency," said Amnesty

Abuses committed by Iraqi forces made headlines, but serious violations in other countries such as Chad, China, Colombia, Mali, Burma, Syria and Turkey gained less publicity, it said

In Africa, gross human rights violations continued despite the optimism which followed the release of political prisoners in South Africa early in the year and the abolition of the death penalty in Namibia

But random killings and the arrest of thousands of unarmed villagers by soldiers in southern Mauritania reached disturbing new heights

Amnesty said international criticism of the human rights situation in Iran was muted, even though it had recorded hundreds of executions and other abuses there

In Syria, thousands of political prisoners were still jailed without charge from previous years, some of them because they were related to suspected government critics

In Israel and its occupied territories, some 25 000 Palestinians were arrested, including more than 4 000 who were held without charge

Amnesty said Asia was the setting for "disturbing human rights violations", with thousands of civilians unlawfully executed or missing in Sri Lanka

An unprecedented rise in violence and killings by separatist groups in several regions of India was accompanied by a similar rise in politically motivated killings by government forces in which many hundreds died

In China, thousands of pro-democracy protesters arrested the previous year were still detained without charge or trial Amnesty recorded 750 firing squad executions last year, the highest number since 1983

It said disappearances and illegal executions continued in Colombia and more than 300 men, women and children disappeared after being arrested by security forces in Peru

Children were gunned down by death squads in Guatemala and Brazil, Amnesty said, adding that in Rio de Janeiro most of the 500 children who died violently were killed by death squads

More than 1 000 ethnic Albanians in Yugoslavia's Kosovo province were jailed for up to 60 days for going on strike or peacefully expressing nationalist sentiments, and at least 30 demonstrators or onlookers were killed and several hundred wounded in violent clashes with police

Amnesty said at least 600 political prisoners were still held in Albania

In the Soviet Union at least 30 Armenians were murdered in Azerbaijan

Widespread and systematic torture which has persisted for many years in Turkey continued in 1990, the group added — Sapa-Reuter

Warrant out for ANC woman

Court Reporter

A WARRANT of arrest has been issued for Cheryl Carolus, 34, a member of the ANC's national executive committee, after she failed to appear in the Cape Town Magistrate's Court.

She and six others were to appear yesterday on charges of taking part in an allegedly illegal demonstration outside parliament on May 10 this year in connection with the ANC campaign to free political prisoners. Only four of the seven accused appeared. Warrants of arrest were also issued for Gerald Siljeur, 48, of Steenberg, and Liza Saayman, 18, of Mowbray.

Probing family murders

Star 10/7/91

252

The Human Sciences Research Council has completed an investigation into the large number of family murders that have afflicted South Africa in recent times Carried out over three years, it comes up with some surprising conclusions

According to a 300-page report released yesterday, there was no single solution to the problem

People should be taught to cope with their problems and call for professional assistance timeously.

Family murder should be recognised in law as a unique phenomenon, it said

Couples, who planned to marry, should receive marital counselling and people should learn life skills that included coping with stress

The researchers had found no confirmation that family murders occurred mainly among Afrikaners or whites And neither the religious affiliation nor the method used to commit family murder showed a regular pattern, they said

Alcohol, narcotics, psychological deviations, hours of work, unemployment or financial problems usually played no role in such murders, the report said

As far as could be ascertained, the political system, the media and violence in the community also did not have a direct influence

Autumn was the season for family murders and there was a preference for using firearms

Most of the killers were between 24 and 35 years old, with twice as many men as woman committing family murder.

The murderers were usually married, and families had an income of more than R30 000 a year

"The murderer may be a man who suffers from depression, burnout and stress — symptoms which become worse before the murder. The murderer experiences both active and passive aggression, but cannot express it in a socially acceptable way and, therefore, is unable to assert himself."

Such people struggled to communicate and socialise In addition, they were emotionally immature, dependent, asocial and had a poor self-image

They felt inadequate, inferior, helpless and jealous and reacted impulsively

They also wanted to control others and be rigid, the report said.

"Family murderers have intense feelings of desperation and helplessness Despite feeling persecuted, they are reliable people.

"The murderer's spouse usually has higher educational qualifications, tends to dominate the relationship, suffers from stress and is emotionally ambivalent, confrontational, disapproving, convictive and feels superior."

Such marriages were characterised by poor communication and a superficial relationship in which both partners threatened each other emotionally and physically

They were also jealous and did not trust or respect each other, and one of the partners withdrew emotionally

The couple were also dependent on their parents

The HSRC team found many other typical factors, such as isolation from religious and social activities, stress at work and financial mismanagement

The research was carried out by 20 HSRC researchers, led by Dr Louis Olivier, of the Centre for Child and Adult Guidance — Sapa

Row over the release of the killer cop grows

252

THE previous criminal record of convicted killer Jack le Grange had to be taken into account even if it was more than 10 years old.

Lawyers for Human Rights director, Mr Brian Currin, said the statement by the Department of Justice on Tuesday night that an offender, whose previous offences were committed 10 years before his last offence, may be regarded as a first offender was "absolute nonsense".

"This criterion only applies for the purpose of sentencing. His (Le Grange's) criminal record still stands." Sowetan 11/7/91

Drug dealers

Currin said the LHR's statement on Tuesday that the release of prisoners in terms of the State President's announcement of a remission of sentences was being carried out unfairly had been an understatement.

"In fact, it is being carried out unlawfully as well because Le Grange is not a first offender."

In Tuesday's statement the Department of Justice defended the release of Le Grange, convicted of murdering two alleged drug dealers and attempting to murder a businessman, saying his previous offence had occurred 18 years ago and he should, therefore, be regarded as a first offender

Criminal records

Currin said this was absurd as it meant that anyone who had been in jail for more than 10 years was a first offender

"I am certain this was not (State President) F W. de Klerk's intention."

If it was his intention to ignore convictions which were more than 10 years old then the remission was far more extreme and far-reaching than was initially anticipated.

"It means people with long criminal records going back more than 10 years can be released." - *Sapa*

Many 'unlawfully executed'

ET 11/7/91 (252)

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Amnesty said the year opened against a backdrop of dramatic political change, often moving towards greater respect for human rights, symbolised by the release of Mr Nelson Mandela and the fall of the Berlin Wall

But mass executions and torture following Iraq's invasion of Kuwait showed the failure of other governments to tackle grave human rights abuses in Iraq in the past, it said

In its report on Africa, Amnesty said positive changes led to opposition parties being set up in several former one-party states, the abolition of the death penalty in three countries and greater human rights safeguards in others

In South Africa, however, political change did not result in the end of human rights violations, the report said

It said 1 500 government critics and opponents were held without charge or trial under the emergency regulations, the Internal Security Act and other laws

"Some people were tortured or ill-treated in police custody and there were at least 18 deaths of detainees in suspicious circumstances" — Sapa-Reuter

SA 'still violates human rights'

DARIUS SANAI

TORTURE and political killings were still regular occurrences in SA, despite improvements in the political situation, Amnesty International said in London yesterday.

In its annual report, it said last year's release of ANC deputy president Nelson Mandela was "symbolic of a greater world-wide respect for human rights".

A spokesman said yesterday the organisation still had "major concerns about serious human rights violations in SA"

"Our primary concerns involve the accusations of torture and complicity in political killings by the security forces," the spokesman said.

Government had been consistently slow in following up allegations against the security forces during the past 18 months, she said.

Government's reluctance to pursue allegations arising from the Harms Commission of Inquiry into politically motivated killings last year was "implicit message that the security forces would not be punishable for human rights violations"

She said this year's revision of the Internal Security Act was a step in the right direction, but the police still had "far too much discretion" in legal matters.

Black farmers 'need direct aid'

THE Land Bank should provide direct financial support to prospective black farmers to enable them to buy land directly from owners, Development Bank of Southern Africa senior divisional manager Johan van Rooyen said this week.

Addressing Nafcoc's agricultural conference in Thaba Nchu, he said extending the financing facilities of the Land Bank and the Agricultural Credit Board to black farmers was the best form of affirmative action to benefit black farmers

Land transfer programmes through the Land Bank were lengthy, difficult and costly processes which chased up land prices, he said.

"If any subsidy is considered, it should be directed at reducing the transaction cost of access, rather than at subsidising the interest rate" Examples of these costs were deposit requirements, conveyance and loan administration costs

Van Rooyen said alternative programmes to facilitate access to farming opportunities also needed to be considered

THEO RAWANA

"A substantial proportion of farms in the current commercial farming areas are not permanently owner-occupied, and farms are often under the effective management control of black farm managers"

"Alternative programmes could include the extension of share ownership schemes to farmworkers by farmers looking for alternative ways of accommodating farm labour.

Van Rooyen said sources of credit such as co-operatives and the commercial banking sector were not always geared to providing credit to emerging farmers, smallholders and part-time farmers.

This would also require innovative strategies like rural savings mobilisation (stokvels), group credit schemes and new interest rate policies It might also be necessary to consider certain specialised institutions to provide such finance.

Van Rooyen said affirmative action could also take the form of training black farm managers and "new" farmers.

NP plans a moderate alliance, says study

THE NP would attempt to form an alliance with Inkatha, the Labour Party, Solidarity, the Zionist Christian Church and various homeland leaders, the SA Institute of Race Relations said in a research report released yesterday.

The SAIRR said its information came from sources close to the NP hierarchy, and added that the Zionist Christian Church was already thinking of converting to a political party

It said the NP believed this alliance could attract a majority of voters.

Research officer Shaun Mackay says in the publication Countdown To Negotiations that in anticipation of the proposed multiparty conference, most major political organisations are expanding their power bases through alliances or increased membership, or both

Mackay says the PAC and Azapo see the proposed multiparty conference as an opportunity for government to diminish the legitimate claims of the "oppressed" through compromise in a body the NP will fill with black parties it has been working with all along

In Mackay's opinion, therefore, there is the danger that organisations like the PAC and Azapo, which refuse to participate in the multiparty conference, could lose their chance of helping to shape the foundation upon which the new constitution is to be built — Sapa.

Two of Sharpeville Six released on parole

Star 11/7/91 - 252

By Thabo Leshilo

Two of the Sharpeville Six prisoners, Oupa Diniso (35) and Joshua Khumalo (31), were freed on parole last night in accordance with President de Klerk's amnesty after serving two years and seven months of their respective 25 and 18-year sentences.

A spokesman for their lawyer, Amichand Soman, confirmed that Mr Soman was telephoned by the Department of Correctional Services to pick them up at Leeuwkop prison yesterday evening.

Department of Correctional Services spokesman Colonel Danie Immelman was unable to give any more information pertaining to their parole or release conditions.

The two, together with Mojalefa Sefatsa (35), Reid Mokoena (27), Theresa Ramashola (29) and Francis Mokgesi (33), were sentenced to hang in 1985 for the murder of Lekoa deputy-mayor Khuzwayo Dhlamini on September 3 1994 at the height of South Africa's violence.

The release of the two comes after Lawyers for Human Rights (LHR) had complained that Mr de Klerk's parole was used unfairly and unlawfully to favour policemen in prison. Both the Department of Correctional Services and the Justice Ministry denied the allegation.

LHR national director Brian Currin had specifically asked why the Sharpeville Six were not being released.

The court found the six had common purpose with the mob that murdered the councillor

The six were initially sentenced to death but were reprieved from the gallows in November 1988

They won a stay on the eve of their execution date, March 17 1988, to enable them to apply for the reopening of their case.

The six, together with 13 other Death Row prisoners, including four policemen jailed for murder, were reprieved in November 1988 by the then-State President, P W Botha.

The rogue policemen, Jack la Grange and Robert van der Merwe, were convicted of murdering two drug dealers and attempting to murder a businessman. The other two, Patrick Goosen and Leon de Villiers, were convicted for murdering an anti-apartheid activist near Cradock in the Cape.

The reprieve of the Six, whose sentence caused a worldwide outcry, came after the Appeal Court had dismissed an application to reopen their trial and one of them had refused to sign a petition for clemency.

Khumalo and Mokgesi's sentences were commuted to 25 years, Sefatsa's to 20 years and the sentences of Mokoena, Diniso and Ramashola to 18 years.

Legal stars debate the justice case

w|mail 12|7 - 18|7|91.

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LAW & THE COURTS

CARMEL RICKARD at the National Bar Conference in Durban

LEGAL mega-stars like legendary advocate Sydney Kentridge QC (played by himself) and the country's chief justice, Mr Justice Corbett, (credited with initiating the call for a Bill of Rights) have been debating vital issues for justice in a new South Africa.

Meeting in Durban for the second ever National Bar Conference, they tried to get to grips with a number of problems which should concern all South Africans, even non-lawyers

There was a surprising amount of agreement about where change was necessary and what these changes should be. But there were three contentious issues, important for a credible legal system under a new order: how to get ordinary people involved in the administration of justice, thus overcoming feelings of alienation experienced by so many, how to change the white male face of the judiciary, and how to ensure that the process of selecting judges gives credibility to the choices made

One of the issues on which there was most division was whether to reintroduce the jury system

This was not because delegates are *LA Law* addicts. In many countries the jury system is seen as an excellent way to get non-lawyers involved in the law, creating a feeling that the community is having its say about the issues the court is considering.

In present day South Africa, this is not what most people experience. They feel alienated and "deserted by the law".

Will juries help by giving back a sense of involvement? There were big guns on both sides of the argument.

Mr Justice Kriegler from the Transvaal said that during the 130 years the jury system operated in South Africa it failed to work for reasons which still held good today. Society was deeply divided and would remain so for years

There were insurmountable practical problems involved in reintroducing the jury system, one of which was the question of language. If jurors did not all speak the same language fluently, interpreters would have to be locked up with them in the "sacrosanct jury room".

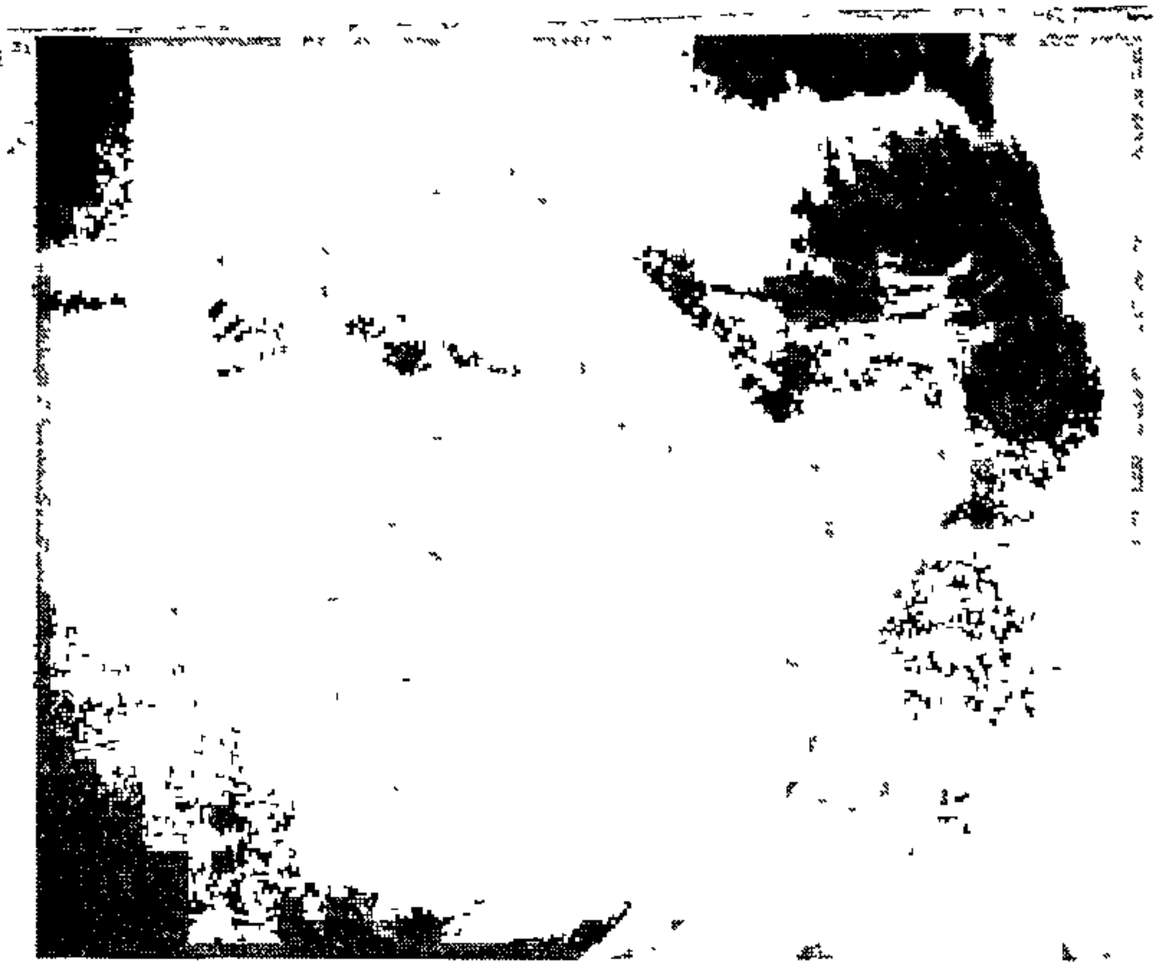
The chief justice, Mr Justice Corbett, also dislikes the idea. He said the system wasted a lot of time and presented difficulties in appeal as juries did not give reasons for their decisions

However, speaking from the floor, Jules Browde SC urged that the issue be given serious consideration. Browde first raised the subject at a law conference early last year, sparking debate which has continued since then

Another strong supporter was Mr Justice Ipp from Western Australia, formerly of the South African Bar.

The judge said when he left South Africa he was strongly opposed to juries, but his experience presiding over cases with juries converted him into a keen backer of the system.

Another proposal for lay involvement — that non-lawyers should sit with magistrates and judges as assessors — was well received, Mr Justice Corbett being among those who approved of the idea.



LEGENDARY ADVOCATE ... Sydney Kentridge QC Photo: The Star

Several speakers complained that the judiciary lacked credibility with the public because its members were all white, and all except one, male.

Dealing with how this situation could be improved, the chief justice said the real answer was to encourage the legal profession as a whole to become more representative of society, thus automatically making the bench more representative.

He indicated his support for the possibility of academic lawyers being appointed as judges.

Even more controversially, he approved the idea of suitably qualified attorneys being given the right to appear in the supreme court This would make it easier for black people to enter the profession and would thus widen the pool of candidates to the Bench.

"I do not think that the exclusivity of the Bar both as to rights of audience and judicial appointment can be maintained under the present system or under whatever future system lies in store for us."

Discussing various options for the appointment of judges, he said he was against lay people or politicians being involved, and that if the present system were changed, he believed a committee, possibly of judges obliged to consult with the organised legal profession, would be best.

On whom should be appointed to the bench, newly elected ANC executive member and law professor, Kader Asmal, was firm. "We don't want party or ideological 'hacks'," he told the conference

Judges were most likely to be "hacks" if they were government appointees and he urged that a way be found of opening up the method by which judges were selected to avoid this problem.

He listed a range of options for appointments, but said whatever mechanism was chosen, it should be one which ensured that women and black people were better represented.

However, he said, the ANC wanted only those people who merited such a position appointed to the bench.

People should not be kept out of the judiciary because of their colour, creed, language, gender or sexual orientation.

"Once this is established as a principle, gays must be appointed to the judiciary if they are qualified," he said.

Less Bar and more Bench

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THE judge president of the Cape, Mr Justice Munnik, wants "a little less cant" and more commitment from lawyers about the need for quality judges.

The judge president said he would like "a little more desire from the Bar to serve, instead of first wanting to ensure their future, their children's future and their grandchildren's financial future".

Top members of the advocates' profession earn considerably more than judges, and some are reluctant to accept appointment to the bench because of this w|mail 12|7 - 18|7|91.

The problem may be more widespread than the public realises — during the National Bar Conference in Durban both the judge president and the chief justice, Mr Justice Corbett, urged that top counsel show more willingness to serve on the bench.

Mr Justice Munnik responded to speakers who had urged new methods of appointing judges. "I would like to wish the new selectors luck."

He said he had had experience of going to top advocates to discuss a possible appointment to the bench, "and getting a hundred and one excuses all allegedly unrelated to money"

In his summing up at the end of the conference, Mr Justice Corbett added his voice to that of his colleague, urging that advocates make themselves available for appointment.

"Never in the history of the administration of justice in this country has it been more important that the cream of the profession should be available for judicial appointment."

Bar serves as 'pathway to justice'

IN the worst days of apartheid and government inroads on individual liberty, the Bar was at times the only pathway to justice.

This view of the role of the profession was expressed by prominent South African advocate Sydney Kentridge QC, now practising in London.

He took his audience through a survey of how the advocates' profession had performed during the darkest days of government racial discrimination and violation of basic liberties. While many individuals helped keep alive the idea of rights which the state may not infringe, there were few institutions which took this stance. Kentridge listed four — the English language universities, the English language press, the supreme court and the Bar.

He said the Bar was not a profession of crusaders for justice, and its members were concerned about making a living. "Nonetheless as members of the organised Bar we have had as one of our explicit constitutional objectives the vindication of the rule of law."

The organised profession had spoken out publicly against gross infringements of the rule of law — "perhaps not as often as we should have, but we did speak; and often did so while other professions remained silent either on the excuse that the issue was 'political' or accepting with grateful alacrity the glib assurances of whoever was the current minister of justice."

Advocates, through their day to day work, helped maintain the idea of the rule of law as a counter-balance to naked executive power.

They took on political trials in the era of grand apartheid and, even earlier, defended people charged with opposing the wartime government.

"Regrettably, there were times, especially in the 1950s and 1960s, when, in contrast to the advocates ... there were few attorneys prepared to take on political cases."

This was not because advocates are "morally superior" to attorneys but because the standards of the profession insisted on independence, objectivity and public duty. Advocates are obliged to act for anyone, whether the client is unpopular, or regarded as socially or politically undesirable, if the fee offered is reasonable and the advocate is not otherwise engaged.

This rule is not impossible to evade, but it is a central principle of the Bar; attorneys on the other hand are not bound by such a rule, because the conditions of their practices are different.

Kentridge said the two essential features of the Bar — its independence and professional experience in the higher courts — explained why it was the natural source of supreme court judges.

The government had in the past appointed judges from outside the practising bar, and according to Kentridge, these appointments, with a single exception, "varied from the merely disastrous to the utterly calamitous".

While there had been disastrous political appointments from the bar, the judiciary had recovered from these and on the whole the bench had remained an independent court which had provided some protection against the excesses of the executive. "If the supreme court has sometimes disappointed its admirers, it has just as frequently surprised its detractors. I have no doubt that the independence of the Bench stems from the independence of the Bar. Each reinforces the other, (and) the Bar has been not only a pathway to justice but at times the only pathway."

Goldstone urges support for ADR procedures

JUDGES and magistrates have been urged not to feel threatened by alternative disputes resolution (ADR) procedures, but to see them as an important complement to the courts.

Speaking at last week's Bar conference in Durban, Mr Justice Goldstone of the Appellate Division gave a strong vote of approval to ADR, stressing that it should not be viewed by the courts as "some kind of opposition to be frowned upon".

He said too many lawyers used only litigation to resolve disputes, they should make themselves better informed about ADR and then use it more often in suitable cases.

Law schools should research and teach ADR, and the legal profession should ensure that it provided "efficient, available and trustworthy" ADR facilities — properly trained and skilled mediators and arbitrators, as well as premises in which to operate.

This more open approach to ADR would result in more and not less work for the profession.

Mr Justice Goldstone also urged that the new Bill of Rights being debated for South Africa should allow for class actions.

If people were allowed to join together, pooling their financial resources, this would make the courts financially accessible in public interest law cases involving civil rights matters, consumer protection and environmental issues.

The grim list of human rights violations continues, writes **Caroline Moorehead**

Victims of political expedienc

Star 12/7/91. (252)

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EARLY in 1989, Amnesty International began to publish accounts of atrocities committed against children in Iraq They described torture, mutilations, deaths No international action followed

The next year, they again pressed the United Nations Commission on Human Rights to intervene This time, the Commission went so far as to vote not to act on a draft resolution on Iraq It did the same over a resolution on China where, in the wake of the Tiananmen Square protests, several thousand people have been executed

The governments of the world, warns Amnesty International in its 1991 report, are in grave danger of "sabotaging the hope of a new era for human rights"

They are doing so both by their own violations, and by the selectivity with which they exert their influence Where the defence of human rights clashes with self-interest, human rights are the losers Trade and political concerns remain paramount

When the 1990s began, it seemed to many that the dramatic political changes in the world would herald a new order for human rights

With the release of political prisoners from the labour camps of the Soviet Union, the abolition of the death penalty in seven countries — bringing abolition to almost half the countries of the world — and the development of new international standards on children and the use of firearms by police, it seemed as if peaceful political dissent would at last spread

The Amnesty International report shows precisely to what degree such optimism was misplaced According to its country-by-country survey, abuses in 1990 not only continued, but worsened, in 141 nations

Political prisoners were jailed in more than half the world's countries, and more than 100 governments continued to use torture as a routine method in interrogations In 29 countries last year prisoners were executed

Thousands of people, perhaps tens of thousands, "disappeared" or were extra-judicially executed For all the growing publicity accorded to human rights, the world has not become a better place

The chronicle of abuses makes depressing reading It goes from the small-scale — the execution, in Indonesia, of four elderly political prisoners after more than 20 years in jail — to the large, like the torture of thousands of black Mauritanians, many of whom have since been killed

It details the "disappearances" of men, women and even children in Colombia, Guatemala and Peru, and the torture of many others in Mexico, Venezuela, Honduras and Turkey

It describes the 12 men and women publicly executed in Mali, their bodies mutilated by onlookers and then crushed by an armoured vehicle

It tells of 500 children killed in Rio de Janeiro in Brazil, most of them by death squads, and of the people in Pakistan who have had limbs amputated as punishment for injuries inflicted on others And, as the report shows only too clearly, little or no progress has been made anywhere either to investigate past violations or to bring those responsible to book

If Iraq's invasion of Kuwait achieved anything in terms of human rights, it was to highlight, yet again, the extreme hypocrisy of nations driven by self-interest

It took an invasion for the wor to recognise what had been documented by human rights organisations for many years — that Iraq was a major abuser of people

And even during the war, a blind eye was turned to the violations committed by neighbouring states and allies In Saudi Arabia, Syria and Turkey arrests, torture and summary executions continued or increased, while in Israel and the occupied territories some 25 000 Palestinians were arrested, 4 000 of them to be held without charge or trial

As the Amnesty report concludes "We've seen human rights become the casualty of political expediency" — The Independent News Service □

DEATH PENALTY

(252)

There has been a "dramatic decline" in the imposition of the death penalty in South Africa, according to the 1991 Amnesty International annual report. However, capital punishment remains law — unlike in Mozambique, Namibia, Sao Tome and Principe, where it has been abolished

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LIQUID ASSET

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The installation of an R8 000 bar — a donation from Volkskas Bank — at the new offices of the Witwatersrand Attorney-General (AG), in the Rand Supreme Court buildings, led to a directive from the Department of Justice prohibiting staff from accepting any donations in future An application for a liquor licence by the AG's office was later turned down on the grounds that the office — unlike some other departmental offices — is situated in a court of law

Various judges of the Court attended a function after the bar had been installed Some court cases in session on that day were adjourned on the request of State prosecutors so that the function could be attended

The donation was made after a request in November 1987 to Volkskas head office (which was still in Pretoria at that time) by the social club of the AG's office in Johannesburg to provide recreational facilities Volkskas's chief of corporate communications, Jan Snyman, personally handled the matter

After Snyman had discussed the request with senior bank personnel, it was decided to donate a bar counter to the conference facility of the AG's office

In Volkskas circles the sponsorship was regarded as a mere promotional function aimed at A- and B-income groups — represented in this case by the legal fraternity "It was a once-off donation, and I want to stress that we did not donate any liquor," Snyman says

"We receive numerous requests for donations and in all cases we try to ascertain whether the people who would benefit from or use the facilities are Volkskas clients or potential clients On those grounds a decision is taken"

Snyman says he attended the inaugural function after the bar had been installed He was accompanied by the manager of the Volkskas Pritchard Street branch at the time, Pyp de Villiers, and recently appointed deputy MD of Volkskas, Hennie Diederichs

Afterwards, when the department learnt of the sponsorship, there was great concern It was feared that it could hurt the independence of the AG's office and that an impression of favouritism would be created A directive from head office then prohibited the acceptance of any donations

But Snyman says it was not a donation to a government department "The request came from a social club We often donate funds to organisations such as the SA Police Widows' & Orphans' Fund"

Volkskas's Diederichs *at the bar*

It is not known whether the bar is still being used nor whether a liquor licence has been obtained

On Tuesday morning the *FM* faxed questions related to the matter to the department They were referred to Witwatersrand AG Klaus von Lieres und Wilkau and Deputy Minister of Justice Danie Schutte At the time of going to press no response had been received

Eddie Botha

AWB man stalks out of court

(252)

JOHANNESBURG — AWB official Mr Piet "Skiet" Rudolph yesterday stalked out of Krugersdorp Magistrate's Court after refusing to be prosecuted by a black man and objecting to a "coloured" magistrate presiding over his case involving an alleged traffic offence

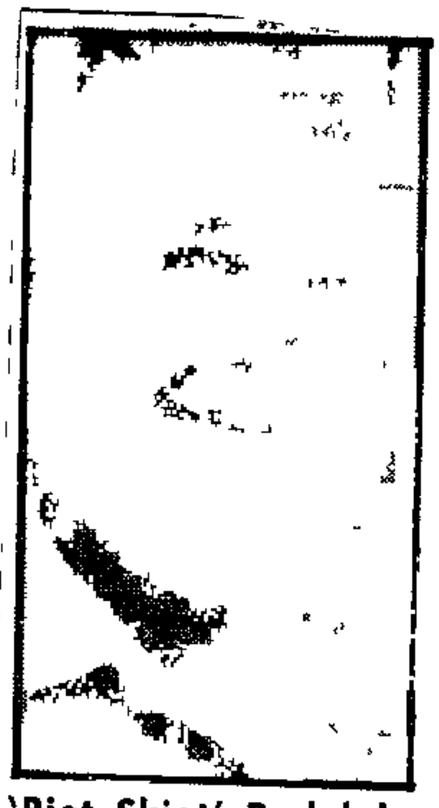
Mr Rudolph appeared on a charge of driving 30km faster than the speed limit on the Krugersdorp-Pretoria highway in April

In court he refused to plead and said he wanted to make a statement, the crux of which was that he would have appeared before magistrate Mr Joseph Jason and also would have agreed to be prosecuted by Mr P R Ramawele if the case was heard in Lesotho, Swaziland, Botswana or Bophuthatswana

His problem lay, however, with appearing before a "coloured" magistrate and black prosecutor "in this state (South Africa)"

He said he did not doubt the ability of the court but that his convictions made it impossible for him to appear in front of the two men

After a short adjournment the case resumed and the orderly called several times for Mr Rudolph who was waiting outside the building but did not re-enter the courtroom Mr Jason ordered that a warrant be drawn up for his immediate arrest — Sapa



'Piet Skiet' Rudolph: magistrate a 'stranger'.

Piet Skiet walks out of 'alien' courtroom

GIEN ELSAS: West Rand Bureau

Star 13/7/91 252

PIET Skiet Rudolph (54) walked out of the Krugersdorp court where he was appearing on a speeding charge yesterday as he refused to be prosecuted by a black man and refused to have a coloured magistrate presiding over him

Mr Rudolph, secretary-general of the AWB, had to appear in the Krugersdorp Magistrate's Court in connection with a speeding offence allegedly committed on the Krugersdorp-Pretoria Highway earlier this year

When he entered the court yesterday, the calm, quietly spoken man who is on the second day of a hunger strike, refused to plead and said he wanted

● TO PAGE 2.

Piet Skiet

● FROM PAGE 1.

Star 13/7/91 252

to make a statement He said he would have been prepared to stand before a coloured magistrate and be prosecuted by a black prosecuter if he had committed the offence in Swaziland, Lesotho, Botswana or Boputhatswana.

When one looked at a state, however, one also looked at the people that brought about the state. The foundation of a state was its constitution

"My whole being is in rebellion against this state," Mr Rudolph said The court appearance, he said, was placing him in the unacceptable position of appearing in front of people who were not his ilk

"When I look at you I see you as strangers to the state I am not prepared to have strangers decide on my fate

"I do not for one moment doubt your integrity but I would have to look at any court procedures taking place as aggressive towards me"

He asked both the prosecutor and the magistrate to recuse themselves

Joseph Jason, the magistrate, explained that he was rejecting the allegations made by the accused as he had sworn an oath of impartiality when he was appointed as a magistrate

APR Ramawele, the prosecutor, said that he had been appointed by the Attorney-General to act as prosecutor in a court of law

Mr Jason explained to Mr Rudolph that, if he refused to take part in the court proceedings, a plea of not guilty would be entered

After a short adjournment, during which Mr Rudolph left the courtroom, the case resumed and Mr Rudolph was called.

Outside Mr Rudolph told the waiting media that he was now leaving Mr Jason ordered that a warrant be drawn up for his immediate arrest

Piet 'Skiet' objects to 'alien' magistrate

Citizen 14/7/91 (252)

By DESMOND BLOW

RIOT police in two Casspirs were sent to the Krugersdorp Magistrate's Court on Friday after Boerestaat Party second-in-command Piet "Skiet" Rudolph walked out during a case against him

Rudolph left before a warrant for his arrest for contempt of court was issued and a police major said he would be arrested at home

He refused to stand trial on a speeding offence because both the magistrate and the prosecutor were black

Rudolph – who is also secretary-general of the AWB – four henchmen and several women and children supporters stood outside the court for more than an hour surrounded by scores of uniformed policemen after he walked out of court telling magistrate Joseph Jassons "I'm leaving You can do with me as you wish"

A polite Rudolph – he even called the black magistrate "your worship" on two occasions – told the court it was against his political convictions to be prosecuted and judged by black men "in my country"

He said he did not mean any disrespect towards the magistrate or prosecutor Albert Ramawele Had the trial taken place in Lesotho, Swaziland or Botswana or "even Bopthuthswana, which I don't recognise" he would be prepared to stand trial before a black magistrate

"I, as a Boer who loved the freedom of his nation, have been placed in a position in which aliens who did not vote for the constitution of the State, are administrating justice

"But you are not citizens of South Africa, you do not have the vote and I am not prepared to be tried by aliens," he said

All court officials in Jassons' court were black. In addition to the prosecutor there was a black female registrar and two black policemen

Rudolph unfolded a handwritten piece of paper and read that although he agreed that speeding was an offence he would not plead unless both the magistrate and the prosecutor recused themselves

Rudolph was facing a charge of having driven his car at more than 155 km/h on the Krugersdorp-Pretoria freeway on April 19

When Rudolph refused to plead, Ramawale asked that the magistrate record the plea as "not guilty"

Jassons said the court was impartial and refused to recuse himself Rudolph then walked out

An hour later the court was resumed and Rudolph's name was called three times When he did not appear, an arrest warrant was issued

Fifteen minutes later, when the warrant had still not arrived at the front of the court, Rudolph said he was tired of waiting and drove away

I SHALL NOT BE MOVED ... Piet "Skiet" Rudolph, flanked by supporters, confronts a police officer outside the Krugersdorp Magistrate's Court after he had refused to stand trial and had walked out of court.

Defamation case starts LHR row

By ELIAS MALULEKE

A STORM is brewing in legal circles because Lawyers for Human Rights is defending a civic leader who is being sued for defamation

Several lawyers said the LHR may be defaulting by defending Pasty Malefo, a spokesman for the Mamelodi Civic Association, who is being sued for R15 000 by a local school principal.

Attorneys who spoke to City Press said the LHR should not "stoop" so low as to defend community leaders in ordinary civil claims if it was using donors' funds and should rather concentrate on human rights activities

A Pretoria lawyer said a libel claim between two ordinary people was not what money donated to the LHR was meant for

One of the lawyers said that if a person was involved in a civil claim, that person was entitled to approach the Legal Aid Board for assistance

The lawyers said although it was not clear on what basis LHR were acting for Malefo, they would be defaulting if he was not paying the costs

Malefo allegedly made the defamatory remarks in an SABC television interview on April 17

The national director of the LHR, Brian Currin, was in Durban and is due to return today City Press was unable to obtain comments from other officials

FREEDOM . . . Released "Sharpeville Six" prisoners Oupa Dinsa (left) and Joshua Khumalo.

■ Pic: SIPHIWE MHLAMBI

'God saved me from Death Row'

252

By THEMBA KHUMALO

Cl Press 14/7/91

DEATH Row inmate Oupa Moses Diniso dreamed that God would save him and five comrades from the gallows

This week, three years after his dream, Diniso and fellow "Sharpeville Six" inmate Joshua Khumalo stepped out of prison, very much alive

Lawyers for the remaining prisoners said they were working on their release and were optimistic.

Pointing to his Bible, Diniso says he is now on a crusade to tell the whole world that God really works

"God is there for everyone," says the man who came back from hell

The Sharpeville Six were saved from the gallows after an eleventh-hour reprieve by former State President PW Botha

It was the second time they were saved In March 1988 the Appeal Court stayed their executions to allow defence counsel to introduce new evidence In December that year Botha commuted their death sentences to jail terms

Diniso, however, appears not to put much store in the huge civil rights effort that went into his reprieve He puts it all down to dreams

He said "A month before the first stay of execution I had a dream in which I was returning to the township I dreamed of a woman at my hearing who told me to look behind me

"When I responded I saw a strange township which had many routes and I didn't know which one to take. The woman told me to go, and I woke up as I was joining one of the routes

"The dream came as a big relief to my soul because I knew God had spoken to me through it He was telling me that my comrades and I would not hang," Diniso said

Despite having access in prison to library books and the daily newspapers, Diniso threw himself into studying the Bible

Although he was a believer before his ordeal, he had not been very devoted

Another dream "to the effect that I should read the whole of the New Testament", had him ploughing through this section of the Good Book

He became so well versed in the text that he was allowed to conduct sermons for other "Death Rowers"

"Unfortunately I could not tell my dream to other comrades because we were placed in different sections of Death Row This was done so that we couldn't communicate "

Later, however, they were allowed to communicate

He said they had struggled to arrange visits by the only female Sharpeville Six prisoner, Theresa Ramashamola, from the female section

"Finally she was allowed to visit us once a month under guard Now that I'm out she is the first person I'm visiting this weekend at Johannesburg Prison," said an elated Diniso

■ Diniso's release coincided with the return of their attorney, Prikash Diar, who went into exile three years ago after a brief spell in detention Diar spent the time in Canada

Police stop AWB trial rumpus

ST Times . 14/7/91

By JANICE HILLIER

POLICE intervened to restore order after an argument broke out in the public gallery of a court where an AWB kommandant was appearing on assault charges

The argument, minutes before the magistrate entered the De Aar court, was between AWB supporters and coloured townsfolk.

Prosecutor JM de Nysschen said order was restored after he had asked police court orderlies to intervene

Mr Daniel Bothma, 28, appeared in the magistrate's court on Thursday charged with assaulting three coloured children at the town's previously whites-only swimming pool earlier this year

Mr Bothma is alleged to have punched six-year-old Sheraldine Damoense in the eye He is also charged with slapping eight-year-old Darwin Solomons in the face and hitting him over the head with a snorkel in January.

Choked

He is also alleged to have choked eight-year-old Charne Matroos.

The explosive racial incident took place at the town's swimming pool after armed rightwingers, who were opposed to blacks being admitted, arrived at the pool, which had officially been opened to all races.

At his first appearance in court in May, Mr Bothma pleaded not guilty to all three counts of assault

This week the evidence of the boys and their parents, as well as that of a police witness, was led before the case was postponed to Tuesday.

Mr Bothma was released on his own recognisances

The De Aar AWB leader and Mr John Lester Geyser are also due to appear on Tuesday in a separate case on charges of assault and crimen injuria.

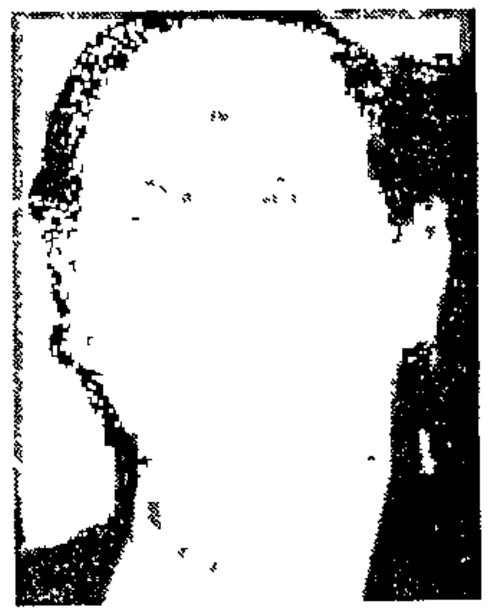
These charges arise from another incident in which Mr Bothma and Mr Geyser allegedly assaulted three juveniles at the town's swimming pool in October last year

Now 'worried' Transvaal A-G warns on freed prisoners

JAILBIRD MADNESS

ST Times 14/7/91

252



DON BRUNETTE 'Few prisoners turn into angels'

By CHARIS PERKINS

TRANSVAAL attorney-general Don Brunette has warned that many of the criminals freed under President FW de Klerk's amnesty will soon be back in court.

Mr Brunette, who is concerned about the mass releases, said "We can expect a large majority of criminals to go back to their old ways"

His warning came after two weeks of mounting public outrage over the freeing of criminals, including murderers, under President De Klerk's amnesty

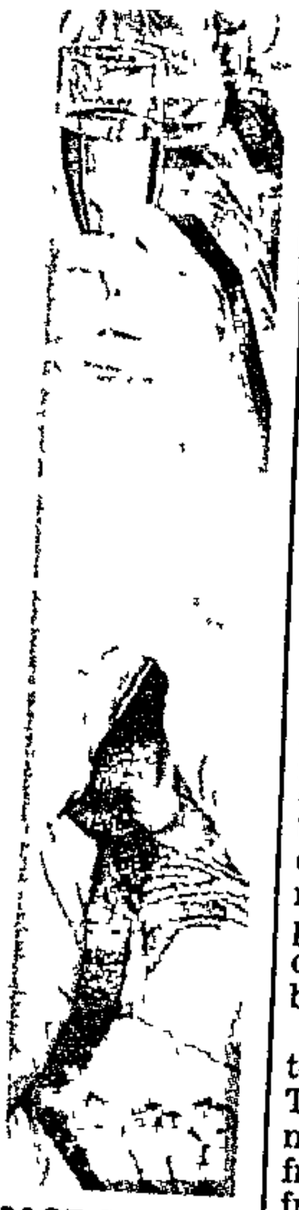
Mr Brunette said "The question one needs to be asking is Is the president's discretion being used properly?

"Those powers should be exercised very carefully Normally, amnesty is granted only in special cases, for example if someone in jail is very sick or old.

"There is a perception among the public that the legal system is being undermined, and that should never happen It's very worrying, and hundreds of my advocates are unhappy about the situation"

Mr Brunette warned that the courts would have to deal with the consequences of the releases

Here comes the bride!



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ably slip into their old ways — and we will then have to deal with them back in court."

Mr Brunette said other attorneys-general were also concerned about the large-scale releases

However, Cape attorney-general Neil Rossouw and Eastern Cape attorney-general Dr Jan D'Oliveira declined to comment yesterday, while Natal's attorney-general was not available

Free State attorney-general Tim McNally said he was not in favour of criminals being released too soon, but added that "every case must be considered on its merits".

Deputy Justice Minister Danie Schutte acknowledged in an interview with the Sunday Times on Friday that measures taken to release more than 57 000 prisoners unconditionally or on parole since December were "extraordinary"

He said "We need to get to the end of these releases The decisions of the courts must be enforced normally from now on, as was clear from President De Klerk's announcement of the latest amnesty"

Three amnesties in the last seven months, freeing 57 000 convicts, have reduced South Africa's prison population to 86 594

In the past two weeks, an estimated 4 200 prisoners have walked out of jail under the president's one-third remission of sentence for first offenders Some of them are on parole

Fears

Thousands more prisoners are due for release in the next few weeks

Most of them are first offenders, but President De Klerk is also considering proposals for the release of other previous offenders

The latest available crime statistics confirm Mr Brunette's fears

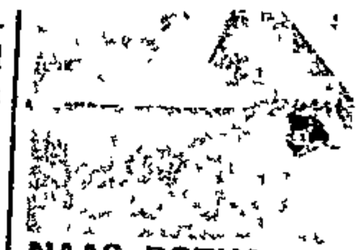
Serious crime soared to 121 000 reported incidents in May — the highest figure in South African criminal history

The crimes include murder, rape, armed robbery, housebreaking, theft, fraud and arson

Seven percent of the prisoners released since December have already been rearrested by the police on fresh criminal charges

Explaining the remission for non-political first offenders, President De Klerk said it would redress the imbalance brought

□ To Page 2



NAAS BOTHA, in
controversial, top-s
(AND FIND OUT HO

Now for the Africa Games

By COLIN BRYDEN

MOVES to have South Africa admitted to the All-Africa Games in Cairo in September came to light yesterday, as local officials chafed about what they see as unnecessary delays in the country's return to international competition

The organiser of the Cairo games, Mr Abdel-Moneim Emara, confirmed South Africa had applied to enter — and had offered to help finance the event

Mr Emara said he supported South Africa's participation, because it would attract greater world attention to the games, resulting in greater income from advertising and tickets

Concern

However, a decision would have to come from the OAU, which maintains a boycott of South Africa

The application concludes a dramatic week for sport during which South Africa was invited to the Olympic Games in Barcelona next year and re-admitted to the International Cricket Council

But local officials have expressed concern at what they see as delaying tactics by Mr Sam Ramsamy, chairman of the National Olympic Committee of SA

Mr Ramsamy warned that participation in Barcelona was not guaranteed and that unity remained the prime objective for sport.

● See Pain before Spain, Page 26

Warning on jailbird madness

S/Times 14/7/91

From Page 1

about by the release of political prisoners earlier this year

Critics of the releases have rejected President De Klerk's reasoning

Pretoria criminologist Irma Labuschagne said the releases were "ridiculous"

She said "Normal convicts are not the same as political prisoners, for God's sake They do not have the right to expect equality"

The national director of Lawyers for Human Rights, Mr Brian Currin, said the organisation could not see "what common criminals have to do with the political process"

"The departments of Justice and of Correctional Services, and the Cabinet, owe South Africans an explanation," he said

The Democratic Party's spokesman on justice, Mr Dave Dalling, said there was no justification for the release of common criminals before they had paid their debt to society

ANC spokesman Gill Marcus said the government was trying to criminalise political cases and that amnesties granted to convicted criminals were clouding the complex issue of political prisoners

The Human Rights Commission said the amnesties were smokescreens

"They were announced while the government was under considerable pressure to release political prisoners and there can be no doubt that a substantial number of unidentified political prisoners — perhaps as many as 2 000 — have walked free

"This is the price the government is willing to pay to climb out of the hole they dug for themselves," said an HRC spokesman

But Mr Schutte said the criminal amnesties should be seen in the light of a new approach to sentencing

In an Act passed during the last parliamentary session, correctional supervision — a sophisticated form of community service — was added to the list of possible sentences for criminals

Mr Schutte said the amnesties created the opportunity "to implement a new correctional services approach".

He said "South Africa has one of the highest prison populations in the world, but by May we had reduced overcrowding to 1,62 percent, compared with 30 percent in 1990"

● This weekend, two rightwingers stopped a 20-day hunger strike after being told they would be considered for parole within four months

Fanie Goosen, 30, is serving a 12-year sentence on various charges of terrorism, including the bombing of former Sunday Times columnist Jani Allan's flat

Corrie Lottering is serving a 24-year sentence for murder, robbery, intimidation, illegal possession of arms and ammunition and escaping from custody

15/7/91

Warrant of arrest for Piet 'Skiet'

Weekend Argus Correspondent

JOHANNESBURG — Afrikaner Weerstandsbeweging secretary-general, Mr Piet "Skiet" Rudolph, 54, walked out of Krugersdorp court where he was appearing on a speeding charge because he refused to be prosecuted by a black man and to have a coloured magistrate presiding over him

The case related to a speeding offence earlier this year.

When he entered the court yesterday the calm, quietly-spoken Mr Rudolph who is on the second day of a hunger strike, refused to plead and said he wanted to make a statement

The gist of his statement was that he would have been prepared to stand before a coloured magistrate and be prosecuted by a black prosecuter if he had committed the offence in Swaziland, Lesotho or Boputhatswana

"When I look at you I see you as strangers to the State. I am not prepared to have strangers decide on my fate," he added

He asked the prosecutor and the magistrate to recuse themselves

Magistrate Mr Joseph Jason said he rejected the allegations as he had sworn an oath of impartiality when he was appointed a magistrate

Prosecutor Mr A P R Ramawele said he had been appointed by the Attorney-General.

Mr Jason explained to Mr Rudolph that if he refused to take part in the court proceedings a plea of not guilty would be entered on the speeding charge.

Mr Rudolph said "that's fine," and left with several aides.

After a short adjournment the hearing resumed and the orderly called several times for Mr Rudolph, who was outside Mr Jason then ordered that a warrant be drawn up for his immediate arrest

Piet Skiet 'wanted to see wife'

CT 15/7/91

JOHANNESBURG — Fugitive right-winger Mr Piet "Skiet" Rudolph wanted to spend the weekend with his wife before he would allow police to arrest him today, he said in a telephone interview on Saturday evening

A warrant was issued for the arrest of the volatile spokesman of the Afrikaner Weerstandsbeweging on Friday after he refused to acknowledge the authority of a "coloured" magistrate and a black prosecutor in Krugersdorp Magistrate's Court, where he was appearing for an alleged traffic offence

Mr Rudolph said on Saturday that he was "visiting friends", but did not wish to divulge their address

"I will not be ashamed to walk into a police station on Monday morning to have myself arrested I might even stop by Wachthuis (SAP headquarters in Pretoria) for this purpose

"However this weekend I want to look into my beloved Breggie's eyes and spend valuable time with her I fully expect to have to go to jail again after that

"I did not want to insult the magistrate and the prosecutor by telling them that I considered them 'aliens'

"I merely want to be tried by my own fellow Boers, which I believe is my civil right If I am being treated in my own country as a stranger, this will start happening to all my fellow Boers All of us will become strangers in our own land

"I will insist that my civil rights must not be usurped by the courts"

A police spokesman said clerks processing warrants did not work on weekends so the warrant for Mr Rudolph's arrest might be processed only today

On Thursday Mr Rudolph started a hunger strike in solidarity with imprisoned right-wingers, all members of the Orde Boerevolk, who were involved in his right-wing-terrorism acts in the past

He also submitted an application for political indemnity in connection with the video he distributed through the Boer underground and in which he called up fellow Boers to join the armed struggle

Mr Rudolph said he would continue his hunger strike after his arrest — Sapa

Piet 'Skiet' waiting for the sheriff

Sowetan 15/7/91

252

FUGITIVE rightwinger Piet "Skiet" Rudolph said on Saturday evening he wanted to spend the weekend with his wife before he would allow police to arrest him today.

A warrant was issued for the arrest of the volatile spokesman of the Afrikaner Weerstandsbeweging after he refused to acknowledge the authority of a "coloured" magistrate and a black prosecutor in Krugersdorp Magistrate's Court on Friday He walked out of the court

SAP police spokeswoman Lieutenant Nina Barkhuizen said the clerks processing warrants did not work over the weekend, and that the warrant for the Boerstaat Party leader's arrest might therefore only be carried out today.

"I will not be ashamed to walk into a police station on Monday morning to have myself arrested .

"I did not want to insult the magistrate and the prosecutor by telling them that I considered them 'aliens'

Stranger

"I merely want to be tried by my own fellow-Boers, which I believe is my civil right If I am being treated in my own country as a stranger, this will start happening to all my fellow Boers All of us will become strangers in our own land

"I will insist that my civil rights must not be usurped by the courts."

He has also submitted an application for political indemnity in connection with a video he distributed through the Boer underground and in which he called up fellow Boers to join the armed struggle

The Justice Department on Friday strongly denied an allegation by Afrikaner Weerstandsbeweging leader Mr Eugene Terre'Blanche that a black prosecutor and a coloured magistrate had been deliberately appointed to try Rudolph

Mr Nic Grobler of the Justice Department said the magistrate was appointed in March 1991 and the prosecutor had been at Krugersdorp Magistrate's Court even longer - Sapa

Burnt boy: white farmer stands trial

A MESSINA farmer who allegedly doused a 15-year-old black boy with petrol and later set him alight is to stand trial in the Louis Trichardt Regional Court today.

Court officials in Pietersburg confirmed that Mr Jan van der Westhuizen, of Hayoma farm in the Tshipise district, would be charged with assault.

The trial follows an incident on December 9 last year during which the farmer allegedly tied the boy to a steel table in his workshop, after accusing him of stealing a gun.

Assaulted

The boy was allegedly assaulted and doused with petrol, then set on fire with a live welding rod, resulting in severe third-degree burns to his chest and abdomen, for which he had to undego a skin graft

The case aroused great controversy after police arrested the boy and kept him under police guard in

By
MATHATA TSEDU

the Limpopo Hospital, saying the burning had been an accident Investigations into the boy's version of events was only undertaken when *Sowetan* queried the police version

Headlines

The boy made further headlines when he was transferred from Limpopo hospital in the back of a police van swathed in bandages and unable to walk, after the superintendent, Dr JP van Zyl, prematurely discharged him, claiming that journalists were making "political capital" out of the case.

Van Zyl said, when asked about using a police van to transfer a patient that, as far as he was concerned, the police could have used "a wheelbarrow or something" because if the boy could give interviews and pose for Press photographs, "he must be fit to travel in a van"

Piet 'Skiet' to be returned to Krugersdorp

(252) ARG 16/7/91

The Argus Correspondent

JOHANNESBURG. — Prominent rightwinger Piet "Skiet" Rudolph was arrested at the Pretoria offices of the Afrikaner Weerstandsbeweging, police confirmed

Liaison officer Major Willie Vlotman said Mr Rudolph, secretary-general of the AWB, was being held at Pretoria Central police station on a charge of contempt of court.

Mr Rudolph yesterday declined the option of bail and would be handed over to police in Krugersdorp today, Major Vlotman said

A warrant for Mr Rudolph's arrest was issued on Friday following his refusal in Krugersdorp to appear before a Coloured magistrate and a black prosecutor on a speeding offence allegedly committed on the Krugersdorp-Pretoria highway earlier this year.

In a handwritten statement to the court, Mr Rudolph said the prosecutor and the magistrate were "aliens" as they could not vote and, therefore, could not carry out justice

He asked them to recuse themselves. Magistrate Mr Joseph Jason, who has been on the bench in Krugersdorp since March, rejected Mr Rudolph's request. Mr A P R Ramawele has been prosecuting for at least four years

Mr Rudolph said that although he did not doubt the court's integrity, he was unable to be judged by people not of his own ilk

Mr Jason then entered a plea of not guilty.

While the court was adjourned Mr Rudolph left the building and did not return. Mr Jason ordered a warrant for his immediate arrest

Youth tells of being set alight

(4) CT 16/7/91

LOUIS TRICHARDT — A 15-year-old black youth yesterday told the Regional Court here that a white farmer welded his wrist to an iron table before dousing him with petrol and setting him alight

The teenager, who cannot be named because he is under age, was giving evidence against Northern Transvaal farmer Mr Johan van der Westhuizen, who is standing trial for attempted murder

Mr Van der Westhuizen has pleaded not guilty before magistrate Mr G J J van Deventer

The youth was in hospital for 4½ months, allegedly as a result of the assault.

The teenager told the court that after Mr Van der Westhuizen took a piece of metal and welded his right wrist to the table, he doused him with petrol and set alight the jacket he was wearing

The youth tried to take the burning jacket off with his free hand before one of the labourers poured water over him and extinguished the flames

He remained welded to the table for several hours before being set free The police then arrived, handcuffed him and took him to the Messina police station He was later taken to hospital

Under cross-examination, the youth said he had no idea why the farmer had assaulted him

The case continues today — Sapa

My day in. hell

Court hears how youth was tortured and burnt

A 15-YEAR-OLD boy told the Louis Trichardt Regional Court yesterday how a white farmer assaulted him, doused him with petrol and set him alight without even telling him why.

By MATHATHA TSEDU

The boy, who may not be named because of his age, told magistrate Mr JGJ van de Venter that a white policeman who arrived on the scene later kicked him in the stomach before pulling him up from the ground with handcuffs.

The boy, from Tshituni Village in Venda, was testifying in the trial of Mr John van der Westhuizen who is charged with attempted murder.

The State alleges that Van der Westhuizen had, on December 8 last year, assaulted and set the boy on fire at his Hayoma Farm near Messina. Van der Westhuizen has pleaded not guilty.

To Page 2

...my day in hell

From Page 1

The boy, who undressed and showed the court burns on his throat, chest, abdomen and hands, said he was on his way to see his mother on the farm when Van der Westhuizen asked him to accompany him to the workshop to help with some work

When they got to the workshop, Van der Westhuizen started assaulting him with fists on the head and body for no reason.

"He told four black men to hold me as he went into the workshop and came with a big chain and a shocking device used for cattle.

Chained feet

"He chained my feet and started shocking me all over the body Later he took an iron and fitted it around my left wrist. He took me to a steel table and welded the iron to the table, burning my hand in the process," the boy said.

Showing the court the burn mark around his wrist, the boy said Van der Westhuizen had gone into a smaller room in the workshop and came back with petrol in a plastic container.

"He poured it over my chest on the lumber jacket that I was wearing. Then he took the two terminals of the welding machine and advanced towards me hitting them against each other.

"The sparks from the terminals fell on my petrol-soaked jacket and caught fire," he said As the youth said this, his mother broke down and had to be escorted out of court in tears

Burning jacket

He told the court that he tried, using his right hand, to pull the burning jacket off as the blaze ate into the shirt and his skin He stopped when his hand also caught fire

A labourer doused the flames with water. "The burning still continued because the nylon jacket was melting When I tried to pull it off, my flash peeled off too," he said.

Van der Westhuizen, who kept on shaking his head in court yesterday as the evidence unfolded, had later gone to his house nearby, the boy said.

"He returned and stood near me and laughed" Later, as he sat welded to the steel table, a white policeman arrived

"He kicked me in the stomach and went out to his van He brought handcuffs. One of the labourers sawed off the iron on my hand as I cried from pain

Never told

"The policeman pulled me up with the handcuffs that he had fastened on my burnt right hand and took me to his open van He fastened the cuffs to a bar on the back of the van and drove me to the Messina police station," the boy said

At no point was he ever told why all of this was happening

He was later taken to hospital.

There were tears in his eyes when his pictures taken at Messina Hospital soon after the incident were shown to him

He still feels pains and cannot walk for long distances

The hearing continues.

Piet 'Skiet' is arrested

Sowetan 16/7/91

RIGHTWINGER Mr Piet "Skiet" Rudolph was arrested by police yesterday afternoon at the offices of the Afrikaner Weerstandsbeweging in Pretoria.

A warrant was issued for Rudolph's arrest on Friday by a Krugersdorp magistrate after he walked out of the court and refused to be tried on a traffic offence by a black prosecutor and a coloured magistrate

West Rand police liaison officer Captain Henriette Bester said yesteray that Rudolph was arrested by Pretoria police.

She said police told her that Rudolph would be taken to Pretoria Central Prison.

He was due to appear in the Pretoria Magistrate's Court late yesterday. - *Sapa.*

Wife-assaulting charge dropped

Star 16/7/91

The State withdrew a charge of assault with intent to do grievous bodily harm against former police sergeant Ronald Bezuidenhout, alias "Agent Tokarev" from the police anti-terrorist unit at Vlakplaas, in the Springs Magistrate's Court yesterday

Mr Bezuidenhout had previously appeared on a charge of allegedly assaulting his wife, Marilyn Bezuidenhout.

In an article published in Vrye Weekblad in May, Mr Bezuidenhout alleged he was an undercover agent for the SAP and had been trained by the ANC in Angola and East Germany

Yesterday's charge was withdrawn before Magistrate J Brits The public prosecutor declined to give reasons for the withdrawal but it is believed that Mrs Bezuidenhout did not want to press charges

Amnesty for 2 more policemen

Star 16/7/91

GRAHAMSTOWN — Two former riot policemen, sentenced to death in 1988 for the murder of a Cradock man, have been released under the Government amnesty.

A spokesman for the Department of Correctional Services confirmed yesterday that Leon de Villiers and David Goosen were released on July 4.

The men, both of Port Elizabeth, were convicted of "panel beating" Mlungisi Stuurman.

It was found that they took Mr Stuurman (18) to a river outside Cradock and shot him in the back of the neck.

Mr Justice Neville Zietsman said there were no extenuating circumstances and passed death sentences.

Mr Goosen and Mr de Villiers had been part of a unit sent to Cradock to monitor the funeral of an ANC member on July 26 1986. After a radio report of stone-throwing in the township, the unit decided to go and "curb unrest".

The judge said the State had proved beyond a reasonable doubt that Mr Goosen had stabbed a person during the operation. But because it could not prove that the man had been killed, both men were acquitted on one murder charge.

Mr Goosen and Mr de Villiers had their sentences commuted by former President P W Botha. — Albany News Agency.

Court told of assault by farmer

Boy 'welded to table, set alight'

Star 16/7/91

252

By Dirk Nel
Northern
Transvaal Bureau

LOUIS TRICHARDT — The mother of a 15-year-old boy broke down and wept in the Regional Court here yesterday when her son told magistrate G J J van Deventer how he was "welded" to a steel table on December 8 last year and then set alight by a farmer, John van der Westhuizen.

The boy, Frank Mokwati of Tshituni village in Venda, removed his shirt to show the court severe burn marks all over his body He said he had not yet recovered from the injuries, despite being treated in hospital for four months

Mr van der Westhuizen (30) of Hayoma Farm, Tshipise, pleaded not guilty to charges of assault and attempted murder during a previous court appearance

The boy testified that he was on his way to see his mother near Tshipise on the morning of December 8 when the accused pulled up in a bakkie and asked him to help with a chore. He climbed on to the back of the vehicle, joining four other young blacks.

The accused then drove to a workshop on Hayoma farm, where the man grabbed him and began punching him on the chest, head and stomach, the boy claimed

Then Mr van der Westhuizen allegedly handed him over to the other four, who held him firmly, while the farmer "shocked" him with a cattle-shocking device

Flames

Mr van der Westhuizen then allegedly put a bent piece of iron around one of his wrists and welded it to a steel table, sprinkled petrol on the boy and set him alight with sparks from two welding irons

Mutual admirers . . . pop musician and charity worker Sir Bob Geldof shares a joke

Bob Geldof meets hero Mandela

By Esmaré van der Merwe
Political Reporter

Irish pop star Sir Bob Geldof would have liked to give Nelson Mandela a special 73rd birthday present on Thursday — a compilation of the approximately 50 songs that have been composed to honour the anti-apartheid legend.

out on Friday," the sleepy, off-beat Geldof said, to break the ice

la, Geldof said "I am still very nervous."

Mr Mandela quipped back "I've always felt nervous (about meeting him)."

Replied Sir Bob: "Yeah, but he's a boxer"

The two then met behind closed doors for an exclusive interview filmed by an Italian film crew

Geldof will also meet In-

all over his body He said he had not yet recovered from the injuries, despite being treated in hospital for four months

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The accused then drove to a workshop on Hayoma farm, where the man grabbed him and began punching him on the chest, head and stomach, the boy claimed

Then Mr van der Westhuizen allegedly handed him over to the other four, who held him firmly, while the farmer "shocked" him with a cattle-shocking device.

Flames

Mr van der Westhuizen then allegedly put a bent piece of iron around one of his wrists and welded it to a steel table, sprinkled petrol on the boy and set him alight with sparks from two welding irons.

"I tried to take my jacket off, but let go of it when I felt my hand burning The four others brought water and doused the flames. When I finally got the jacket half off, some of my flesh came with it," he said

A man called Shamba cut the rest of the jacket off.

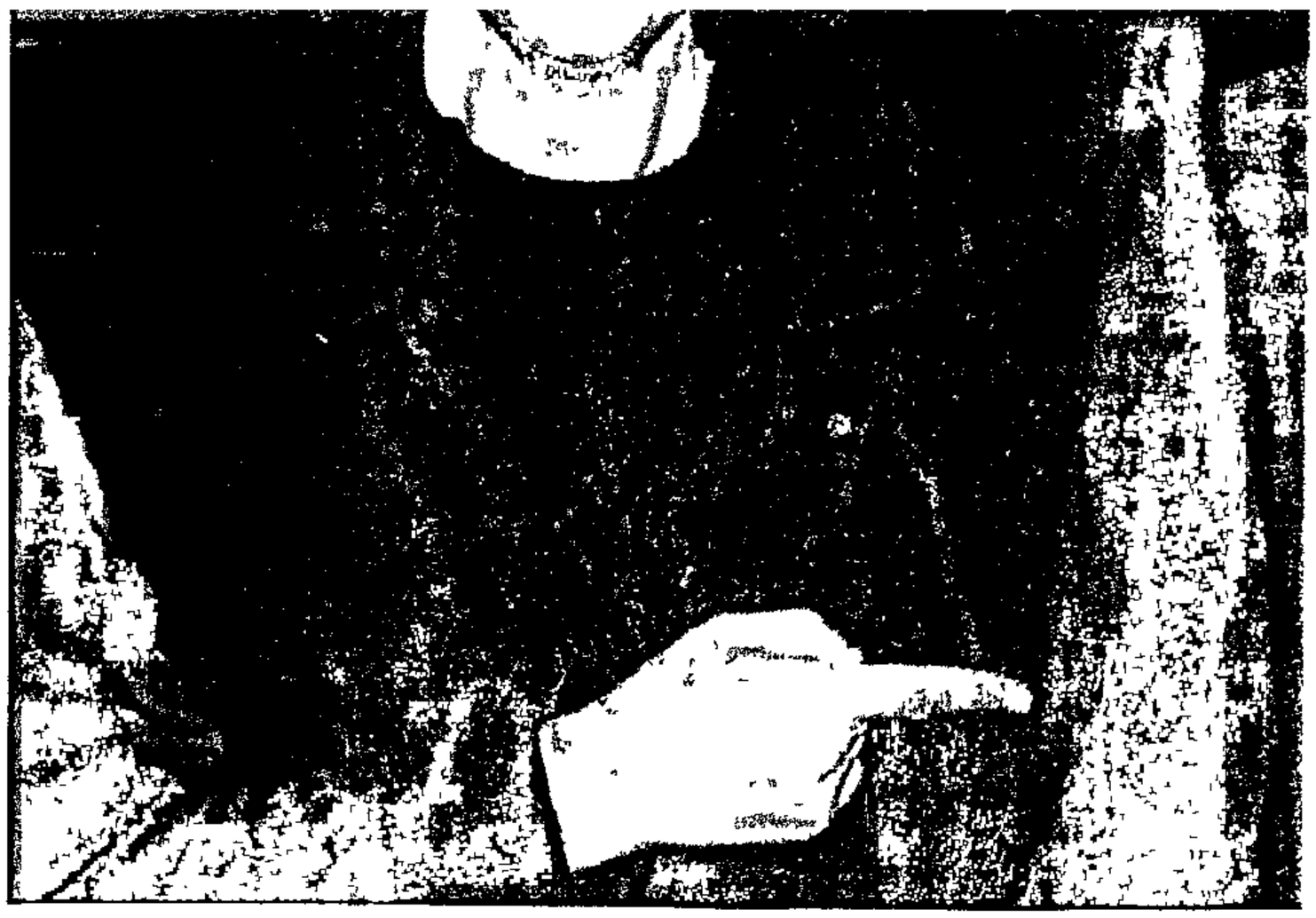
Meanwhile the farmer had left and returned with a white policeman, who kicked him in the stomach, the boy alleged

During all these events, nobody told him why he was being treated so harshly, he added

The policeman took him to his bakkie, handcuffed him to a heavy piece of iron, and drove him to the Messina police station He was later transferred to the Messina Hospital from where he was moved to the Pietersburg Hospital and eventually to the Ga-Rankuwa Hospital

During cross-examination of the witness, defence attorney J L C van Vuuren rejected his version of the day's events, claiming the boy had been on the run after being sought by the police in connection with a burglary However, the complainant denied this, saying his evidence was true

The hearing continues



Mutual admirers . . . pop musician and charity worker Sir Bob Geldof shares a joke

Bob Geldof meets hero Mandela

By Esmaré van der Merwe
Political Reporter

Irish pop star Sir Bob Geldof would have liked to give Nelson Mandela a special 73rd birthday present on Thursday — a compilation of the approximately 50 songs that have been composed to honour the anti-apartheid legend

"But listening to that would be far worse than 27 years of solitary confinement," the world-renowned "Band Aid" artist said upon meeting his idol at the ANC head office in Johannesburg yesterday.

Shaking hands during their first meeting, the two men — celebrities in their own yet very differing ways — exchanged niceties under the glaring lights of television cameras and the flashes of photographers' cameras

"My new record will be out on Friday," the sleepy, off-beat Geldof said, to break the ice.

On a more serious note, the Nobel Peace Prize nominee said he would love to talk to Mr Mandela for the entire afternoon if time permitted.

Mr Mandela was equally complimentary about the leader of legendary '70s punk rockers, the Boomtown Rats

"I like everything that has got to do with him," Mr Mandela said.

Asked whether he was nervous to meet Mr Mandela, Geldof said· "I am still very nervous."

Mr Mandela quipped back "I've always felt nervous (about meeting him)"

Replied Sir Bob. "Yeah, but he's a boxer"

The two then met behind closed doors for an exclusive interview filmed by an Italian film crew.

Geldof will also meet Inkatha leader Chief Mangosuthu Buthelezi while visiting SA

● Mr Mandela is to undertake a three-week visit to Spain, the Caribbean and Latin America

The trip, which starts on Friday , will include visits to Madrid, Kingston, Havana, Mexico City, Venezuela, Argentina and Brazil

ANC spokesman Carl Niehaus yesterday said Mr Mandela would meet several heads of state, including President Castro of Cuba.

Fight over VAT on essentials grows

Star 16/7/91

By Paula Fray and Jacqueline Myburgh

Public resistance to the levying of value-added tax on essentials such as medical services and foodstuffs is growing as the vast scope of the VAT net becomes clearer.

Recent revelations that the switch-over from general sales tax to VAT would more than double the tax burden of low-income families have sparked off grassroots resistance

VAT will replace GST on September 30.

The Congress of South African Trade Unions has joined concerned consumer bodies in pointing out the heavy toll of VAT on certain services

Cosatu is set to meet the Minister of Finance on July 23 to discuss the implications of levying the new tax on foodstuffs, medicines and medical services

The meeting with the Minister precedes Cosatu's national congress on July 24, where the issue will be high on the agenda

Cosatu spokesman Neil Coleman said "I don't want to make threats, but at the end of the day, if the workers have to take action they will do so"

Labour Research Services, in a recent study for Cosatu, calculated that with 12 percent VAT, a low-income family would pay between R26 and R38 more sales tax than under GST

"This, when workers are already living on the breadline," Mr Coleman said

The Housewives League has come out in support of a Consumer Council call for the public to resist VAT on medical services

League president Lyn Morris called on consumers

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Rudolph in court

(252)

Sowetan 17/7/91

PIET "Skiet" Rudolph appeared briefly in the Krugersdorp Magistrate's Court yesterday.

This follows his refusal last week to be present at a hearing in connection with a speeding charge against him because the magistrate was coloured and the prosecutor black

Supporters of the AWB had waited patiently outside the building from early yesterday but Rudolph first appeared in the Pretoria Magistrate's Court where he was granted bail of R50

Mrs Erina Breedt, the prosecutor, explained to the court that the magistrate and the prosecutor at the previous hearing could not preside over the case as their testimony might be required in a hearing against Rudolph

Rudolph had appeared before magistrate Mr Joseph Jason and prosecutor Mr APR Ramawele in the speeding case.

He refused to return to the court after an adjournment and a warrant for his arrest was issued.

He was arrested on Monday and spent the night in jail before appearing in Pretoria and later in Krugersdorp.

Plea

Mr SW van Niekerk, the magistrate, said a plea of not guilty had been entered on Friday and Rudolph confirmed that, in view of all that had happened, he wanted that plea to stand.

He also told the court that, under the circumstances, he now felt he needed legal representation and asked that the case be postponed

He said he believed there might be contempt of court charges against him.

Van Niekerk said charges that Rudolph had failed to return to court during a hearing might be brought against him.

This would only occur once an investigation had been completed after the present court case.

"At this stage there is no contempt of court charge being investigated," Van Niekerk assured him.

The case was postponed to August 22 for trial.

The courtroom was packed with curious onlookers as well as supporters of the AWB.

Rudolph was escorted from the building where the group first sang an Afrikaans song before they slowly disbanded. - *Sowetan Correspondent.*

Piet 'Skiet' in court — granted R50 bail

(252)

JOHANNESBURG — Right-winger Mr Piet "Skiet" Rudolph appeared briefly in the Magistrate's Court here yesterday in connection with a speeding charge which he refused to be allowed to be heard last week by a coloured magistrate.

Supporters of the Afrikaner Weerstandsbeweging waited patiently outside the building from early yesterday but Mr Rudolph first appeared in Pretoria Magistrate's Court where he was granted bail of R50.

Mr S W van Niekerk presided at yesterday's appearance and the prosecutor was Mrs Erina Breedt.

Mrs Breedt explained to the court that neither the magistrate nor the prosecutor at the previous hearing could continue with this case as their testimony might be required in a further possible hearing against Mr Rudolph.

The case was postponed to August 22 for trial — Sapa

CT 17/7/91

'I welded boy to table'

Sowetan 17/7/91

FARMER Mr John Van der Westhuizen would admit to welding a boy to a steel table but deny setting him alight with petrol, the Louis Trichardt Regional Court heard yesterday.

By MATHATHA TSEDU

Defence attorney Mr JLC van Vuuren was closing cross-examination of the 15-year-old boy, who had earlier told the court of his ordeal at the hands of Van der Westhuizen.

Van Vuuren told the magistrate, Mr GJJ van Deventer, that Van der Westhuizen, who has pleaded not guilty to a charge of attempting to murder the boy at Hayoma Farm near Messina on December 8 last year, will deny that he poured petrol on the youth and set him alight using the welding machine sparks.

Sought by police

He said Van der Westhuizen would admit he had welded the boy's left hand to a steel table "to make sure he did not escape as he was being sought by police for various crimes".

Earlier Lieutenant Mark Froneman of the Police Forensic Laboratory in Pretoria told the court that a jacket similar to the one the boy was wearing on the day had not ignited when placed near the sparks from a welding machine

He said the jacket had, however, burst into flames after petrol had been sprinkled on it.

Tests done on the boy's burnt jacket had not shown any traces of petrol three months after the incident.

This, however, could have been caused by the jacket lying exposed for over two days after the incident. All traces of petrol would by then have evaporated.

The boy said under cross examination by Van Vuuren that Press reports quoting him as saying he had been accused of stealing a gun

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Farmer will admit this - lawyer

P.T.O.

Rudolph in court over speeding offence

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Star 17/7/91

By Gien Elsas
West Rand Bureau

Piet "Skiet" Rudolph appeared briefly in the Krugersdorp Magistrate's Court yesterday in connection with a speeding offence for which he had refused to stand charge last week because the magistrate was coloured

Supporters of the AWB had waited patiently outside the building from early yesterday, but Mr Rudolph first appeared in the Pretoria Magistrate's Court where he was granted bail of R50

S W van Niekerk presided at yesterday's appearance, and the prosecutor was Erina Breedt

Mrs Breedt explained to the court that both the magistrate and the prosecutor of the previous hearing could not continue with the case as their testimony could be required in a further possible hearing against Mr Rudolph

Mr Rudolph had appeared before Joseph Jason, and A P R Ramawele had appeared for the State

Mr Rudolph had also refused to take part in the proceedings because the prosecutor was black

He refused to return to the court after an adjournment, and a warrant was subsequently issued for his arrest

He was arrested on Monday and spent the night in jail before he appeared first in Pretoria and later in Krugersdorp

Mr van Niekerk said a plea of not guilty had been entered on Friday, and Mr Rudolph confirmed that, in view of all that had happened, he wanted that plea to stand

He also told the court that, under the circumstances, he now felt he needed legal representation and asked that the case be postponed

He added that he believed contempt-of-court charges might be brought against him as well

Mr van Niekerk denied this, but said it was possible that other charges — of failing to return to court during a hearing — might be brought against him

The case was postponed to August 22 for trial

Policeman in court over 'jest'

Star 17/7/91.

Staff Reporter

The policeman, filmed by an international television crew telling a group of men in Soweto, "If you want to kill Mandela, take until tonight", appeared in the Protea Magistrate's Court yesterday.

Warrant Officer Gideon Cornelius Lubbe (36) of Randfontein was charged with having acted in an unlawful and irresponsible manner not compatible with his duties as a member of the police.

He has pleaded not guilty.

The incident happened on May 1 at the Meadowlands hostel in Soweto during faction fighting between township residents and hostel dwellers.

Parts of the video tape of the incident were shown to court officials and members of the media.

Worldwide Television News cameraman Arthur Brian Green, who filmed the incident, agreed during the hearing that the statement was said in jest.

He described the crowd as having been "quite jovial", adding that the incident had ocurrred in a "pretty relaxed atmosphere".

Mr Green told magistrate JP H Oliver that he found it "unbecoming" for a policeman to utter such an "irresponsible" statement, especially when there was so much tension at the time between supporters of the ANC and the Inkatha Freedom Party.

He testified that he supposed the "Mandela" referred to by W/O Lubbe was ANC president Nelson Mandela, then deputy-president.

The hearing continues today.

Top policemen join outcry over releases

Star 17/7/91.

Staff Reporters

Senior policemen yesterday joined South Africa's attorneys-general in the growing outcry over the mass release of common-law prisoners

Top retired and working policemen — including generals — interviewed by The Star yesterday warned that a substantial number of the criminals released would again commit serious crimes

Angry officers feared that

- An even worse crime wave could be in the offing
- There were not enough policemen to cope
- The wide-scale release of serious law-breakers was a recipe for even more violence

The fears they expressed followed the disclosure yesterday that a joint letter had been sent to Minister of Justice Kobie Coetsee on behalf of the country's attorneys-general voicing strong objections to the Minister's release of certain prisoners "found guilty of serious and horrible crimes"

Heather Regenass, national marketing manager of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro), this week said the conditional one-third remission of sentence for first offenders was inconsistent and would lead to an increase in crime

Prisoners qualify for a remission of a further third of their sentence for good behaviour

Mrs Regenass warned that many released prisoners would be unable to find work

It is estimated that recent amnesties have set 57 000 convicts free.

A former CID chief said the greatest degree of leniency had already been shown in court and in sentencing

"To simply alter the sentence is wrong," he said

"An experienced policeman knows the calibre of criminals — whether they are innately vicious or not Some criminals, even first offenders, are brutal and vicious and will stay criminals while others won't"

One policeman said he could understand people who committed emotional crimes being released from prison, but "people who committed cold-blooded and vicious crimes should not be allowed to go free"

Describing recent releases as something he could not understand, one high-ranking officer said it was a recipe for more violence

"Hardened criminals at the best of time need guidance and help after having served their sentences Can you imagine what a prisoner, after having been in jail for only a fraction of his term, will do once he's out?" the officer asked

Another policeman described the releases as demoralising

"I cannot see the purpose in bringing such people to justice any longer"

Yet another expressed concern that criminals, once freed, would somehow try to get back at the person responsible for placing them behind bars

In an interview with The Star, a senior detective described how he had tracked down a gang that had murdered an elderly woman.

"When they were arrested, all three swore they would kill me, the judge and those who got them jailed," he said

No further comment was available yesterday from the Department of Justice

Accused denies using petrol

252

Star 17/7/91

By Dirk Nel
Northern Transvaal Bureau

LOUIS TRICHARDT — A police forensic expert yesterday used a video in a regional court to prove that the lumber jacket worn by Frank Mokwati (15), who was allegedly "welded" to a steel table and set alight on December 8 must have been sprinkled with a highly flammable substance

John van der Westhuizen (30) of Hayoma Farm, Tshipise, has pleaded not guilty to charges of assault and attempted murder, arising from second-degree burns sustained by the boy, who testified on Monday that Mr van der Westhuizen sprinkled petrol on him and then set him alight with sparks from two welding irons

Lieutenant Mark Froneman of the SAP Forensic Science Department in Pretoria showed the court a video sequence featuring tests made with a welder, and a jacket similar to the one worn by the boy

Attempts during the test to ignite the nylon and cotton jacket with sparks from the welder failed, until petrol was sprinkled on it

However, Lieutenant Froneman said there were no traces of petrol on the boy's jacket when he examined it in June

He said this did not necessarily mean that a small amount of petrol had not been sprinkled on it

Defence attorney J L C van Vuuren said during cross examination of the complainant, that Mr van der Westhuizen denied using any petrol or a welder to set the boy's clothes alight

He claimed Mr van der Westhuizen had been informed by police that the boy was wanted in connection with a burglary

The accused took three workers with him when he heard the suspect was on the farm and they found him hiding in an orchard, the defence contended

They caught the boy, and the accused took him to his workshop where he put a bent piece of iron around his wrist and welded this to the table to prevent him from escaping, Mr van Vuuren told the court

But the accused had definitely not set the boy alight purposely, he claimed

Under cross examination the boy denied he was on the run, but did acknowledge that he had been told to appear in court on August 13

He said he did not know what it was all about

Messina District Surgeon Dr Maria van der Walt, who examined the boy shortly after the alleged workshop incident, described the injuries as second-degree burns, explaining that the victim had had to go undergo skin-graft surgery

She rejected a suggestion by the defence that the wrist injury could have been an abrasion, saying it was definitely a burn

The hearing was adjourned until September 23

Morris Pogrund is appearing for the State

SOWETAN Thursday July 18 1991

LHR won't act in lawsuit

Civics leader being sued for R15 000

252
Sowetan 18/7/91

LAWYERS For Human Rights will not be defending a Mamelodi Civic Association leader who is being sued for R15 000 by a high school principal for defamation.

By MONK NKOMO

Mr Brian Currin, national director of the LHR, said yesterday they had only agreed to enter appearance on behalf of Mr Pasty Malefo after they explained to him that this was done only to ensure that default judgment would not be granted against him

Currin's reaction followed concern by lawyers after a report in *Sowetan* last Thursday in which it was disclosed that Malefo, publicity secretary of the Mamelodi Civic Association, was being defended by the LHR in the lawsuit.

A high school principal in Mamelodi, Mr Cekiso Kajeni, has demanded R15 000 in damages from Malefo, who allegedly said in a television interview on April 17 that he (Kajeni) was no longer attending school because he had been chased away by parents for embezzling school funds

Sowetan established that the LHR had filed a notice in the Pretoria Supreme Court stating that "the defendant hereby appoints Lawyers for Human Rights as attorneys of record and all pleadings and processes shall be served at the said attorneys' address"

Several lawyers warned that the LHR would be defaulting by defending Malefo and said funds donated to the LHR were meant for human rights activities and not ordinary civil claims

In a statement yesterday, Currin admitted that the LHR took instructions from Malefo and entered appearance on his behalf

"However, he approached us at the last minute and when we agreed to enter appearance on his behalf we explained further that the matter was not a human rights case and that he would have to instruct a private practitioner to represent him further

"In the circumstances, we will not be representing Mr Malefo in this matter," said Currin.

Piet Skiet's arrest a publicity stunt — claim

T 18/7/91

Own Correspondent

JOHANNESBURG. — AWB spokesman Mr Piet "Skiet" Rudolph, who was arrested this week for refusing to stand trial before a coloured magistrate and black prosecutor, appeared before the same officials several weeks ago without objecting.

A Krugersdorp Magistrate's Court official said yesterday that Mr Rudolph had pulled a "publicity stunt" last Friday when he refused to appear before magistrate Mr Joseph Jasson and prosecutor Mr A Ramawela on a traffic charge

At his first appearance on a similar charge several weeks ago, Mr Rudolph did not object to the prosecutor and magistrate not being white, the official said

● Four ordered to assassinate BWB man? — Page 7

Traffic desperado Piet captured

CT 18/7/91

PRETORIA — Police yesterday caught up with Mr Piet "Skiet" Rudolph, who has been on the run since he refused to appear before a coloured magistrate last week.

He was arrested at the offices of the Afrikaner Weerstandsbeweging here (252).

He is scheduled to appear in the Magistrate's Court today.

A warrant was issued for Mr Rudolph's arrest on Friday by a Krugersdorp magistrate, after he walked out of the court and refused to be tried on a traffic offence by a black prosecutor and a coloured magistrate.

AWB staff were furious about Mr Rudolph's arrest for a minor traffic offence.

"We were very glad that the arresting officers were white. Otherwise Mr Rudolph would have refused to go along and there might have been considerable trouble," a spokesman said.

A joke says Mandela 'threat' cop

By SELLO MOTLHABAKWE

JUDGMENT in the case of Warrant Officer Gideon Lubbe (36), appearing in the Protea Magistrate's Court on charges of improper conduct and/or bringing the South African Police into disrepute, will be delivered on August 5.

On the second day of the trial Lubbe, who has been suspended for six months from the police force for remarks he allegedly made about Mr Nelson Mandela to Inkatha supporters, said he now thought the words he uttered were not necessary

He, however, denied that the words were inciting

Earlier in his evidence before Mr IG Olivier, Lubbe said he was stopped by a group of Inkatha supporters who told him they wanted to kill Mandela He said he realised the situation was tense and explosive and thought of a way of defusing it He told the group: "If you want to kill Mandela, wait till tonight"

Lubbe said he was joking and had no intention of hurting or instigating anybody.

Miss Carin Nienaber, for the State, said Lubbe ought to have been cautious, particularly in view of the public's perception of the police-Inkatha relations

Mr I Swartzberg, for Lubbe, submitted that the police were overreacting because of the political atmosphere

'No trouble with black court staff'

Star 18/7/19

By Helen Grange
Pretoria Bureau

252

Black and coloured magistrates and prosecutors are practising in several conservative towns — and have never been subject to right-wing objection such as that in the Piet "Skiet" Rudolph case, Transvaal Attorney-General Don Brunette said this week

"This is an isolated, political incident Only one other case in Pretoria a few months ago — where a right-winger created a fuss over a non-white magistrate — has come to my attention," he said

Moans

Mr Brunette said there were "quite a few" black and coloured magistrates practising all over the country, including Pretoria, Pietersburg, Potgietersrus, Springs and Benoni

"There have been little moans now and again about language problems — but there has never been an incident like this one."

If there was an objection by an accused, it was not an option to remove the magistrate from the court, Mr Brunette said

The Department of Justice says there are 23 "non-white" magistrates operating in the country, three of whom are black

Among State prosecutors, there are 64 coloured, 32 Asian and 41 black people

shameful — Nicro

DARIUS SANAI

MORE than 30 000 people were sentenced to whipping last year, the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) said yesterday.

Nicro regional director Heather Regenass said yesterday government figures showing that 31 647 people were sentenced to whipping last year were "shameful".

The figure excluded "a large number" of prisoners whipped for offences committed while in prison

Latest figures did not give a breakdown by race of people sentenced to whipping Regenass said figures for previous years showed coloureds were far more likely to be whipped than blacks or whites

Juveniles of all races could expect to be sentenced to between four and eight strokes with a light cane for minor offences such as fighting in public.

Corporal punishment should be abolished, she said. The Nicro programme of rehabilitating offenders and teaching schoolchildren about the effects of violent crime was being undermined by a legal system that dealt out violent punishments.

A Justice Department spokesman said yesterday the department had no plans to change or abolish the corporal punishment system.

convicts still on fast

THEO RAWANA

ALL but 15 prisoners in Bophuthatswana hospitals had suspended their strike by last night after intervention by ANC president Nelson Mandela, the Mafikeng Anti-Repression Forum said

Mandela, on a midnight visit to hunger strikers at Odi Hospital on Saturday, persuaded prisoners to suspend their strike so that "other strategies" could be pursued in the campaign for their release

This resulted in 25 prisoners suspending their strike at the weekend, and these in turn called on the other 41 to suspend the fast Forum spokesman Laura Taylor said last night 26 prisoners had suspended their action, but the full facts had not been explained to the remaining 15

"I have been granted permission to visit them at Bophelong Hospital and will be talking to them tomorrow (Thursday)," she added.

Taylor, who had gone to the hospital in the hope of meeting the prisoners yesterday, said a Human Rights Commission report that only one prisoners was still on hunger strike was incorrect.

Sapa reports that three political prisoners at Pollsmoor Prison in Cape Town have resumed their hunger strike, after fasting for 27 days in April.

● Comment: Page 10

'Kill Mandela' retort was joke, court told

WILSON ZWANE

POLICE Warrant Officer Gideon Cornelius Lubbe was not thinking straight when he "jokingly" told a group of Inkatha supporters to wait and kill ANC president Nelson Mandela on the night of May 1, the Protea Magistrates' Court heard yesterday.

Lubbe has pleaded not guilty to charges of improper conduct and/or alternatively bringing the SAP into disrepute The charges against him arose from an incident in Soweto when he allegedly told a group of Inkatha supporters "If you want to kill Mandela, wait till tonight"

The incident was filmed by a video cameraman working for an international news agency.

Prosecutor Carin Nienaber submitted that Lubbe had admitted he did not have to utter those words, which she said rendered his conduct unbecoming and which dented the SAP image

Defence attorney Ike Swartzberg said Lubbe had not had time to consult with his superiors about what to say to the group. Had he had time Lubbe would not have uttered those words

Giving evidence earlier in the day before magistrate I Olivier, Lubbe said he was joking.

Lubbe said he thought he was under threat from the group, which had stopped and surrounded a police van in which he was travelling

The group was talking about killing Mandela and in an attempt to defuse the situation which had grown tense, Lubbe told them "jokingly" to "wait till tonight if you want to kill Mandela"

"I did not think the situation out properly then, but on reflection I think it was not necessary to say those words," he said

But he did not agree with the State that his words dented the SAP image, he said

The case was postponed to August 5 for judgment.

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Rudolph 'colour blind' at previous hearing

B 1 Day 18/7/91 (252)

JONATHON REES

AWB spokesman Piet "Skiet" Rudolph, who was arrested this week for refusing to stand trial before a coloured magistrate and black prosecutor, appeared before the same officials several weeks ago without objecting

A Krugersdorp Magistrate's Court official said yesterday Rudolph had pulled a "publicity stunt" last Friday when he refused to appear before Magistrate Joseph Jasson and prosecutor A Ramawela on a traffic charge

At his first appearance on a similar charge several weeks ago, Rudolph objected to the absence of traffic officers whose evidence was required but he did not object to the prosecutor and magistrate not being white, the official said

An attorney said yesterday that people could not legally refuse to attend court hearings Rudolph should have been arrested and immediately brought before the court and fined for contempt of court so the traffic offence hearing could proceed

Rudolph was arrested at the AWB's Pretoria offices on Monday, held in police cells for the night and appeared in the Pretoria Magistrate's Court on Tuesday He was released on R50 bail and his case was transferred to the Krugersdorp Magistrate's Court

He appeared before a white magistrate S W van Niekerk and his hearing — for allegedly speeding at 156km/h in a 100km/h zone — was postponed to August 22

A Krugersdorp court official said yesterday Jasson and Ramawela could no longer deal with the case as they would probably be required to testify in an inquiry which might be held into Rudolph's court behaviour last Friday

The findings of the inquiry would be referred to the Witwatersrand Attorney-General

The bureau which defends the people

The Legal Aid Bureau operates from a dingy suite of offices, has 14 staff members, a miniscule budget, and gives free assistance to about 22 000 people every year

By PAT SIDLEY

LEGAL AID IN ACTION ... Tension (seated centre), the bureau's messenger, translator and counsellor and two members of the bureau assist a member of the public with his problem Photo: GUY ADAMS

GLADYS QUAYISO's son — a trainee policeman in the Ciskei Police Force — died while exercising. Two other young men died at the same time. By the time an inquest established the police had negligently caused the deaths, the time to claim from the police had lapsed

By law, citizens have only six months to make a claim against the police, and this case had dragged on for over two years. This did not stop a firm of small-town attorneys near the Ciskei from taking a R500 deposit from Gladys Quayiso to make a claim they cannot by law make.

She had come to Legal Aid to try and get assistance.

Nora Ndlovu's ex-husband died last year. She has custody of their children and has been trying without success to find out from his former employers if there is a provident fund or pension fund which would pay out death benefits for his children. The company has not bothered to reply. Ndlovu wants help in finding this out and has come to Legal Aid.

Pauline Lipson, Legal Aid's director, has chain-smoked her way patiently through these cases and literally close to a million others for more than 40 years

There is almost nowhere else for these desperate people to go when bureaucracy and crookery threaten to overwhelm them

Lawyers' fees are high — often R300 an hour — and letters, stamps and phone calls add to the cost. This before the case gets anywhere near a court.

The state provides limited legal aid, and in the past decade several public interest law firms and legal assistance groups have sprung up. But they tend not to deal with the bottom of the line daily hassles of ordinary people, like divorces, credit deals gone sour, illegal repossessions and administrative problems in getting money from pension funds

Of two million prosecutions in South Africa annually (excluding the TBVC homelands), at least 90 percent are not represented by lawyers, according to Lawyers for Human Rights

The prison population in 1989 (again excluding the TBVC homelands) was about 112 000 and LHR thinks it is probably closer to 120 000 now Of those, about 90 percent were unrepresented in court before they were sentenced to terms in prison, LHR says

At any given time, according to LHR, between 30 000 and 40 000 prisoners are in jail waiting to be tried — most of them with no legal aid.

Despite this the legal profession was scandalised when it was attacked by one of its own — Mr Justice Johan Kriegler.

He accused lawyers of greedily grabbing at everything they could, while millions of South Africans remained out of reach of legal assistance. The profession, he said, was simply not dealing with the advent of a new society

The howls of righteous indignation from lawyers which greeted the judge's criticism may have been dampened had they been sitting in the offices of Legal Aid Bureau Defence of the Poor — a Johannesburg charity which offers, free of charge, legal aid to those who would not otherwise get any help

Legal Aid Bureau operates out of a dingy suite of offices in central Johannesburg with broken furniture, manual typewriters, about 14 staff members — "paid worse than anybody else in the country", according to the director — and a few volunteers.

There is no fax machine — they only recently acquired a copying machine from a donation and another grant provided a few electric typewriters

On a miniscule budget of less than R200 000 annually, and a bit of free time from the less greedy lawyers, 22 000 people are helped every year

From about 7am on any day of the week a queue of desperate people turns up at the offices Shortly after 8am they will be allowed in but the doors will be shut On the bureau's meagre budget, the employees do half a day's work and thus cannot see more than 120 people in a morning.

Lipson, the director, is one of the few lawyers on the staff. One other is a social worker, and a third mainstay of the operation has no qualifications but years of sorting through the legal hassles of divorces according to both African customary law and South African civil law

The filing clerk is also the translator

Most of Legal Aid's funds come from small donations from local sources. It was not until last year that the organisation was granted permission to raise funds out of South Africa, but to date it has only received one grant from a foreign country — the Canadians donated R10 000 The Johannesburg municipality, which was jolted into generosity after a tour around the office, recently gave them R25 000.

Johannesburg lawyers do give money and time — but in limited doses .

Attorneys are asked to donate a R10 levy annually "and you would be surprised how many do not" When she is not seeing clients, Lipson is trying to raise lawyers to do the legal work required which nobody is qualified to undertake at Legal Aid. She has a list of attorneys in Johannesburg who will give their time and assistance free

They form a small proportion of the attorneys in town and many of them, tired of her constant requests, duck the calls if they can

"I hear them shouting at their secretaries. 'Tell Mrs Lipson I'm not in'," says Lipson

Legal Aid was started in 1937 by the South African Institute of Race Relations who had hoped that such an organisation could provide legal aid in the courts.

The two organisations have no relationship nowadays.

"The idea was originally that there should be a legal aid office that would give people legal representation in the criminal courts in the magistrate's court "

The state introduced its own Legal Aid Board in 1962

"This is basically a legal welfare office and a lot of it is not law, like claiming for workman's compensation

"There are people who get into trouble because they do not know any better, people who get into trouble who know that they should not get into trouble, people who buy things they can't afford They enter into contracts that they have read and realise what it is going to mean to them — and still sign it

"There are people who buy large amounts of furniture and lie through their bloody teeth about their incomes . and of course after three months they cannot keep up their payments These sort of people I want to kill "

For the others she does what she can

'Panelbeating' case: Brutal killers freed

By BEVERLEY GARSON **Grahamstown**

TWO former riot policemen sentenced to death in the "panelbeating" case for the brutal murder of a Cradock youth have been released in terms of the government amnesty.

Department of Correctional Services Major Peter van Rensburg, confirmed that Leon de Villiers and David Goosen, who were sentenced in the Grahamstown Supreme Court in 1988, had been released on July 4 this year.

The two, both from Port Elizabeth, had been convicted of "panel beating" and "taking out" an 18-year-old youth, Mlungisi Stuurman, while on duty in Cradock

During the trial it was found they had taken Stuurman to a river outside Cradock and shot him through the back of the neck.

Passing judgment at the time, Mr Justice Neville Zietsman said the two had earlier assaulted Stuurman so badly they decided he would have to be "taken out".

The judge ruled there were no extenuating circumstances and he therefore had to pass the death sentence. He refused both men leave to appeal.

It emerged during the trial that Goosen and De Villiers were sent to Cradock to monitor the funeral of an African National Congress member.

Their unit arrived in Cradock the night before the funeral. They began drinking liquor they had confiscated in shebeens in the Port Elizabeth townships. By midnight all were drunk except Goosen.

Later the unit, under the command of De Villiers, heard a radio report of stone-throwing in the township and decided to "curb unrest".

The judge found De Villiers had ordered his unit to take "moering tools into the township. He said the state had proved beyond a reasonable doubt that Goosen had stabbed a person during the operation.

However, both men were acquitted on one of the murder charges and two assault charges

Mr Justice Zietsman said the unit entered the township the following day and continued their "unlawful" acts. They had arrested a number of innocent people, including Stuurman. — Ana

Judges slam 'senseless' amnesty

W\Mail 19/7 - 25/7/91

Natal judges have expressed reservations about the amnesty granted to many prisoners They fear there could be an increase in violent crime as a result of the releases

By CARMEL RICKARD

NATAL'S acting judge president has contacted Justice Minister Kobie Coetsee about the government's granting of amnesty to thousands of prisoners, including many convicted of serious crimes

In his letter to the minister, Mr Justice Shearer outlined his views and those of the judges in the province on duty (it is official court vacation at the moment) on the question of the release of these prisoners.

Although the contents of the letter have not been disclosed, the decision to write to the minister comes amid growing expressions of concern by the country's attorneys-general, prisoners' assistance organisations, political groups, human rights and lawyers' organisations, all of whom say they fear a significant increase in violent crime following the amnesty

They have also expressed anxiety that the release of these prisoners could undermine the credibility of the courts and the whole legal system in the eyes of the public, especially at this time of heightened violence country wide

In Natal particularly, the courts and the system of justice have been severely criticised because comparitively few perpetrators of violence are convicted and jailed There is concern that the government's action in releasing prisoners will further undermine the courts

Officials of Lawyers for Human Rights said it was counter-productive to release prisoners convicted of dangerous crimes when the call among the public was for action to be taken to stop violence no matter who the perpetrator

National director of LHR, Brian Currin, said the amnesty "made no sense at all".

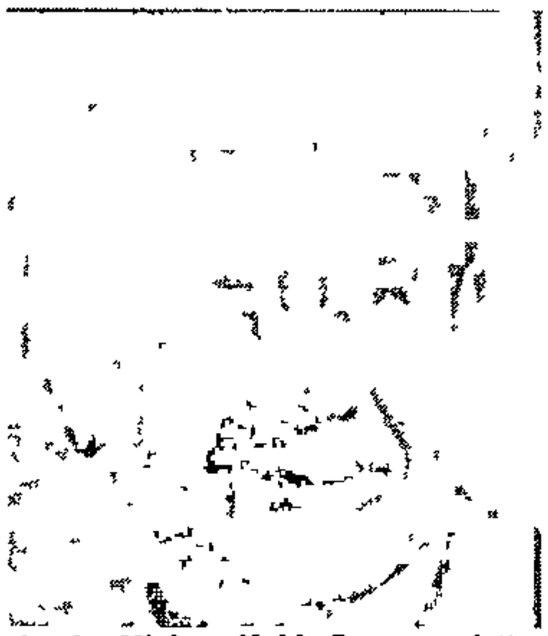
He said he believed that the government decided to introduce the remission of sentence as an appeasement to the right wing, "disguising" the release of further African National Congress-related political prisoners — a view shared, ironically, by the Conservative Party.

One of the most significant aspects of the row is the unprecedented joint letter to Coetsee by all the country's attorneys-general

Natal's attorney-general, Mike Imber, who sent the letter acting on behalf of all his colleagues said he "regretted" the leak of the letter to the media but, embarrassing as it must have been, the disclosure could have a positive spin-off it reveals that the attorneys-general, sometimes viewed as civil servants in the pocket of the state, do act independently and are even prepared to criticise government actions in strong language when the administration of justice is at stake.

It can only improve the image of the attorneys-general as independent.

Imber's letter spoke of prisoners convicted of "serious and horrible crimes"



Justice Minister Kobie Coetsee letter from Natal's acting judge president

who had served "only a meagre portion of particularly long terms of imprisonment" being "injudiciously" released

It referred to media criticism of the courts and staff of the attorneys-general and the allegation that the community had lost confidence in the courts and the administration of justice.

"The releases only contribute to a prevailing extremely unhappy state of affairs," the letter said

Among those freed by the amnesty was police officer Jack le Grange, convicted of murder and sentenced to 25 years after his death sentence was commuted, at the time of his release he had served a little more than three years of his jail term

More than 50 000 prisoners have been released since last December, and Currin estimated that 20 000 to 30 000 more would be released before the programme ended. At the same time, serious crime has reached an all-time high with prisoners' assistance organisations warning that the releases were happening so quickly it was impossible to prepare families or even the prisoner for proper re-entry into society

Human-rights lawyers decide to go it alone

LAW & THE COURTS

Carmel Rickard

After a long, cosy relationship with political activists and organisations, one of South Africa's most prominent civil-liberties groups, Lawyers for Human Rights (LHR), wants a separation

Since President FW de Klerk's nothing-will-ever-be-the-same-again speech of February 2 last year, LHR has been aware it would have to redefine its role and re-examine its relations with political groupings

At last weekend's AGM, two top officials — Jules Browde SC, who chairs the organisation, and Brian Currin, its national director — spoke strongly about the need for political neutrality. They warned this was essential for LHR's continued credibility now that previously banned organisations had become political contenders.

Browde said when LHR tried to bring about a democratic society under the rule of law, it had to avoid being seen as partial to any particular political organisation

"We must never take sides in the struggle for political power Our concern is that South Africa be free, as far as lies within our power, from violations of international standards set for the protection of human rights

"The fact that thus far we have been concerned with violations of those standards enshrined in our statute books in the name of apartheid, must not make us complacent that once apartheid has finally been buried our work will be over.

"New regimes bring new dangers — one tyranny often replaces another — and the abuse of human rights goes on. We must be vigilant "

Currin was equally frank: "What happens to that cosy relationship which we enjoyed with political activists who spearheaded the struggle against apartheid and its ghastly consequences? The struggle for human rights and the political struggle for liberation, democracy and justice have been synonymous. In the result, many human-rights organisations are very close to, and even part of, political organisations on the threshold of political power

"Prior to February 2, political organisations participating in the extra-parliamentary political movement had no foreseeable prospect of being part of a future government. For that reason, there was no difficulty in being both a political activist and a human-rights activist simultaneously.

"All that has changed. Extra-parliamentary political organisations such as the ANC are beginning to participate in the political arena, they are competing for political power, they are providing political leadership, they are potential governments. Human-rights organisations are non-government organisations, they do not participate in power politics, they represent the rights and interest of the people "

LHR's reaffirmation of this principle coincides with a growing tendency among members of the National Association of Democratic Lawyers (Nadel), another of the country's "alternative" lawyers' organisations, to reach the same conclusion

Nadel's national co-ordinator, Nomazizi Ramaphosa, said that at the last general council meeting a resolution was taken on the issue. Members had realised that the ANC was an open political organisation fighting for political power. "Nadel cannot function if we are in the pocket of the ANC," she said

If LHR's relationship with political organisations was cosy, Nadel's was positively intimate and a separation will be painful and difficult to achieve — something officials acknowledge. Ramaphosa commented: "It will be hard, since most members are also members of the ANC."

Many Nadel officials hold office in the ANC, but Nadel president Pius Langa feels this in itself is not a problem — as long as the organisation is able to act independently

Will it be able to do so? Some officials of the Black Laywers' Association (BLA) have serious doubts.

While Nadel has been seen by BLA and others as "charterist" (the organisation early on gave its backing to the ANC's Freedom Charter), BLA is perceived as pro-black consciousness

Against the major rethink on political neutrality comes a request from Nadel for some form of rapprochement between the three human-rights lawyers' bodies.

Langa said the exact nature of a new relationship could be discussed if the others were interested. It might simply be co-operating more closely, or a federation or even unity in a single, new organisation

Both LHR and BLA are to have discussions with Nadel to clarify its suggestion.

The clear voice with which all three organisations are now speaking on the issue of political neutrality will certainly make it easier than in the past for them to consider working together.

The Government's unilateral conduct alarms the **Human Rights Commission**

Breaking faith on the political prisoner issue

Star 19/7/91.

252

THE HRC is becoming seriously alarmed about the increasingly unilateral manner in which the Government seems to be handling the issue of releasing political prisoners From the time of the accord arrived at in the Pretoria Minute of August 6 1990, the Government appears to have drifted considerably from both the spirit and the letter of that document

Although agreement was reached on criteria for defining political offences (and therefore political prisoners) and on a timetable and mechanism for release (including arbitration bodies), it was not long before the Government began introducing unilateral distortions to that agreement.

In the Guidelines gazetted by the Government on November 7 1990, itself a unilateral document, the criteria for defining political prisoners were broadened to encompass those who have committed offences in support of the system of apartheid. While it was the Government's prerogative to do this, it could hardly be expected that this would be endorsed by the ANC or anyone else in the anti-apartheid camp.

A second unilateral element implicit in the Gazette was the attempt to link the rate of release to the abandonment of mass protest action by the ANC and its supporters, an attempt which ultimately failed but nevertheless reduced the release process to a snail's pace (five releases a week until the end of March 1991, which shot up to 145 a week in April as the deadline approached)

A further unilateral element was the introduction of a bureaucratic process of application forms amounting to signed confessions of past activities. After an initial period of rejection, the process backfired and produced an avalanche of nearly 6 000 applications, which choked the bureaucratic channels

Another unilateral feature of the November 7 Gazette was its creation of "consulting bodies" or "indemnity committees" whose composition, powers and functions were then spelled out in a Government Gazette on November 9. From the regulations it was clear that the Government had no intention of taking part in arbitration structures that would take into account the interests of two equal negotiating parties

On the contrary, the indemnity committees were designed to be Government-constituted, Government-controlled, secret and without decision-making powers, which are reserved solely for the State President The agreement reached in Pretoria seems to have been overridden when one of the parties took it upon itself to draw up the rules of decision and declare itself the sole referee

The next distortion of the Pretoria accord came on April 30 The Government insisted that that date was not a deadline at all but simply a target When it became clear that no one would swallow such a story, the astounding claim was made that the process of political prisoner release was in fact complete in terms of the Pretoria Minute since those prisoners left were disqualified through their involvement in violent acts

This statement constitutes an unilateral shift in definition away from the Pretoria Minute criteria, which state clearly that "in certain circumstances a 'common' crime, even a serious one such as murder, may be regarded as a political offence"

It also ignores the existence of a published list of 900 identified political prisoners still being held, nearly 300 of whom are acknowledged by their own Department of Correctional Services as being "security, security-related and unrest-related" prisoners

It also conveniently omits to mention that substantial numbers, convicted of violent offences such as murder, have already been released as political prisoners in terms of the Pretoria Minute

The ultimate distortion has been the smokescreen of three remissions of sentence for most prisoners, which the HRC predicted on July 10 would result in the release of more than 50 000 That has already been exceeded and it seems to us that more than three-quarters of the convicted prison population will walk free before the process runs its course

We perceive the purpose of this exercise to be a cover for the clearing out of the 1 000 or so political prisoners still left, in order to get rid of the problem once and for all It is a huge and irresponsible price to pay It is unilateralism in the extreme. □

Boy who was welded to table shows court his scarred body

ST Times 2/7/91

By JOCELYN MAKER

A YOUNG boy stripped in court this week to show his scarred body which was allegedly burnt after his wrist had been welded to a table

When Frank Mukhwathi, 15, of Tshituni village, Venda, turned so that the Louis Trichardt regional magistrate could see the white scars on his lower back, the child's mother hung her head in despair.

Earlier, she had left the court weeping as her son told of his day of agony at the farm Hayoma

Messina farm manager Jan van der Westhuizen has pleaded not guilty to attempted murder.

The teenager said he had been on his way to visit his mother, who worked on the farm, on the morning of December 8 1990

Hitting

As he turned on to the farm road, Mr Van der Westhuizen drove up in a bakkie Four workers were on the back of the vehicle Mr Van der Westhuizen told Frank he wanted him to help in the workshop

"I got on to the bakkie and when we got to the workshop, he got out. As I began walking, he grabbed me by my chest He began hitting me on my chest and stomach," said Frank, adding that the farmer hit him about 10 times

"He fetched a chain and a cattle prod He chained my feet while the four men stood around After my feet were tied, he began shocking me all over my body"

After this, Frank said, Mr Van der Westhuizen took a piece of steel which he fitted around his wrist

"Then he fetched a welding machine My legs were chained while he did this. He then put my arm against the table and with the piece of steel around my wrist, he began welding it"

Earlier, he showed the court the deep burn scar which had been left around his wrist

"I had a lumber jacket on and a pyjama top underneath He went and fetched petrol He threw the petrol on to my jacket Then he took the welding machine and rubbed two rods together Fire came out of them

"The fire caught me on my chest It began to burn. He never spoke to me I did not know why he was doing this to me"

Frank said that by this time his jacket, pyjama top and body were burning.

"With my right hand, I tried to pull the clothes off my chest, but had to stop when I felt my right hand burning

"After this, the four men threw water on me and put out the fire"

After the fire was extinguished, Frank said, he tried to pull the jacket off with his injured right hand

Kicked

"My skin came away as I did this I could only get the right sleeve off; another man cut off my left sleeve After this, the accused went to his house, came back and stood there laughing at me"

He told the court a policeman arrived shortly afterwards and kicked him in the stomach and the sides of his lower body while he was still attached to the table

Frank said a farm labourer then cut his arm free with a steel saw

The policeman handcuffed his burnt right hand and put him on the back of a bakkie

He was taken to the Messina police station and then to hospital where he remained for four months

The accused's attorney, Mr JLC van Vuuren, said Mr Van der Westhuizen denied using petrol or a welder to set the boy's clothing alight.

A Pretoria police forensic expert showed a video to prove that the boy's jacket must have had a flammable substance poured on it to have caught alight

The case has been postponed to September 23

Govt weak and rotten, squatting trial told

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By Abel Mushi Star 22/7/91

An emotional Leandra farmer, standing trial for offences relating to allowing black squatters to occupy his land unlawfully, told the Evander Magistrate's Court on Friday that the Government was "weak, useless and rotten"

Michael Katz, owner of the Brakfontein farm in the south-eastern Transvaal, appeared on charges related to erecting or allowing the erection of structures on his farm without having had their plans approved by the local authorities

He is also charged with allowing a number of people to occupy his property illegally

The trial has been postponed to Wednesday for judgment

In evidence given by two policemen and a health inspector, the court heard that about 250 homeless people, who lived in 16 old caravans and about 35 brick and zink "houses", did not have an adequate water supply or toilet facilities

Mr Katz denied that the tenants, whom he claimed were staying on the farm "free of charge" except paying for electricity and water, were living in unhygienic conditions

He said there were only about 22 brick and zink structures on the farm in addition to the 16 caravans

Mr Katz was asked by police in January to produce plans for the structures and to get rid of the caravans within 30 days.

The tenants, most of whom are employed by Mr Katz, have been living on the property for periods ranging between three and 40 years, Mr Katz told the court.

"Because this Government allows people like these (policemen) to play with the law as they see fit, I can only conclude this Government to be weak, useless and rotten," he said

He added that the trial was a "disgrace for the Government, who should never have allowed it to happen".

Magistrate B J van Heerden threatened to charge Mr Katz with contempt of law.

Mohamed Bhabha, for the defence, argued that Mr Katz, who had inherited the farm from his late father in 1981, could not be held responsible for submission of the plans in question because the buildings had been standing on the farm for years when he took it over

Bill of rights has to be fair — judge

A BILL of rights had to be fair and must not be perceived as a cynical attempt by the minority to maintain power and privilege in their hands. Sowetan 23/7/91

This was said on Sunday night by the Chancellor of the University of Natal, Maritzburg, Mr Justice Leon, at the opening of a conference on implementing a bill of rights for South Africa.

Leading experts in the field of constitutional and human rights law, including delegates from the United Kingdom and Canada, will participate in the conference.

Leon said not long ago there were human rights lawyers in South Africa who viewed a bill of rights as a far-off and perhaps Utopian ideal.

However, it was now common cause that South Africa needed a bill of rights.

He warned that the body enforcing rights required the confidence of the community and the power of legitimacy.

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Advocates

"In the eyes of many, the Supreme Court with no black judges and but one woman judge does not enjoy the legitimacy it ought.

"We need many more black advocates. It may also be necessary to widen the base from which judges are appointed. It may be easier to do that by creating a special constitutional court which will enforce rights under the constitution," he said. - *Sowetan Correspondent.*

'No protection of minorities'

(252) CT 24/7/91

Own Correspondent

DURBAN — Blacks in South Africa will fight against the legal protection of minorities in a bill of rights, as they have been discriminated against for many years, according to Professor Charles Dlamini of the law faculty at the University of Zululand

He was speaking at the conference on the implementation of a bill of rights in SA which is being hosted by the Liberal Democratic Association and the Institute for a Democratic Alternative in South Africa at Natal University

Prof Dlamini said the idea of minority group protection was seen by blacks as being "undemocratic"

"The issue of groups is particularly emotive in SA due to a history of discrimination," he said

The issue of group rights and their legal protection came under focus and the issue was addressed by two other speakers — Mr Bede Harris of Natal University and Prof Dawid van Wyk of Unisa

Prof Dlamini said a bill, which guaranteed the protection of individual rights, would do much to cover the issue of group right protection

But he added that group protection could possibly be included in the constitution but excluded from a bill of rights

Mr Penuel Maduna, a member of the ANC Constitutional Commission, said an entrenched Bill of Rights as part of a rigid constitutional system was needed which would not be "subjected to the whims of temporal majorities'

"We must know that whatever party may have the majority behind it at any given time in future, the constitution and our basic rights and freedoms will be safe and will not be easily tampered with"

"We want to ensure an accountable government which acts constitutionally" he said

Human rights 'a priority'

(252)

Sowetan 25/7/91

DEVELOPING a human rights culture in South Africa must not be left entirely to politicians.

Speaking at a Bill of Rights conference in Maritzburg, law lecturer at Natal University Mr M Cowling said a human rights culture was not deeply rooted in South African society but it was a necessary ingredient of good government.

Programmes

People had to get involved in the creation of the human rights culture.

Mr Bulelani Ngcuka, a member of the ANC's constitutional commission, said important to the development of a human rights culture was the need to eradicate expressions of inferiority like 'baas' and 'madam' that were still being used by people.

There was a need to establish educational programmes to deal with such issues. - *Sowetan Correspondent*

CT 25/7/91

Proposed legal fee 'grossly excessive'

Staff Reporter

A GROUP of Cape Town advocates, who at one stage demanded a retainer of R600 000 from a client, have been found not guilty of unprofessional conduct by the Cape Bar Council.

The council investigated a fee proposal by Mr Marcus Jacobs SC, Mr Fritz Brand SC and their junior, Mr John Newdigate, and concluded that they had "proposed a fee that was grossly excessive".

Had they not retracted the proposal it "would have constituted unprofessional conduct, save in the case of Adv Newdigate, who acted under the guidance of the senior counsel involved".

The advocates on November 2, 1990 wrote to their instructing attorneys proposing their fees for continuing to represent township developer Mr Norman Benjamin in a Supreme Court case, which resumed on February 4.

Double pay

Mr Benjamin had a dispute with a German development company, Suba Baugesellschaft, involving millions of rands.

The advocates had been asked by the instructing attorneys to set aside February, March, April and May for the partly heard case, which eventually lasted four days.

In the proposal the advocates said that if the trial did not continue for the full period, for any reason whatsoever, they should still be paid the entire sum.

Mr Benjamin's attorney, Mr J Bromley, replied "I doubt you seriously suggest counsel of your respective standings will sit without work until the end of May. That being the case, your proposal amounts to a suggestion that you receive anything up to double pay if the matter does not run."

The council found that the advocates had spontaneously retracted the fee proposal before it was responded to by Mr Benjamin's attorneys.

REPRESSION DOSSIER

New trust fund for legal defence

South 25/7-31/7/91

As the International Defence and Aid Fund winds up operations, a new trust fund is being established in Cape Town to do similar work. HENRY LUDSKI reports.

A NEW trust fund which will assist in providing legal defence and promoting human rights in South Africa is in the process of being set up in Cape Town.

The South African Legal Defence Fund (Saldef) will operate from offices in Observatory before the end of the year.

The organisation will continue much of the work previously undertaken by the International Defence and Aid Fund (Idaf) which is now in the process of winding up its London operation.

Idaf over the years has provided for the legal defence of thousands of South Africans. It is estimated to have spent R500 million.

The Observatory head office of Saldef will be staffed by a director and about eight to 10 other workers who have still to be appointed.

The former general secretary of the South African Council of Churches (SACC), Dr Beyers Naude, has been appointed chairperson of the trust which was set up last month.

He said this week that many of the details of the fund would be finalised at a meeting to be held in Cape Town on August 20.

Saldef's board of trustees includes representatives of political organisations such as the African National Congress and the Pan-Africanist Congress, human rights organisations and organisations representing civil rights lawyers.

Beyers Naude

Saldef has set itself the task of providing legal defence, promoting human rights and advocating the promotion of the public defender system and a bill of rights.

Idaf's director in London, Mr Horst Kleinschmidt, said his organisation was "being phased out" and it was planned that Saldef would take over its role.

Kleinschmidt said Idaf, which had a budget of R50 million last year, was operating on a reduced budget of R35 million this year.

He said that contrary to expectations, there had been an increase in applications for legal assistance this year.

"Most of the applications warrant support in terms of our criteria but it is inconceivable that money can be obtained from donors that will enable us to match our support in previous years."

He said Saldef would operate on a reduced budget and would also not be able to handle the same volume as Idaf.

"Saldef will have different priorities appropriate to the current situation in the country. Clearly, the possibilities are very exciting."

Lawyers fight indemnity cut-off date

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South 25/7 - 31/7/91

LAWYERS plan to challenge the conditions of the Pretoria Minute by bringing indemnity applications for scores of people who were arrested for political offences several months after a government cut-off date for clemency.

In at least two instances in recent weeks, lawyers have succeeded in having political trials postponed to allow them to lodge the indemnity applications

The applications are for offences committed in the past three months, whereas the Pretoria agreement between the African National Congress (ANC) and the government stipulates that the indemnity applies only to offences committed before October 8 last year The indemnity applications will be brought for 37 people who were arrested in May on charges of illegal gathering, and three others who were arrested last month on charges of illegal possession of a firearm and two hand-grenades

Lawyers representing the 40 people will argue that the political offences fall within the ambit of the Pretoria Minute and that the government cut-off date for clemency and indemnity should be changed to include political offences of recent months

In the past few months several thousand ANC supporters have been arrested on charges of illegal gathering and trespassing after widespread protests to demand the release of political prisoners

About 700 protesters, including several members of the ANC national executive, were arrested in the Western Cape after protests in the city centre near parliament

A Cape Town lawyer who is monitoring the trials this week said that several hundred of these had already appeared in court He also confirmed that warrants of arrest has been issued for about 200 trialists who did not turn up at court for the hearings

Several of them had subsequently paid admission of guilt fines, he said

DEMO ARRESTS: Lawyers are seeking indemnity for people arrested during demonstrations, as above

PIC. YUNUS MOHAMED

THE WI
1991

The 'eyes and ears' of the courts find a voice

w/mail 26/7 - 1/8/91

LAW & THE COURTS

Carmel Rickard 252

Judges, magistrates, prosecutors, lawyers, witnesses, the accused — all may think they are the most important characters in the daily drama of the court room

But there's a strong case for arguing the real heroes are none of the above rather they are the highly skilled men and women working long hours, under sometimes unacceptable conditions, with little recognition and appalling pay, but without whom the court system would collapse

They have decided, since no one is speaking for them, they will have to do it themselves around the country, interpreters are organising

Last weekend the Natal and south-eastern Transvaal region was formed, the second in the country, and a national association is in the pipeline once other regions are established.

Among the speakers at the Natal launch was deputy justice minister Danie Schutte, who acknowledged that without interpreters, the courts would not be able to function properly.

He encouraged interpreters to study further, saying their court experience would give them an advantage in qualifying as prosecutors and magistrates.

He also said it was vital for interpreters to be independent "You are the eyes and the ears of court Being part of the court, you should also be totally independent But your independence goes further You are also the eyes and ears of witnesses, the accused, the prosecution If ever there was a case of impeccable independence, then I believe it is your case This is a matter which you should consider in a code of conduct for your association "

Schutte welcomed the formation of the association, adding it would "have to be reckoned with" as a mouthpiece.

Similar encouraging and complimentary views were expressed by Durban's chief magistrate, among others

But once the interpreters themselves began to speak, a different picture emerged

Members of this profession feel undervalued One said the attitude of many other employees of the department of justice was interpreters should be "kept hidden in a dark corner and brought out only when there is something to do that no one else wants to do Everyone feels they have the right to give instructions to us and seem to believe, 'when in doubt, blame the interpreters'," he said

Another said "Interpreters are called on to risk life and limb, coming to work when there are stayaways and boycotts. We do this because we believe that the work of the courts must continue But the department is not very helpful about assisting us."

Speakers said departmental information which could be useful to interpreters was often not passed on, and that "confrontations" were common

"We carry enormous responsibility, but are not given the respect to go with it We are disdained, dehumanised and forced into perpetual depression," was one man's graphic description.

When they speak about "disdain", they are referring to their salaries, among other issues Figures given at the meeting indicated that the starting salary of an interpreter, with matric and a four-week intensive course, in the police force was R20 000, in the army R20 000 to R30 000, in the prisons service R24 000, and in the SABC R36 000. Interpreters with the same qualifications start in the courts on R9 999

"If you pay peanuts, you get monkeys," said one woman angrily

White "casual" interpreters, paid on a daily rate, earn far more than their black full-time colleagues — another source of discontent

The interpreters also talked about the "disdain" of some departmental colleagues in the magistrate's courts. Often they are given no offices, although, like prosecutors and magistrates, they spend all day at the courts

Then there is the indignity of the informal, but rigid, "petty apartheid" of two sets of public toilets at some courts unlocked ones, in a filthy condition, which black people, including the interpreters, are expected to use, and immaculate, locked ones set aside for the exclusive use of whites

The country's chief inspector of interpreters, Abie Mahlangu, who speaks at least 11 languages, summed up "I am behind the association because during the days when the police, teachers, nurses and all and sundry resorted to dancing the toyi-toyi, the interpreter, despite all the short-comings (under which we work), kept his cool.

"There was not a day when he or she stood with placards hanging his dirty linen in the open We are responsible people, showing maturity at all times Hopefully the director-general, the deputy minister and our minister of justice will now correct the unacceptable situation under which interpreters have to work "

Inkatha to blame, inquest court told

(252)

Sowetan 26/7/91

THREE witnesses at an inquest into the deaths of 17 people in a bus massacre in Maritzburg earlier this year alleged yesterday that Inkatha supporters had started the trouble.

The witnesses, all members of the KwaShange community in the Edendale Valley of Death, testified in the Maritzburg Regional Court in connection with the massacre on February 10 in which 16 Inkatha supporters and one African National Congress supporter died.

Buses carrying Inkatha supporters were allegedly attacked on their way back from a prayer meeting.

Mr Alpheus Zondi told Mr G Barnard he was at his home when he heard a child shouting "ibhemile" ("trouble is coming").

He heard the sound of trumpets which he associated with an impending attack, because he had heard it in an attack on the area by Inkatha supporters.

He saw two buses, followed by a bakkie, driving along the main road through KwaShange.

A girl ran in front of the vehicles shouting "the comrades are in for trouble".

A man in the bus fired a shot at a boy, who was picked up by companions and carried away.

Zondi said men from the buses rushed up the hill. He saw a number of KwaShange residents rushing towards the group.

They were defending themselves from an Inkatha attack, he said.

He later heard that many people had been killed.

When told that evidence would be heard that residents of KwaShange had provoked the attack by throwing stones at the Inkatha buses, Hlophe said this was incorrect.

Sowetan Corredspondent

FM 26/7/91 (252)

And justice for all

Mediation, juries and a constitutional court are all being considered

Will our legal system be adequate to future challenges? If not, what must be done to make it so?

The problem is that while it enjoys real respect internationally as a formal system based on Roman, Dutch, English and Germanic law, it lacks credibility among black South Africans It has been used — and at times perverted — to uphold apartheid legislation For that reason the system is perceived by many as oppressive and the preserve of whites

That the legal system in a post-apartheid SA will undergo a transformation is certain, in some ways, this transformation has already begun Lenient sentences for racially inspired crimes evoke outrage When it comes to civil disobedience, rightwing extremists are charged with the same offences as their leftwing counterparts — and more controversially, both appear to enjoy the same consideration when it comes to reprieves and amnesty

Speaking in parliament earlier this year, Justice Minister Kobie Coetsee said government was "determined to take this process (of legal reform) to its logical conclusion " In this, as in other fields, the ANC doesn't trust government

ANC legal adviser Mathew Phosa mixes a few metaphors to explain why "The ANC is prepared to maintain only the Roman Law in its pristine form Even Roman Dutch Law, which we've had since 1652, has been seriously raped by apartheid We need to unscramble this egg "

The practicalities of such an exercise are enormous Precisely how the ANC will go about separating the two systems after a marriage of 349 years is difficult to imagine

Phosa elaborates "We would want some adjustment on the law of property as we now face a situation where more than 85% of land is owned by whites and 13% held in trust for Africans " This would seem to argue for mechanisms of restitution (legal affirmative action) now that the repeal of the Land Acts has opened up ownership to all

Democratic Party (DP) MP for Yeoville Douglas Gibson, a partner at attorneys Moss Morris Mendelow Browde, says the ANC needs to spell out its intentions "Though every householder in SA should be able to become a property owner, this won't happen by nationalising without compensation In a market-orientated economy, everyone will have access to land "

Businessmen will be pleased to know that the ANC believes that English mercantile law should continue to govern commercial thinking and activity for a long time And Phosa does concede respect for the foundation of the legal system — shorn of its

Continue

apartheid trappings But, he adds, "we need a situation where people look at the law as representing their will and respect it, making law enforcement easy A future legal system must be just, fair, equitable and reasonable, but above all accessible"

This touches the heart of the resentments about the system — its cost and remoteness, including remoteness to aspirant black lawyers As long as the black accused or litigant faces a system in which judges and prosecutors are white, few attorneys are black and even fewer advocates, they will never have complete faith in the system

Earlier this month, the General Council of the Bar of SA, at its 46th AGM, reiterated its commitment to making justice more accessible to all Six senior Bar leaders were appointed to consider a number of issues, including greater involvement by the lay public in the administration of justice and the desirability of reintroducing the jury system and methods of appointing judges to ensure that the judiciary will be more broadly representative of the entire community

The issue is complex Says Phosa "At present, there are some 7 000 white lawyers for a population of 4,5m whites By contrast, the black population of 25m is only serviced by 2 000 black lawyers Our mission must be to train as many lawyers as possible for the public and private sectors"

Earlier this year, parliament amended the Attorneys Act to allow service at law clinics to be regarded as articles served Other reformist moves suggest cutting the two-year period of articles by a year Or, says Gibson, articles could be abolished entirely and replaced with a six-month course on practice and procedure followed by an exam This is the situation in many parts of the world

More practically, five of SA's largest legal firms recently joined forces to create a forum geared to assist candidate attorneys, particularly black ones Werksmans partner Sean Larkan says the task is not easy "Candidate attorneys need to be recruited at an early level, possibly for vacation work This would provide them with some financial assistance and give them the opportunity early on to learn the complexities of running a law practice"

These solutions are long-term "Even if we qualified all the black graduates who couldn't find articles, there would still be a shortage of black lawyers," says Phosa "Hence the need for alternate forms of mediation and mediators" Phosa is a fully qualified and experienced commercial lawyer He believes that short courses could provide an adequate elementary knowledge of law which could equip paralegals to handle matters like maintenance, family disputes and basic commercial litigation

The realisation that SA needs informal dispute resolution mechanisms is widespread Chairman of the Law Review Project, Louise Tager, says legal costs are prohibitive for South Africans, whatever their colour "A future SA must concentrate on making legal remedies cheaper and quicker Any law is meaningless unless a person has redress to remedies"

It is perhaps in this context that the rise of the infamous people's courts can be explained — in many ways they were an extreme response to a sense of powerlessness

Phosa talks of legalising people's courts, but emphasises that there is no place for the old version, which, he says, was characterised by hoodlums dishing out vicious punishments at random Instead, he says, people should be trained to mediate at community level And he adds that the US Bar Association has promised to make such training available within the next few months

This kind of thinking has the approval of government Coetsee, in his parliamentary address, confirmed that talks with black civic associations were in progress to find acceptable forms of dispute resolution at local level His intention was to use assessors more widely to include more members of the community Special justices of the peace are to be appointed to deal with lesser criminal offences — in other words, as a form of criminal small claims court Coetsee also announced that R21m has been allocated to legal aid in this year's Budget, representing a

45% increase from last year's R15m

Recognition of the need for alternate mediation has also come from within the legal fraternity Last month, the Alternate Dispute Resolution Association of SA (Adrasa) was opened as a result of the joint efforts of the Association of Law Societies and the General Council of the Bar Their purpose to actively promote alternate dispute resolution in SA

Adrasa believes alternate dispute resolution will provide a swift, cheaper and more accessible alternative to litigation and will inform the public on a variety of appropriate procedures — mediation, quick arbitration and conciliation — and train attorneys and advocates as mediators The success of the venture depends on the support of the legal profession and, to date, five firms have undertaken to establish alternate dispute resolution centres, the largest being Webber Wentzel and Werksmans The establishment of Adrasa is in line with trends in the US and the UK

However, as Larkan warns "While one talks of alternate mediation, one can't forget about the economics of the profession Many attorneys are battling to make ends meet The reality is that someone has to provide legal services and if they are not making a profit they won't be able to help anyone"

Another way of involving blacks directly in the judicial system would be to re-introduce the jury system This could serve to incorporate different cultural perceptions of justice in evidence and sentencing "A jury drawn from all sectors of the community would certainly enhance the credibility of the system," says Phosa

Gibson lodges a few reservations "I simply think we are too divided in terms of race, language and culture We are too immature as a country to operate a fair jury system I don't believe there should be a jury before we have a new constitution because jurors should be full citizens"

The return of the jury system may certainly be as far off — or as near — as a new constitution Making the bench, as it stands, more representative would be much more difficult The pool of black advocates is tiny, and while it has been suggested that judges could well be recruited from the ranks of attorneys and academics, in reality eminent attorneys are usually specialists in commercial law and corporate work with little general experience in litigation and criminal work Academics are also generally specialists and unless a specialist bench is introduced, this may not be a fertile alternative

Political factors will obviously play their part Phosa predicts that the composition of the courts — and the public service — will gradually change to include more blacks "Of course, judges like Didcott, Goldstone and Kriegler, who have made a stand on human rights issues, and other good judges will be retained," he comments

Gibson feels that "it's crucial not to undermine the status and standing of the bench Political appointments made after 1948 were very unfortunate — as judges, the appointees were flops and are still regarded as such by the legal profession Surely SA has learnt a lesson from this experience?"

Maybe not

Fortunately, there is consensus on the notion of an independent judiciary and of a constitutional court Government and the DP favour the idea, while the ANC stresses that the composition of such a court must be the subject of discussion and negotiation All feel that such a court — a court of final recourse — would have to be independent and have the power to interpret laws in such a way as to ensure that no action is *ultra vires*, no matter who is in power

This is a reasonable basis on which to begin to reform the law It has to be hoped that reason will prevail over political passions ■

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Natal judge files R100 000 lawsuit against paper

NATAL Supreme Court judge Mr Justice Michael Mitchell has launched a R100 000 claim against *The Natal Witness* in a case that has been set down for five days from September 2

The case arises out of a report about a murder trial in which two members of the African National Congress who planted bombs in the Wild Coast Casino were sentenced to death in 1989.

At the time Justice Mitchell was seconded to the Transkei Supreme Court.

The report was written by Miss Carmel Rickard, of the Durban bureau of *The Witness*.

Report

The judge says that the contents of the report were intended to mean, and were understood to mean, more especially in the light of the headline, that in discharging his judicial duties, he had acted unfairly, illegally, immorally and untruthfully and sentenced two people to death without properly discharging his judicial duties and therefore not in accordance with the law.

He says that by reason of the publication he has suffered damages to his reputation, dignity, fair name and status in the amount of R100 000.

He says that the contents of the report were published with the intention of injuring (animus injuriandi). They were wrongful and false

Alternatively the contents of the report, read with the headline, "Casino blast: judge's ruling challenged" carried an innuendo

The Witness denies these statements.

The newspaper says that in reporting what was said by Justice Mitchell in his judgment and what was said by Professor Naidu in an affidavit, and in giving the other facts contained in the report, the contents of the report were true, or substantially so.

In the event of the judge proving his allegations, the report was in the public interest and the comment was fair

The report was published pursuant to a right and/or duty.

The Witness says that the Wild Coast Sun Hotel, frequented by the newspaper's readers, was controlled by South Africans

The contents of the report concerned a South African judge who was presiding over a Transkei case.

The two accused were members of the African National Congress who had placed a bomb in a lavatory When it exploded it caused loss of life

The accused were alleged to have said that they had done so because they felt it was a place that was exploiting the poor Transkeians in that area and they wanted to chase people away from it

Argument in extenuation took place in May 3, 1989. On May 12, according to *The Witness*, Mitchell delivered judgment on extenuating circumstances in the absence of Naidu, who could not be present.

Plea

It says that the judge did not find extenuating circumstances and said it was not necessary for Naidu to be in court as he had fulfilled his function

The newspaper says in its plea that on or about May 26 Naidu filed an affidavit and *The Witness* report contains a substantially correct account of the affidavit or document.

In a replication Mitchell denied that he delivered any judgment on the question of the absence of Naidu and that Naidu deposed any affidavit.

A "document" only formed part of the judicial proceedings when it was handed in from the Bar on September 11

Police rescue tortured women

A special police unit set up to investigate "kangaroo courts" in Natal has made several arrests after uncovering alleged detention cells near Maritzburg, the SAP said yesterday

More arrests would follow, said the statement

Police said they rescued four women on Friday who claimed they were tortured and held captive in a two-roomed house in Copsville

The breakthrough came after police received information about executions scheduled to take place on that day.

Policemen noticed a group toyi-toying in front of the Copsville building. The group fled when the policemen approached.

One room was locked with a heavy chain and a padlock.

Police broke down the door and found four women who had allegedly been tortured.

"The women thought the executioners were coming to carry out the sentence. They were overjoyed to see the police."

Anyone with information is requested to contact the nearest police station. — Sapa

Bush urged to press SA over prisoner issue

ARG 31/7/91 (252)

The Argus Foreign Service

WASHINGTON — The United States Senate has passed a unanimous resolution, with the active approval of the South African government's strongest supporters, urging the Bush administration to seek the release of remaining political prisoners in South Africa.

The measure set a deadline of 90 days within which the Secretary of State, Mr James Baker, would be required to report to the Senate Foreign Relations Committee and to the Speaker of the House of Representatives on what progess had been made.

It is the strongest show of congressional disapproval of the South African government's reform performance since sanctions were lifted earlier this month, and was intended to send a signal to Pretoria and the White House of the urgency with which the issue was regarded in Congress.

Senators said that earlier signals of disquiet, which were channeled through the media and through "diplomatic contacts", had failed to "elicit much reaction", which was unfortunate because it suggested that the Senate's concerns about President Bush's interpretation of sanctions legislation were not taken seriously.

Conservative senators, such as Senator Jesse Helms, traditionally the South African government's staunchest supporter in Congress, was among those who said the resolution was "a genuine and broadly-based expression of concern".

LHR to visit prisoners in the Ciskei

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Sowetan 31/7/91

THE Lawyers for Human Rights will soon visit prisoners it believes qualify for indemnity as political prisoners in the Ciskei, the organisation said yesterday.

The Ciskei's Department of Correctional Services confirmed it had received a list of eight people the LHR wanted to see and had granted the organisation permission to visit them

Major-General Dumo Silandela of the Correctional Services said of the eight prisoners on the list, four had been discharged and one was unaccounted for

However, Silandela insisted there were no political prisoners in Ciskei The homeland had released all political prisoners "But we will throw our doors open and will allow them to visit"

The Ciskei recently set up a panel of three judges to consider applications for indemnity

LHR spokesman Mr Sandi Ntsikelelo said he was cynical about the board as it was formed unilaterally and consisted only of government officials. He was also doubtful about their definition of a political prisoner

In Bophuthatswana, Mr Paul Daphne of the Mafikeng Anti-Repression Forum said prisoners there were on the verge of embarking on another hunger strike

Strike

"I have the impression that if they are not released soon, they will re-embark on a hunger strike and this time they will fast until death," he said.

Sixty prisoners, who are still in hospital, in Bophuthatswana prisons recently suspended a fast after an emergency visit by ANC leader, Mr Nelson Mandela

At Pollsmoor Prison in the Cape two Azanian People's Movement members entered their 15th day of a hunger strike on Tuesday, according to the Human Rights Commission.

ANC spokesman Mr Carl Niehaus yesterday said there were at least 800 unrest-related cases and all would still be tested for political status - *Sapa*

2 ANC men acquitted of murder

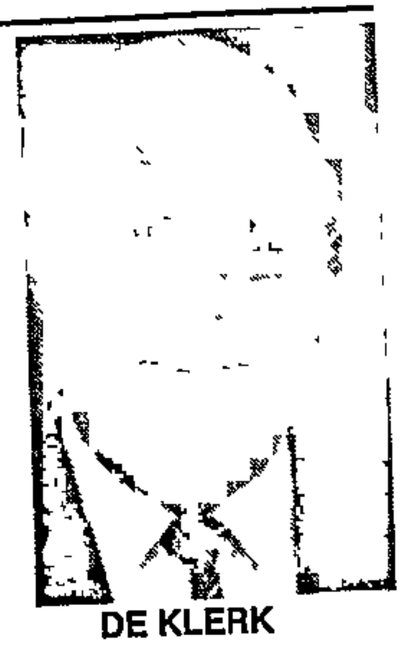
Two ANC members were acquitted yesterday by the Rand Supreme Court of stabbing and hacking to death a member of Azapo.

Mr Justice B R du Plessis, with two assessors, found that State witnesses had given contradictory evidence and that it could not be proved beyond reasonable doubt that the men were guilty.

Jacob Seoka (27) and Alfred Soxokashe (21), both of Bekkersdal near Westonaria, had pleaded not guilty to murdering Mbuyiselo Norman Montshiwa in a shebeen last year.

"The four witnesses did not give reliable accounts of the events of the night," the judge concluded. — Staff Reporter

Are our courts in the dark?



DE KLERK

IN the South African Government, the one hand doesn't know what the other is doing, or so it seems Sowetan 1/8/91

Between trying to prosecute alleged terrorists and trying to indemnify them, there was bound to be a crossing of wires

It is very simple, President FW de Klerk indemnifies and the courts prosecute

Political Correspondent

A Press release received yesterday from the Appeal Court in Bloemfontein said four PAC men - Mr Mabatu Enoch Zulu, Mr Siyabulela Ndoda Gcanga, Mr Vincent Alson Mathunjwa and Mr Sestiba Paul Moholo - had received leave to appeal against their 1988 convictions

However, it appears the courts, or the prisons, had not done their paper work because the men were released weeks ago after being indemnified by De Klerk (252)

Zulu, Gcanga and Moholo were released on July 4 and Mathunjwa was released in April

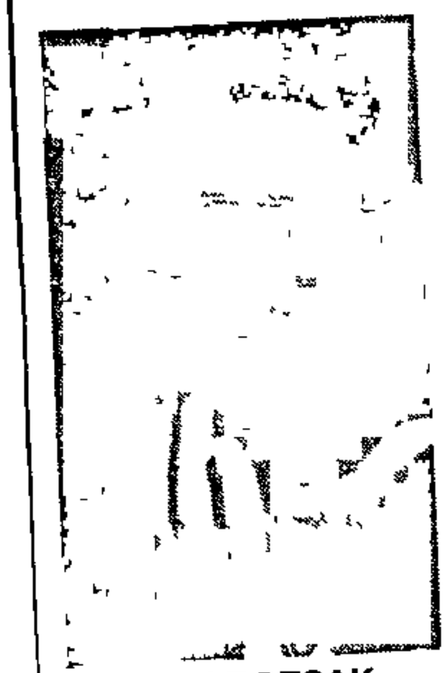
The Ministry of Justice yesterday did not see the humour in this confusion.

A spokesman for the Department of Justice said it was the prisoners' right to pursue their cases for as far as they chose to

The four had lodged their applications for leave to appeal against their sentences, after the Appeal Court set aside the conviction and sentence of Mr Ebrahim Ismail Ebrahim who had been abducted from Swaziland

Police arrest 60 protesters (329) (327)

Sowetan 1/8/91



ALLAN BOESAK

POLICE arrested about 60 people, including Foundation for Peace and Justice director Dr Allan Boesak, in two city centre demonstrations against Government funding of Inkatha

Boesak, who recently joined the ANC, said he went to Loop Street on Tuesday to try to stop students from protesting after another demonstration, outside Tuynhuys, had been called off

ANC lawyer Mr Willie Hofmeyr called off the Tuynhuys picket after nine protesters were arrested He said although city council permission had been granted, the chief magistrate had not given permission

Permission would be sought for a new demonstration tomorrow, he said

Several Democratic Party members were also present

At the second demonstration police took Boesak and about 50 other people into custody.

Police liaison officer Captain Attie Laubscher said protesters would be charged with taking part in an illegal demonstration

Boesak was released more than five hours after his arrest on condition that he appears in court on August 29 and after initially refusing to be fingerprinted He said he had been wrongfully arrested, and submitted to fingerprinting only "under protest" - *Sowetan Correspondent*

Mineworkers score a major victory

Sowetan 1/8/91

By IKE MOTSAPI

THE National Union of Mineworkers and the Chamber of Mines signed a historic wage agreement in Johannesburg yesterday

Included in the package are comprehensive and innovative agreements covering conditions of service, upgraded recreational facilities, fringe benefits, death and funeral benefit schemes and free movement and operations by NUM members on the chamber's mines

The agreement was signed by NUM president Mr James Motlatsi, secretary general Mr Marel Golding, the chamber's president, Mr Naas Steenkamp and vice-chairman Mr Bobby Godsell

The agreement was reached after two months of intensive discussions between NUM and the chamber.

Right-wing hunger-strikers on bail

CT 2/8/91 (252)

JOHANNESBURG. — Three hunger-striking right-wing prisoners were released on R1 000 bail each yesterday when Johannesburg Magistrate's Court convened first in a hospital ward and then in Pretoria Central Prison.

The three men — Mr Leonard Veenendal, 24, Mr Darryl Stopforth, 23, and Mr Horst Klenz, 53 — were in custody pending an extradition request by Namibia for them to stand trial on charges of murder.

Yesterday was the 32nd day of Mr Veenendal's fast Mr Klenz had refused food for 24 days and Mr Stopforth for 18 days All three were apparently too weak to attend the bail hearing and the court acceded to a defence request to move the proceedings

The court first convened in a ward at Johannesburg Hospital where Mr Veenendal and Mr Stopforth, both members of the Orde Boerevolk, sat in chairs Both men breathed with difficulty.

Bail was granted to them on condition they hand in their passports to the police and report daily to the Booysens police.

The bail hearing then moved to an office in Pretoria Central Prison to consider Mr Klenz's case.

Mr Klenz was also granted bail and was ordered to report daily to the Potchefstroom police station

Union is favoured, court told

Sowetan 2/8/91

252

By SONTI MASEKO

STATE witness Mr Rodney Teu denied yesterday that Delmas Milling Company favoured a rival union over the Food and Allied Workers Union

He was testifying in the Randfontein Magistrate's Court in the trial of seven Fawu members charged with assault, intimidation, public violence and contempt of court

The seven - Jack Selowa, Simon Matlala, William Leepo, Frank Mashobane, Moses Mogale, Johannes Motlhasedi and Edwin Nthusang - have pleaded not guilty before Mr HJ Oosthuizen

Defence lawyers also put it to Teu that his union was allowed to have office facilities within the company premises while the same was not allowed to Fawu Teu said the facilities had been negotiated for by his union

Earlier Teu, employed in the company's personnel department told the court that on April 9 last year while at work he was forcibly ejected out of his office by a crowd of about 300 Fawu members and marched to the gate to face a singing and chanting crowd

Keep your binoculars focused on this path-breaker

w/mail 2/8-8/8/91.

LAW & THE COURTS

Carmel Rickard (252)

NOW that the chief justice has indicated support for the appointment of senior legal academics as judges, there is a serious but relatively unknown new contender for a seat on the Bench

He is Charles Dlamini, formerly law professor at the University of Zululand, now the university's registrar.

Few people in the legal community are aware that he was recently appointed senior counsel. This makes him the country's second African "silk" — and, in terms of the present procedures, qualified for appointment as a judge.

Bench-watchers should train their binoculars on the remote Ngoye campus — with pressure mounting to find suitable black candidates for appointment, Dlamini must be a good bet Granted, he is an academic rather than a practising advocate, but he is an expert in several fields of law, he serves on a number of important panels and committees, and he favours the idea of black lawyers accepting appointments to the Bench right now, rather than waiting for further political developments.

He guards his independence fiercely, and does not belong to any political party "I feel much more comfortable being my own man, rather than my views being fashioned by a particular organisation or group."

Dlamini, who is as fluent in Afrikaans as in English, has lectured on most aspects of law His master's thesis dealt with bills of rights in the rest of Africa He has two doctorates, one on customary law, the other on "informal justice", particularly the role of chiefs and their courts

Now, as registrar, he handles university administration, but continues his legal research — "that's my hobby" — and serves on the South African Law Commission, the Human Sciences Research Council's committee on marriage and family law, the National Institute for Crime Prevention and the Rehabilitation of Offenders, and the panel reconsidering the cases of prisoners whose death penalties were confirmed by the Appellate Division before the recent changes to the law

His is the classic success-against-overwhelming-odds background. The oldest of six children in a very poor family, he still appears a little amazed that he finished school, let alone that he made it to the top of the academic world and could be poised to move into the legal elite

How would be feel about being a judge, if he should be asked? "I am not saying this is something that will happen, but I think I would be comfortable with being a judge I like to see others treated the way I would like to be treated And I regard myself as an independent-minded person, I don't believe in always agreeing with people."

He concedes some gaps in the knowledge he would need as a judge "The gaps are in the area of procedure I have done some lecturing on this subject, but do not regard myself as a fundi But it's not something which is awfully difficult, especially when you are doing it in practice"

And there could be problems about the death penalty. "I would have sleepless nights about imposing it, and I believe the best thing would be for the government to scrap it altogether"

"On the credit side, my having studied customary law, private and public law and legal philosophy has broadened my concept of law and given me a deeper understanding of what law is, rather than looking at it positivistically My basic philosophy is that law must promote human welfare and development, not the other way round

"With the background of customary and Western law, I feel the two can be merged somehow, reconciled into something favouring human development"

Dlamini believes the time has come for black lawyers to accept appointments to the Bench, and that it should be done sooner rather than later

"I believe you must get in when it is tough — work your way up in a difficult situation

"I have said black people should be prepared to serve as judges if they are available, even under the present circumstances When a white judge gives a decision favouring human rights, we are all happy We will also be happy when a black judge gives a pro-human rights decision"

He says there is an established view among human-rights lawyers about how to deal with unjust laws in the period before a bill of rights is introduced when there are two possible interpretations, the judge should choose the one which upholds the rights of the individual Where judges have no choice and it is clear the discrimination was intended by parliament, judges should speak out clearly, saying the law is unjust.

There are difficulties in being path-breakers in any profession, but it has to be done — and Dlamini, like his four black senior-counsel colleagues, thrives on a challenge

Demo over subpoena

CP Correspondent

HISTORY was made on Thursday when more than 70 Durban and Maritzburg journalists took to the streets and staged placard demonstrations in protest against Section 205 of the Criminal Procedures Act.

Under the act, journalists can be required to reveal confidential sources of information.

Placards at the protest read "Section 205 gags depress", "Society needs a free press" and "Stop gagging the press".

The protests followed the serving of a Section 205 subpoena on a *Daily News* political reporter, Nicola Cunningham-Brown.

She appeared in the Pietermaritzburg Magistrate's Court on Thursday to answer questions concerning her sources in an article about alleged AWB operations in the troubled Richmond area in the Natal Midlands.

The case was postponed.

In the article, which appeared in the *Daily News* of July 26, Cunningham-Brown reported that AWB training camps had been set up near Richmond.

At the camps, operatives are trained in the use of firearms and explosives. They allegedly practised their skills in raids on Ndaleni, Magota and N'kobeni townships in which at least two people had died, the report said.

The article said the AWB attackers wore camouflaged uniforms in an attempt to mislead township residents into thinking they were SAP members.

Meanwhile, the Durban Supreme Court dismissed with costs a R20 000 defamation claim by advocate Gideon Sheltema against the *Sunday Tribune* last week.

Sheltema was defence counsel for the KwaZulu Deputy Minister of the Interior, Samuel Jamile, who was sentenced to life imprisonment in June this year.

The claim arose from a report headed "Judge slams handing over of privileged statements".

Jail for death squad

THE action of a "racial clean-up squad" which resulted in the death of a black man was barbarous and unjustifiable, a Klerksdorp circuit court judge said this week.

Justice NC de Klerk found Adrian Roets, 26, of Swartruggens and Jacob du Plooy, 28, of Orkney, both guilty of culpable homicide. They were sentenced to seven years' imprisonment each.

They admitted rounding up about 11 black people in Klerksdorp and assaulting them during a "clean up" of the town in February last year. As a result Johannes Makgetlana died. – CP Correspondent

Strikers hired hitman

THE Rand Supreme Court this week heard how five strikers at Haggie Rand in the Transvaal allegedly hired a hitman to kill scab labourers

As a result of hiring the killer, five workers died and nine were seriously injured.

Richard Khazamula Ngobeni, Jeffrey Sipho Mtsali, Malvert Ngubane, Samuel Kgosiekgolo Malepo and Malan Khumalohave pleaded not guilty to five counts of murder, nine counts of attempted murder and arson

The five National Union of Metal Workers of South Africa (Numsa) members were fired in October 1989 for going on an illegal strike

They then allegedly hired Joseph Mdumiseni Bhengu to use violence and intimidate workers who did not go on strike

Haggie Rand production manager, JC Du Plessis, told the court that in October 1989 Numsa had banned all overtime work

On October 18, shopstewards had called a meeting where Ngobeni had demanded management immediately stop overtime and threatened a repetition of the "Germiston incident"

Du Plessis said he regarded the remark as a violent threat because five people had been killed and several injured at Haggie Rand in Germiston

The case is continuing – CP Correspondent

underwent several changes in name and ownership

both sides

Features included two garden verandas, seven

and 190 crew members

It was carrying 400 passengers and 180 crew members at the weekend

Killings: State opposes policemen's bail bid

THE State has opposed a bail application by SAP Capt Brian Mitchell who was arrested on Friday night in connection with the massacre of 11 people, including young children, during a funeral vigil in Trust Feeds, Natal, in 1988

The case was adjourned in the New Hanover Magistrate's Court until August 16

His arrest followed information from two former SAP special constables, David Khambule, 26, and Dumisane Ndwalane, 27, both of Mpumalanga, who were arrested in connection with the killings

In statements to the court they alleged the New Hanover station commander, B V Mitchell — who was a lieutenant at that time — had instructed them and others to surround and attack a house where "terrorists" were said to be hiding

Four other unidentified former policemen are being sought in connection with the incident — Sapa

Star 6/8/91

Inquest into Daveyton killings begins

An inquest into the death of 14 people killed during a clash between ANC supporters and policemen at Daveyton on the East Rand in March began yesterday with an *in loco* inspection.

The inquest is being heard by Mr Justice B O'Donovan in the Rand Supreme Court.

According to press reports at the time, some 13 ANC supporters were shot and a policeman hacked to death.

It seemed a crowd had gathered to protect themselves from a feared Inkatha attack.

Police said they had to defend themselves after being attacked.

Policeman warned for Mandela remark

K Star 6/8/91

By Montshiwa Moroke

The policeman who made the "kill Mandela" remark to Inkatha supporters outside a Soweto hostel in May was reprimanded and discharged when he appeared in the Soweto Magistrate's Court yesterday

The suspension which was imposed on Warrant Officer Gideon Cornelius Lubbe (36) of Randfontein has been lifted and he can resume his duties, said the Regional Commissioner of Police for Soweto, Major-General J Swart

Warrant Officer Lubbe appeared on charges of acting in an unlawful and irresponsible manner not compatible with his duties as a policeman

The charges arose from an incident outside the Meadowlands hostel on May 1 at a time when there had been fighting between township residents and hostel dwellers

Warrant Officer Lubbe told a group of Inkatha supporters "If you want to kill Mandela, take until tonight" He was filmed speaking the words by a cameraman of Worldwide Television News

The remark referred to ANC president Nelson Mandela

Magistrate Mr I P H Olivier said the State had proved its case beyond reasonable doubt, but he had to take into account that Warrant Officer Lubbe had already been punished by the police and that he had served the force for 17 years without a blemish on his record

Warrant Officer Lubbe's attorney, I Swartzberg, said outside court yesterday "We are satisfied The magistrate understood the situation"

Warrant Officer Lubbe had told the court he had been joking when he uttered the words

"I have no hostile feelings about Mr Mandela, the ANC or the Inkatha Freedom Party, and at no time did I have any intention to harm the image of the SAP," he said

General Swart said any further steps would be considered after police had read the judgment and testimony

Because of the prosecution and depending on his superiors' decision, the outcome could affect Warrant Officer Lubbe's future in the police force For instance, the verdict could delay for six months whatever promotion may have been due to him, a senior police source said yesterday

Warrant Officer Lubbe, an administrative clerk at the Soweto East district headquarters, was suspended from his duties on May 4 following the remark

Since then he has received only a fraction of his salary He is expected to be paid his full salary retrospectively

All SA law under review, says Coetsee

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B/Day 9/8/91

TIM COHEN

JUSTICE Minister Kobie Coetsee yesterday announced a complete review of all SA law.

The work will be done by 18 committees consisting mainly of top academics.

Coetsee made the announcement in Bloemfontein at a ceremony to mark the handing over of the SA Law Commission's interim report on group and human Rights. The report will be made public within six weeks.

Coetsee said it was imperative that the legal system keep abreast of developments of a new and dynamic SA.

"It is of particular importance that the principles of private and public law should be in pace with the needs of societies and communities. It is our task as law reformers and law givers to remain sensitive to their rights and obligations."

The 18 project committees had been appointed in terms of the law governing the Law Commission and their task would be to identify areas which needed reform.

The reports would result in executive and legislative action, Coetsee said.

Mr Justice Pierre Olivier, who was chairman of the Law Commission, is chairman of eight of the committees while permanent law commission member G G Smit is chairman of seven others.

Top legal academics from practically all SA universities have agreed to be members of the committees.

Coetsee said the Law Commission would play a significant role in developing a legal and constitutional foundation for a new SA.

"This interim report will be followed by a final report which may become an instrument of reconciliation," he said.

All SA law to be reviewed

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CT 7/8/91

JOHANNESBURG. — The Minister of Justice, Mr Kobie Coetsee, yesterday announced a complete review of all South African law

Mr Coetsee made the announcement in Bloemfontein at a ceremony to mark the handing over of the SA Law Commission's interim report on group and human rights

The report, which contains a proposed Bill of Fundamental Rights, will be made public within six weeks

Mr Coetsee said it was imperative that the legal system keep abreast of developments in a new and dynamic South Africa

"It is of particular importance that the principles of private and public law should be in pace with the needs of societies and communities It is our task as law reformers and law givers to remain sensitive to their rights and obligations"

Eighteen project committees had been appointed in terms of the statute governing the Law Commission and their task would be to identify areas which needed reform

Top legal academics from practically all South African universities, as well as Transkei University, have agreed to be members of the committees

Mr Coetsee said that since he requested the Law Commission five years ago to investigate the protection of group and individual rights and the role that the courts should play in this, South Africa had experienced events in the political and security field which had not only emphasised the necessity of such an investigation, but had made it clear that the time was more than ripe to break away from a culture in which force was acceptable as a method to maintain or gain power

The price of such an approach was paid with hundreds of human — often young — lives, with which the future of the country could have been built

Mr Coetsee said it was expected the report would be available as a printed document in about six weeks, when a further opportunity would be given to interested parties and the public to make a final input. — Own Correspondent and Sapa

Inquest told of order to leave pool in Daveyton

By Susan Smuts Star 11/8/91

A clash between the ANC and the police — which left 14 people dead — took place after about 200 ANC supporters refused to disperse from a swimming pool where they had gathered, the Rand Supreme Court heard yesterday

Major Frederick Killian, giving evidence at an inquest into the deaths, said about 15 000 Inkatha supporters had gathered for a rally in Daveyton, near Benoni, on March 24

Police had set up three roadblocks to search Inkatha supporters for weapons, and were patrolling the township, he said

The police were also monitoring the number of "Zulus" going to the rally, he told Mr Justice B O'Donovan

A group of Inkatha people approached the police, demanding the release of 11 supporters who had been arrested for illegal possession of firearms

They demanded to know why Inkatha people had been arrested, when ANC supporters were allowed to gather illegally

Major Killian said he later received a report that about 200 ANC supporters had gathered at a swimming pool in the Xhosa section of Daveyton

He asked a Sergeant Smal to monitor the situation, and to tell the group to disperse as they were outnumbered by Inkatha Sergeant Smal said about 60 ANC members had blankets

"I told him to be careful because I know from past experience that they usually carry guns under the blankets"

Major Killian sent dog patrols and an SADF unit to the pool, after Sergeant Smal had asked for reinforcements At 12 45 pm Sergeant Smal radioed to say they were under attack The next report Major Killian received was that Sergeant Jan van Wyk had been badly hacked

About 235 men were under his control on the day, although he could not say how many had been sent to the swimming pool

The inquest was adjourned until tomorrow

Coetsee receives human rights report

Star 7/8/91

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BLOEMFONTEIN — The South African Law Commission's interim report on group and human rights in South Africa, which contains a proposed bill of fundamental rights, had brought South Africa to the start of a further phase in its challenging future, Minister of Justice and Correctional Services Kobie Coetsee said yesterday.

The report was handed to the Minister in Bloemfontein by the chairman of the commission, Mr Justice van Heerden, who said the report would be published after the Minister had studied it.

Mr Coetsee said the report would probably be available as a printed document in about six weeks, when a further opportunity would be given to interested parties and the public to make a final input.

He said it was now more imperative than ever that the laws, legal system and administration of justice should keep abreast of the development of a new and dynamic South Africa.

It was of particular importance that the principles of private and public law should be in step with the needs of societies and communities.

"It is our task as law reformers and law givers to remain sensitive to their rights and obligations."

He announced the establishment and composition of 17 project committees to study specific aspects of South African law that needed reform.

The question had arisen in the Law Commission whether the time had not arrived for a simultaneous and scientific review of South African law in its entirety. It had, therefore, been decided to appoint specialised project committees in terms of the law that governed the Law Commission, said the Minister.

The committees would consist mostly of academics. Their task would be to identify, through study and research, the areas that needed reform.

The committees would be supported by the infrastructure of research workers at the Law Commission, and the reports of the committees would result in executive and legislative action.

Mr Coetsee said the Law Commission would continue to play a significant role in the development of the legal and constitutional foundation of South Africa's emergent state — Sapa

Case dismissed

THE Rand Supreme Court has dismissed with costs an application to prevent the Transvaal Provincial Administration from removing squatters from Ivory Park near Midrand.

Mr Justice Labuschagne said it should have been evident to the applicants that the land was already being developed when they started squatting there.

He found that the squatting had been organised and there was no evidence of allegations levelled in court that the squatters had undisturbed possession of the land on June 5 and 6.- *Sapa*.

Indemnity granted to former SADF officer

Star 8/8/91.

By Philip Zoio

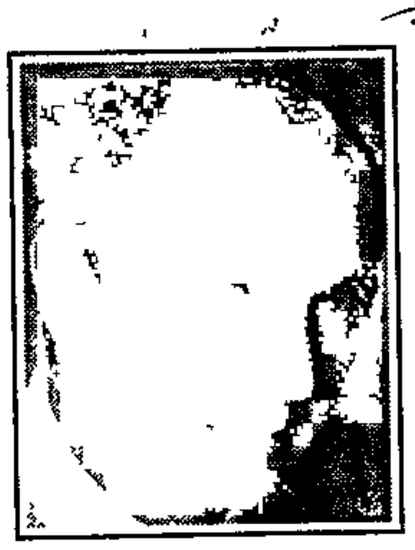
Former South African Defence Force major Nico Basson was yesterday granted indemnity from prosecution after he said he did not know the whereabouts of a man who has alleged SADF involvement in Reef train attacks

Mr Basson had been subpoenaed under section 205 of the Criminal Procedure Act to reveal the location of former Five Reconnaissance member Felix Ndimene, who alleged that his unit, which is based at Phalaborwa, carried out attacks on civilians

He told magistrate Mr R G le Roux in the Johannesburg Magistrate's Court that he had made a point of not knowing where former 5 Recce Battalion member Mr Ndimene could be found

Mr Basson, whom Mr le Roux described as a credible witness, confirmed reports that he would rather go to jail than reveal the whereabouts of his informant

Mr Basson is the leader of Soldiers of Peace, an organisation established to help former military and police members to release information about alleged atrocities committed by the security forces



Indemnified . former major Nico Basson

He said that because the police had "techniques" for extracting that sort of information, he had spoken to Mr Ndimene only when the latter had telephoned him

He told the court that he had told General R N van der Westhuizen, Colonel Niels Langenhoven and other policemen during a meeting on July 23 that he would produce Mr Ndimene — on condition that Mr Ndimene's indemnity and safety could be guaranteed

But on July 25 he told them that since the law made no provision for indemnity, he was not prepared to deal directly with the police

He said he had made representations to President de Klerk for a general amnesty that would allow police and military personnel to give evidence on atrocities and malpractice for political purposes — without fear of prosecution or fear for their safety

Mr Basson said the use of the subpoena under section 205 was simply an attempt by police to intimidate security force members to remain silent on abuse of power in the security forces

He said he was prepared to release information to the Commission on Intimidation, an independent body that would be acceptable to political parties outside the State mechanism

President de Klerk has promised to establish this body

Mr Basson said statements supporting Mr Ndimene's allegations of SADF involvement in the Benrose train massacre were being prepared for submission to the Attorney-General's office

It was impossible for police to be impartial in probes of such incidents because they themselves were usually involved

During the Harms Commission, General van der Westhuizen had congratulated alleged CCB operative Staal Burger for his evidence, and that showed their collaboration

ten also serve as sheriffs of the court — blurring their identities as defenders or court officials

Another feature of rural justice was the high incidence of young offenders sentenced to corporal punishment or sent to reform schools

"There is seldom a chance that an accused can ask to serve a period of community service," the attorney said.

"In most rural towns it is blatantly obvious that the courts are just an extension of the security forces

"It is not seen as a separate arm of the law, and the black communities there have lost all faith in the courts

Other lawyers agreed that when an accused was not represented bail proceedings often mitigated against accused because they were not aware of their legal right to demand bail

TWO AWAITING trial prisoners died in jails last year — before they were convicted Lawyers and legal interest groups in South Africa are concerned about the high percentage of unrepresented accused who are imprisoned

Chaskalson said where sentences required that such cases should be sent on review, judges were asked to certify that the proceedings were conducted in accordance with justice

"If this is justice, is it a justice of which we can be proud?" Chaskalson asked

The duty of the courts were to hold the scales of justice evenly between the different classes of the community

● over half the jail population are awaiting trial prisoners

South 8/8 - 14/8/91

In South Africa, the situation still exists where many accused suffer "legal poverty'

There are inadequate resources to ensure that every accused has access to legal representation — there are not enough lawyers to perform the task, and the cost of overcoming legal poverty is too high for the present government

The government allocated more than R4 000 million in its 1990 1991 budget for the maintenance of law and order

The money will be spent on the police force and prisons service, the employment of judges, magistrates, prosecutors, interpreters and other court officials

The budget provides for the expenditure of R3 027 million on the police force, R878 million on the prison service and R430 million on the Department of Justice

Only R15 million was allocated for legal aid

"This is hopelessly inadequate, and it is not surprising that the overwhelming majority of people who are convicted and sent to jail have gone through their trials unrepresented " Chaskalson said

The Legal Aid Board, established in 1969 to render legal aid to indigent accused, offers their "judicare" system to people suffering legal poverty

However, their limited funding and stringest means testing still excludes the majority of unrepresented

' It is the board's conviction that much still needs to be done to extend legal aid services to a satisfactory level, said the director of the Legal Aid Board, Mr Nic Pretorius

It is not only an urgent necessity for justice but also a prerequisite for public confidence in the law and the administration of justice — specially at a time of constitutional and political reform with its attendant insecurities

"CITIZENS CAN hardly be expected to have confidence in the law and the administration of justice if they cannot gain access to equal services and the courts in cases in which so much is at stake for them "

However because legal aid is only provided to single persons who earn less than R500 a month and married person earning not more than R1 000 a month the Legal Aid Board only granted assistance to 32 percent of their applicants last year

Defending the low income levels set in the means test, Pretorius said that although he conceded that the present test put legal aid beyond the reach of many people who could not afford legal representation, it could not be adjusted because there were not enough funds available

In an attempt to alleviate the shortage of legal representation in criminal matters, the Legal Aid Board the General Council of the Bar the Association of Law Societies, the Department of Justice the Legal Resources Centre, Lawyers for Human Rights, the Legal Aid Bureau, the Black Lawyers Association and the National Association of Democratic Lawyers launched an investigation last year into a public defenders system for South Africa

A PILOT PROJECT is to be launched in Johannesburg next month where 10 defenders will be employed for two years to defend less privileged accused

"Public defender systems have proved to be a success in countries such as the United States and are said to be considerably more cost-effective than the system currently in use in South Africa," said Pretorius

"The current system entails that the Legal Aid Board pays the fees of private practitioners who act on behalf of indigent accused

"Public defenders, on the other hand, are salaried employees of a legal aid organisation whose services are usually free of charge to accused who are unable to afford legal representation

Public defenders are specialists in the field of defending accused and their academic and professional training focuses on subjects such as criminal law, criminal procedure, the law of evidence and practical skills such as consultation techniques, preparation for trial and questioning of witnesses "

The Legal Aid Board had made R2,5 million available for the investigation and the pilot project and funds to maintain and expand the system will have to be raised in the private sector

Steytler said he had "grave doubts' about the financial feasibility of the public defenders scheme.

"If it costs more than R2 million to get it operating in just one court in South Africa, how much money is needed to duplicate it throughout the country?" he asked

He had doubts that in a country like South Africa, where there was already a dearth of social services, representation for all accused facing serious charges can be achieved

Providing finance for defence counsel was not a "politically popular" scheme and it was doubtful that even a majority government would advance such a cause when money could be spent (252) more profitably on education and help for the innocent victims of crime

What could be done parallel to the public defender system, Steytler argued, was an attempt to increase the pool of defenders by various means

Students who had already passed their B Juris course could be licensed to practise as criminal defenders

"With proper training, law students could be used in their final year of study to provide minimal service to accused persons like bail applications and plea hearings," Steytler said

' This would of course be limited to major centres where there are universities offering law as a course of study and students' time would be restricted during their exams

In the interim, the court structure could be altered to allow magistrates to play a more active role in securing justice for the undefended accused

"The magistrates could play a more active role during the bail proceedings and ensure that the issue of bail is properly discussed," Steytler said

"They can also assist in testing the evidence of state witnesses as the accused are often unable to cross-examine them effectively "

Another factor mitigating against the credibility of the criminal justice system was the racial and gender composition of courtroom officers

Critics allege that sometimes the backgrounds politics and prejudices of judges and magistrates, are brought into the courtroom and play a role in deciding the fate of the largely black accused

JUDGES IN South Africa are all white and all, except one, are male However, bringing "community representatives" into the courtrooms was not going to be achieved overnight, lawyers and legal experts conceded

The jury system — where a panel of peers assist in determining the fate of an accused — is thought not to be viable in a divided society

Before the system was suspended in South Africa, only white people could serve as jurors

It is felt that because of the the high illiteracy rate and the divisions among people of different cultures a jury system would be extremely difficult

An alternative suggestion is the use of assessors — representatives of the accused s community who could be used to assist the presiding officer in understanding the motivations behind the accused's actions and arrive at a suitable punishment

Legislation has just been provided to allow lower courts to use assessors to assist magistrates

Before the use of assessors was limited to the Supreme Court

Steytler said he welcomed the introduction of assessors into lower courts but still had doubts about who would be appointed

' The system of assessors worked inadequately in the Supreme Court and it will be very disappointing if the same thing happens in the lower courts " he said

"IN THE SUPREME Court assessors were tied to the apron strings of the judges and once they were appointed they seldom argued with judges as there was a risk that they would not be asked again

Of course, the system was very lucrative, assessors were well paid and they wanted to ensure that they were asked again "

Steytler said that because of the impossibility of reintroducing the jury system in South Africa, the assessors could perform the duty of juries and represent community values in courts

This system has worked well in other African countries where communities were polarised by racial segregation and was operating in Tanzania Kenya, Zimbabwe and Mozambique

"Community values are only protected in criminal proceedings when representatives of communities are present in court," Steytler said

"In South Africa, this would probably mean that the majority of assessors will be black, unlike the present situation "

Changing the composition of the Bench from being dominated by white males to include more blacks and females, was a slow procedure which could take years to realise

The Bench could be made "blacker' sooner by appointing assessors Steytler argued

They could be selected by a board comprised of representatives of the community

Their task would not be merely a "job" but would be seen as fulfilling a community service for a limited period

"This would overcome the problems experienced in the jury system — it is less cumbersome, less expensive and far less biased in favour of one community," Steytler said

"In the long term, we could see more black female judges and magistrates on the Bench but we cannot appoint people simply because they are black and female "

'The greatest flaw in the South African criminal justice system lies in the failure of the state to provide free or subsidised legal services to the indigent accused' — Justice J Didcott

Justice J Didcott

'In most rural towns, it is blatantly obvious that the courts are just an extension of the security forces It is not seen as a separate arm of the law, and the black communities have lost all faith in the courts'

Nico Steytler

'Citizens can hardly be expected to have confidence in the law and the administration of justice if they cannot gain access to equal services and the courts in cases in which so much is at stake for them' — Nic Pretorius

"But how that can that be done in criminal trials, when the ability of an accused person to offer a defence so often depends on the extent of his or her means? Chaskalson asked

In a ruling on a case in Natal, Mr Justice J Didcott said of the unrepresented accused, "the odds are stacked against him, and stacked heavily

"The greatest flaw in the South African criminal justice system lies in the failure of the state to provide free or subsidised legal services to the indigent accused,' Didcott said

"To think that at the end of the trial of an unrepresented accused there may be justice is an exercise in self-delusion

"Time honoured expressions like all persons being equal in the eyes of the law have come to mean equality before the law if you can afford it

"There is therefore only justice for the rich "

Didcott's judgment set a new precedent — that all accused persons must be told of their right to apply for legal aid and should be afforded every "reasonable opportunity" to obtain legal representation

However, if legal aid is denied the case must proceed. It is only in more complex cases that it is still irregular to try an unrepresented accused

QUEUING AT THE DOORS OF JUSTICE Outside the Cape Town Supreme Court

Justice for none?

South African law assumes that all are equal before the law and all accused are entitled to a fair trial with legal representation However, the reality in our courtrooms is far removed from the lofty ideals in our law books, **REHANA ROSSOUW** discovered

South 8/8-14/8/91.

(252)

LEGAL EXPERTS have estimated that 80 percent of all accused in South African courts are unrepresented They stand alone in the dock facing the combined forces of the police, prosecutor and magistrate

The Judge President of the Eastern Cape, Mr Justice JP Kannemeyer, estimated that in 1989 100 000 people sentenced to imprisonment of three months or more were unrepresented

And without legal representation, those accused of crimes frequently find themselves denied bail

Statistics from the Department of Correctional Service's annual report last year show that more than 200 000 people were held as awaiting trial prisoners last year — 58 percent of the total prison population for the year

During his budget vote in parliament last year the Minister of Justice, Mr Kobie Coetsee, conceded that the government considered it a "duty" to make the courts and the law more accessible to ordinary people

While the criminal justice system in this country is well-administered, its bias towards some sectors of the community has eroded public confidence

Prominent civil rights advocate Mr Arthur Chaskalson SC said criminal trials in South Africa followed a similar pattern The accused was usually black and the judicial officer and prosecutor invariably white

"The proceedings are conducted in a language which the accused often does not understand or understands only imperfectly

Not infrequently the accused is either illiterate or ill educated and an interpreter is required to act as intermediary between the accused and the court

"The accused is usually not represented by a lawyer The preparation for trial, cross-examination of witnesses and the presentation of his or her case by such an accused is usually ineffectual

"Magistrates explain to accused persons what their rights are sometimes this is done with sympathy, sometimes not

But the explanation is not of much value, however it is given, for more often that not the accused has not got the skill to cross-examine or to present his or her case adequately "

Professor Nico Steytler of the University of the Western Cape law department, wrote his doctorate on the undefended accused and spent much time in courts observing proceedings

"What we have in South African courtrooms is a system which is most effective in securing convictions "he said

"When an accused has to defend himself and has to enforce his rights, he is not a competent adversary and it is easy to construct a conviction "

Steytler said the courts "misused" the accused's ignorance Even when they were advised of their rights it was a "meaningless exercise"

Criminal lawyers dealing with cases in the outlying rural areas report that the situation there is far worse.

An Athlone attorney whose case load includes a number of rural clients, said that because it was far more likely that a lawyer would not be present in district or periodic courts, magistrates were more likely to show less sympathy to the less-educated and wealthy clients

"Bail is often set at very high amounts which people cannot afford " the attorney said This is not the purpose of bail "

Often accused, such as farm labourers, could not afford bail and spent long periods in custody before the trial was completed

In cities, where bail was generally provided except in serious crimes, all an accused needed to qualify for bail was a fixed address and employment

In rural towns, although it was less likely that in a small population an accused could disappear, bail was more likely to be denied

Often, spurious reasons were given for denying bail — courts are often told that the police are still investigating the charges, an attorney said

In towns where there are periodic courts people could be held for up to four days before they first appeared in court

"I am busy with a case now where a man was arrested and held in custody for three days before he was brought to court " he said.

"He was assaulted while he was in custody and his injuries were not noted by the magistrate when he first appeared in court

Eventually he was acquitted as the charges were completely malicious

What this illustrates is something that happens often in rural courts — the state prosecutes every case the police bring to them

"Sometimes rural prosecutors are no more than an extension of the police force

The attorney said it was not unusual to find policemen prosecuting trials themselves in rural towns when the prosecutors were unavailable

While it never happened that an investigating officer would prosecute a trial he was involved in, the close relationship between policemen in small rural charge offices can prejudice the case against the accused

Another problem faced by rural accused was the relationship between local attorneys and the police Attorneys were more likely to believe the police version of events, rural community workers say

An attorney in Ashton was nicknamed SP — "Skuldig Pleit (Plead Guilty) — because that was often the only advice he gave his clients during consultations

Attorneys based in small towns of-

● 80 percent of accused are unrepresented

FM 9/8/91 252

relationship because the employees concerned were no longer employees "

Justice Erasmus upheld the company's argument on these grounds

☐ An ex-employee is not an employee in terms of the Labour Relations Act, except where he would have been employed but for the unfair practice being complained of — if, say, the retrenchment itself had allegedly been unfair,

☐ There is no common-law basis for an "extended" or "continued employment relationship " An employment relationship can, therefore, exist only in the context of the employment contract,

☐ There is no clear provision in the Act compelling an employer, where all or part of the workforce has been dismissed, to rehire all if it rehires one,

☐ The many IC decisions that selective rehiring can be unfair are wrong and the IC's assumption of such jurisdiction has no visible support in the Act, and

☐ The part of the definition of unfair labour practice dealing with the creation or promotion of labour unrest refers to more than "unhappiness" being created by some act of the employer

Thus, provided the termination of employment itself is not unfair, the decision holds that it would not be unfair to re-employ dismissed workers selectively Employers who wish to re-employ selectively, however, should do so with extreme caution in view of the many decisions to the contrary, the lawyers advise.

Clarity over insubordination/insolence and dismissals emerged from the recent Labour Appeal Court judgment (Transvaal Division) in Humphries and Jewell vs Federal Council of Retail & Allied Workers Union, Dave Ramokoka and Elias Mfopa Here the IC had earlier ordered the reinstatement of Mfopa, who had been dismissed for insubordination

Humphries had stated that he noticed Mfopa walking around company premises with his hands in his pockets and his collar turned up, which he regarded as insolent and disrespectful. He ordered Mfopa to wear the duty-issue dustcoat and return to work Mfopa allegedly put on the coat, turned up the collar, placed his hands in the pockets, looked at Humphries insolently and walked away An infuriated Humphries next day called Mfopa aside and told him he was being dismissed The latter's silence was taken as acceptance He was paid three weeks' wages and dismissed

The Labour Appeal Court decided "A disregard by an employee of his employer's authority, especially in the presence of other employees, amounts to insubordination and it cannot be expected that an employer should tolerate such conduct " In these circumstances, the relationship of trust and mutual confidence could not continue and the court considered it improper to order reinstatement

It also said that the IC had not borne in mind that the conduct of Mfopu was clearly a wilful challenge to Humphries' authority and that it occurred in the presence of other employees who watched to see the outcome

Because the company admitted that the dismissal was *procedurally* unfair, it was ordered to pay Mfopa four weeks' wages

According to Webber Shepstone Findlay, the Appeal Court's condemnation of Mfopa's conduct as insubordination removes artificial distinctions between that and insolence, which is how the IC had described Mfopa's conduct

The third case deals with petty theft and dismissal

Is it unfair to dismiss an employee for the unauthorised possession of goods worth R45? This was raised in the case of Commercial Catering & Allied Workers' Union and Miriam Miyela vs Central News Agency

The IC did not fault the finding of guilt at a disciplinary inquiry, but found mitigating factors These were that the employee was an elderly widow with five children at school to support, her clean record of service, and the value of the goods taken The lower court found the dismissal unfair, but said the employment relationship had broken down It did not, therefore, order reinstatement but awarded six months' salary

Justice De Klerk at the Appeal Court found that the "mitigating circumstances" were not raised in affidavits nor evidence and that the IC had, therefore, erred in saying these facts weren't properly considered It was a basic and tacit term of employment that an employee would not steal from the employer Even if the mitigating circumstances were taken into account, the dismissal as fair and proper could not be questioned

The court did not find it necessary to distinguish between theft and "trivial pilfering" — which suggests there is no difference, observe the lawyers The decision appears, therefore, to reject the "propensity to steal" argument, which places emphasis on the value of the stolen goods

It is recommended that employers must carefully examine the circumstances of each case, including the amount, before deciding on an appropriate sanction Mechanical application of this case would be unwise ■

LABOUR LAW FM 9/8/91 252

Important shift

The Labour Appeal Court recently overturned Industrial Court (IC) rulings on three litigious workplace issues — selective re-employment, insubordination and petty theft The judgments, which appear to strengthen the hand of employers, bring greater clarity and set precedents on these matters

Previous understanding of the law on re-employing dismissed workers has been thrown into disarray, say lawyers Webber Shepstone Findlay This follows the case of Borg-Warner SA v National Automobile & Allied Workers Union (now known as Numsa), before the Eastern Cape Division of the Labour Appeal Court

The brief background is that, in terms of a rehiring agreement with the union, the company had undertaken "to consider" retrenched workers for re-employment "as and when the need arises " It was common cause that the company breached the agreement and the union alleged that this was an unfair labour practice In defence, the company held that the IC did not have jurisdiction The IC rejected this and ordered it to comply with the agreement

The company pursued its argument at the Labour Appeal Court, maintaining that the dispute did not concern an "employment

Continue -

FW warned over violence probe

ST Times 1/8/91.

252

CIVIL rights lawyers have urged President FW de Klerk not to establish his proposed commission of inquiry into violence until after further consultation

Lawyers for Human Rights and the National Association of Democratic Lawyers warned in a letter to the president this week that the forum would only enjoy credibility if it was set up after negotiations with interested parties

Issues which the lawyers felt particularly needed debate were

- The appointment of the chairman and members of the commission,
- The members of the investigation teams,
- The commission's jurisdiction and terms of reference,
- Its powers and procedures,
- The appointment of counsel

"If the commission is appointed without regard to these issues, it will do little to restore public confidence in your commitment to a South Africa governed by the rule of law," the letter said

Sunday Times Reporter

First black judge's appointment

ST Times 11/8/91

THE government has announced the appointment of the country's first black judge

He is Mr Ismail Mahomed, SC, a prominent Johannesburg advocate.

The elevation of Mr Mahomed to the Transvaal Provincial Division of the Supreme Court was confirmed by Minister of Justice Kobie Coetsee

His appointment takes effect tomorrow

Mr Justice Mahomed has extensive judicial experience, having served on the Swazi Appeal Court for 12 years He is also president of the Court of Appeal in Lesotho and sits on the Supreme Court Bench in Namibia

His appointment, which opens the way to the Bench for other senior black lawyers, has been widely welcomed by legal colleagues in their personal capacities

Among them are PAC vice president Dikeng Moseneke, ANC national executive member Dullah Omar, Jules Browde SC of Lawyers for Human Rights and George Maluleke of the Black Lawyers Association

They all said it was "high time" someone of his calibre was elevated to the judiciary

While still at the Bar, Mr Justice Mahomed appeared in a number of celebrated cases, including the famous "scissors case", but his influence has been felt most strongly in human rights and political trials

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He has appeared in a number of marathon political cases involving anti-apartheid activists, including advocate Braam Fischer, Professor Fatima Meer, the Biko family and ANC veteran Govan Mbeki.

Mr Justice Mahomed also argued several landmark challenges to the state of emergency, during which he urged that the presiding judges should exercise their discretion in favour of human rights.

He has made his pro-civil rights stance clear with a Namibian judgment, based on that country's bill of rights, in which he outlawed court-imposed corporal punishment of adults and juveniles and ruled that corporal punishment could not be imposed by schools

Colleagues said the Pretoria born judge, one of a family of six children, ought to have been appointed to the Bench many years ago He is senior in experience to most judges on the Bench.

While Pretoria refused to consider appointing a black judge, he gave South Africa's neighbours the benefits of his skills

During his long and distinguished legal career in South Africa, however, Mr Justice Mahomed, along with other black colleagues, suffered many humiliations through government legislation, both in his personal and professional life

For example, before the Group Areas Act was amended he was unable to have chambers in the city centre building occupied by his white colleagues.

For 12 years, on arriving for work, he would ask which of his colleagues was in court and would then "borrow" their chambers until the advocate concerned returned

If there were no colleagues out, he had to work in the library

During the years when Indians were barred from staying in the Orange Free State for more than 24 hours there were occasions on which he had to drive from Bloemfontein, where he was appearing in a case, to Kimberley, the nearest Cape province town, to sleep

He was admitted as an advocate in 1957

Another milestone came in 1974 when he was the first black advocate to be appointed senior counsel, joining the ranks of top advocates from whom judges are appointed

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The popularity of Mr Justice Mahomed's decision to accept the appointment reflects a change in attitude by many of his anti-apartheid colleagues across a wide range of organisations, all of whom have welcomed his appointment, saying it was an honour long overdue.

The national chairman of Lawyers for Human Rights, Mr Jules Browde SC, welcomed the announcement, saying LHR believed that, in the eyes of the public, a nonracial Bench would have a legitimacy that was presently lacking

Another LHR executive member and counsel for the Mandela family, Mr George Bizos SC, said in a "just society" Mr Justice Mahomed would have already "graced the Bench for many years"

Similar tributes were paid by the attorney for the Sisulu and Mbeki families, Priscilla Jana, who said the country had entered a transition period and the time had come to "set the pace"

Senior official of the National Association of Democratic Lawyers Azhar Cachalia expressed his delight, adding the appointment was an important step in restoring the poor image of the judiciary.

Another Nadel offical, Mr Dullah Omar, who also serves on the ANC's National Executive Committee, said: "I am delighted We can walk tall."

Mr Govan Mbeki agreed it was "an important and welcome development".

A former colleague of the new judge, advocate Dikeng Moseneke, vice-president of the PAC, welcomed the news and said that on sheer merit, seniority in the profession and skill, the appointment was both "overdue and richly deserved".

Chairman of the legal education committee of the Black Lawyers' Association George Maluleke said he believed the appointment of Mr Justice Mahomed was a necessary step in dismantling apartheid "in a very critical area"

HISTORIC FIRST. but Ismail Mahomed has felt the bite of apartheid Picture: PIERRE OOSTHUYSEN

in anticipation of a new time ago and the fact that society. he is accepting the appoint-

"He should have been a ment will be an asset to the judge in this country a long new society."

Editor to give evidence

C/Press 11/8/91 252

CITY Press Editor Khulu Sibiya has been subpoenaed to give evidence in the inquest into the death of slain human rights leader Chief Mhlabunzima Maphumulo, who was gunned down in front of his home on February 25.

Sibiya was told he might be called to give evidence at the inquest in Pietermaritzburg starting on Thursday City Press Natal bureau reporter S'bu Mngadi was also subpoenaed

City Press published a story quoting a self-confessed agent of the military police as confessing to the murder and implicating the security forces

Making the law fair to the poor

ST Times 11/8/91. (252)

CATHY STAGG considers whether justice seen is always justice done

CAN justice be done when the accused has no legal representation?

The question is one of the oldest in legal history It sprang to prominence in South Africa in June 1988 and has been hotly debated ever since

In that month Mr Justice Didcott and Mr Justice Friedman of the Natal Division of the Supreme Court ordered the quashing of the conviction of two men accused of housebreaking and theft

The men had been unrepresented in their trial and the judges ruled that the magistrate had a duty to inform the accused of their right to representation and the availability of legal aid He had not, so the trial was unfair, they ruled

Issue

The issue will be revisited on August 22 when a leading human rights lawyer, Arthur Chaskalson SC, the director of the Legal Resources Centre, will take a test case before the highest court in the land the Appellate Division

Again the issue is whether an unrepresented accused can have a fair trial Coincidentally, the charges again include housebreaking

But there is a difference between being told about the right to representation and actually getting it

This week Mr Justice JC Kriegler, delivering the annual Morti Malherbe commemorative lecture at the University of Stellenbosch, said that mere free access to the courts did not necessarily mean that people had *equal* access to the law

"Formal access for an accused is no problem — whether he wants to be or not, he is brought before a court,' the judge said

The problem is that an accused, "no matter how uneducated, helpless or even stupid" has no lawful claim to legal representation, he said

The argument was taken further this week by Professor Rita Jordaan in her inaugural lecture as Unisa's new director of the Legal Aid Centre She noted that not even in cases which could result in a death penalty are the accused entitled to assistance, although in practice the state does pay for the accused to brief an advocate in private practice

Even so, the *pro deo* system has many flaws, she said There is no instructing attorney to assist the advocate and, more importantly, such cases tend to be taken by young, inexperienced members of the bar because the fees for *pro deo* work are low

In what may be a new trend, in two murder cases currently being heard in the Rand Supreme Court the instructing attorneys are being paid by a union and a political party, and advocates of the accused's choice have agreed to appear *pro deo*

Whatever flaws the *pro deo* system used in the Supreme Courts may have, the situation in the lower courts is worse

About 80 percent of the more than 2-million accused who appear in the magistrates' courts annually are unrepresented — and more than 100 000 receive jail sentences Research shows that legal representation increases the chances of getting bail, being acquitted or receiving a lighter sentence, Professor Jordaan said

On average, there are 110 000 prisoners, sentenced and awaiting trial, in jail every day This costs R18,61 a prisoner a day

So even if the man in the street assumes he will never have the misfortune to be accused of a crime, the cost of legal aid affects him

At present, legal aid is provided by the law clinics run by universities, Lawyers for Human Rights, the Legal Resources Centre and the Legal Aid Board The legal profession, private donors and the state supply the funds, but the amount is inadequate

For example, the Legal Aid Board, mainly financed by Parliament, has a budget of R21,4-million for the current financial year, Professor Jordaan said A means test is applied to limit the number of people who qualify Single people have to earn less than R500 Yet, despite the means test, only 32,5 percent of those who asked the board for legal aid between April 1 1989 and March 31 last year got it 24 277 people

Burden

So, said Professor Jordaan, the private sector needs to help shoulder the burden Individuals should insure themselves against the possibility of prosecution and employers should consider giving legal aid in the same way that medical aid or housing benefits are included in employment packages Municipalities could help fund legal aid schemes in their areas Individual lawyers should volunteer their time free of charge, as they already do by acting as commissioners in the small claims courts

Prisoner freed from Death Row admits he did shoot man

By EVELYN HOLTZHAUSEN

A FORMER Cape Flats gangster who was sentenced to death for murder then freed by the Appeal Court, has now admitted that he did kill his victim.

Mr James "Jupie" Jochems, 22, confessed in the Wynberg regional court recently that he had shot dead a rival gangster in September 1989

Yet during his trial for murder last year, he claimed he had not even been present at the scene of the shooting

In spite of his confession, Mr Jochems of Hanover Park, Cape Town, will remain free

Under South African law, no-one may be tried twice for the same crime unless there has been a technical fault in the first trial

Attack

Mr Jochems's confession came while he was giving evidence as the chief state witness in a trial

The trial is a sequel to an alleged attack on Mr Jochems by Mr Andre Peterson and Mr Clive Britzon on March 3 this year

Both have been charged with attempted murder

Mr Jochems was being cross-examined when he made the confession

Mr Jochems was released from his Death Row cell at Pretoria Central Prison last November

He had been on Death Row for 14 months after being sentenced to death by Mr Justice Braam Lategan in the Cape Supreme Court for the murder, on September 12 1989 of "Vultures" gang member, Mr Denzel Ronald Abrahams

JAMES 'JUPIE' JOCHEMS
Courtroom confession

Until his courtroom confession, Mr Jochems has persistently proclaimed his innocence At his trial he said he was at home watching TV at the time of the murder

The death sentence imposed on him was overturned by Mr Justice John A Milne in the Appeal Court in Bloemfontein

In his appeal judgment, he said the key evidence of two state witnesses who claimed to have seen Mr Jochems shoot Mr Abrahams was "unreliable" and might well have been "deliberately dishonest"

Judge Milne said this week he had come to his decision to acquit Mr Jochems on the facts before him at the time

Judge Lategan refused to comment

Legal sources say Mr Jochems's admission that he did kill Mr Abrahams has vindicated Judge Lategan who has been criticised as a "hanging judge"

Prof Dennis Davis, head of the Society for the Abolition of the Death Sentence and now director of Applied Legal Studies at the University of the Witwatersrand, said his criticism of Judge Lategan had been based on several cases

"The acquittal of Mr Jochems by Justice Milne was based on the notion that an accused must be proved guilty beyond reasonable doubt Judge Milne had found there was reasonable doubt

"My criticism has always been based on the perceived public impression created of our legal system

Waste

"Questions must be asked when findings by a judge — relating particularly to the imposition of the death sentence — are repeatedly overturned"

An advocate — who did not want to be named — said it would be "a waste of effort" to charge Mr Jochems with perjury as the sentence for perjury would not justify the effort in getting a conviction

He said the courts accepted that people found guilty of serious crimes committed perjury in a desperate attempt to save themselves.

The attempted murder trial has been postponed to September 18

SA gets first black judge

Sowetan 12/8/91

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By ISMAIL LAGARDIEN
Political Correspondent

South Africa has a black judge - and that's official.

Mr Ismail Mohammed takes up his new position on the Transvaal Provincial Division of the Supreme Court today, the Ministry of Justice confirmed at the weekend

His appointment signals a massive shift in Justice Department thinking

While Mohammed has been ignored by the South Africa Government for decades, his services have been valued by the judiciary of neighbouring states, where he has held senior positions

Besides having served on the Swazi Appeal Court for 12 years, Mohammed sits on the Supreme Court Bench of Lesotho, and the Supreme Court of Namibia

The promotion of Mohammed to the Supreme Court Bench was long overdue, a Pretoria advocate, the deputy president of the PAC, Mr Dikgang Moseneke, has said

He was admitted as an advocate in 1957 and reached a milestone when he became the first black advocate to be appointed senior counsel

Mohammed has appeared in a number of prominent political cases involving political activists charged with anti-apartheid activities

Among his clients were Mr Bram Fischer, the Biko family, Mr Govan Mbeki of the ANC and Professor Fatima Meer

He also argued several landmark challenges to the mid-eighties State of Emergency, during which he urged that that presiding judges should exercise their discretion in favour of human rights

Commenting at the weekend, Mr George Bizos SC, said in a "just society" Mohammed would have already "graced the Bench for years"

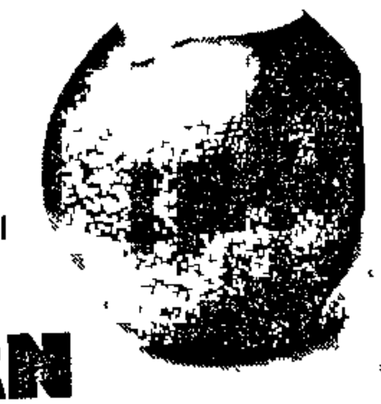
winners

CONGRATULATIONS TO THE WINNER OF THE FIRST TWO-ROOM ZOZO!

S S Ndaba Q 970 Umlazi Township P O Umlazi Natal 4031 And congratulations to the 200 winners of King Korn Dingaan Thobela T-Shirts drawn this week!

Remember, there are still 4 more weekly draws for a two-room Zozo and 200 T-shirts PLUS, the BIG draw for 5 ZOZO shops, 10 two-room ZOZOs and 1500 T-shirts

So keep those entries coming in!



KING KORN
THE HEART AND SOUL OF AFRICA.

EAST SHEARER 0504

Mahomed atop his mountain

Star 12/8/91 (252)

Ismail Mahomed

South Africa's first black judge is more an icon than a token, writes The Star's Political Editor SHAUN JOHNSON

UNANIMITY among members of South Africa's legal profession is a rare thing, but it exists on the subject of Ismail Mahomed No one doubts that Mr Mahomed, SC, would have been Mr Justice Mahomed many years ago, had it not been for apartheid

Ironically, therefore, the historic appointment of South Africa's first black judge is also one of the least controversial elevations to the Bench

Professionally, Judge Mahomed is senior to most incumbent judges There has been no suggestion that his appointment is an exercise in tokenism by a reforming Government, because the man's record renders such a thought ludicrous

Asked to put into words Judge Mahomed's most characteristic trait, his colleagues use one adjective often, but rigorously he is a brilliant man His overwhelming passion is justice, and he has, in its cause, fought celebrated cases which lesser men might have declined

Over the years he has brought to his challenges to civil rights abuses in this country enthusiasm and conviction of heroic proportions

But he remains a private man, close friend to only very few, role-model-at-a-distance to countless young lawyers He is approachable and risible, but not gregarious The biggest tragedy in his life was the death of his mother, to whom he was devoted, some five years ago

A colleague who numbers among Judge Mahomed's few confidants says he is a man who "makes friends very slowly He is universally liked and respected, but his intimate friends are few Once made, though, his commitment is complete and all-encompassing"

The lawyer speaks of Judge Mahomed's "peerless capacity for work I have never met anyone who works as hard or is as devoted It is not unusual for him to work — even during a case — until 3 am, breaking only for a sandwich

"Junior advocates would greet the news that they were to work on a case with Ismail with a mixture of excitement and fear — even horror Excitement because of his imagination and genius, fear of the test to their intellect and stamina Most hearts would sink"

Stories about Ismail Mahomed, SC, are legion in legal common-rooms Lawyers recall with delight his extraordinarily original legal arguments, and his magnificent use of language in court

A favourite dates back to the Supreme Court review of a magistrate's decision in the Raditsela inquest in the mid-1980s Judge Mahomed believed his opponent was asking a witness leading questions, securing bland agreement rather than cross examining him "No, no," he boomed "The truth is not discoverable by a ritualistic incantation of assent"

His sharpness could be turned on his own side, too He once told a junior, whose preparation for a case was less than excellent "I'm in this case not because of you, but in spite of you" The junior, needless to say, mended his ways

Judge Mahomed has lived in Laudium all his life, commuting to Johannesburg from Pretoria In the early years he took the train, but now travels by car

His friend recalls "When he first came to the Bar he could not occupy chambers in his own name, because he was black

"It was only after he took silk (became a senior counsel) that he was invited by the Johannesburg Bar Council to make use of the Bar common-room That was in the 1970s Until then, he would eat sandwiches for lunch wherever he could"

Judge Mahomed has never traded on his personal experience of apartheid — he has had no need to, in professional terms — although he has felt it keenly This has infused his performances with fire

Says a colleague "With Ismail, there was never any proposition that was obvious He would attack anything, even if it looked hopeless

"The arguments he launched were always plausible — judges listened to him with immense respect, and in his opponents he induced a sense of sinking, of foreboding He could weave webs, thinking on his feet I saw it countless times"

An opponent once commented, during an application concerning Affected Organisations "You know, this chap's like a hydra — as soon as you chop one head off, another one grows"

It is widely expected that Judge Mahomed will progress to the Appellate Division in time, and will play a key role in the development — and transformation — of South Africa's legal and constitutional dispensation

In doing so he will become increasingly, a symbol of what can be achieved by a brilliant lawyer, of any colour, in this country

A legal student once remarked, without a trace of disingenuity "I will be happy if I can become half the lawyer Ismail Mahomed is" It is not an unrepresentative sentiment □

SA bill of rights under scrutiny

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Star 12/8/91

The Law Commission's report on human rights is likely to spark much discussion BRENDAN SEERY reports.

WHEN politicians finally get down to discussing the future of South Africa, one of the first documents on the negotiating table will be the report of the Law Commission on Human Rights, which was handed to Justice Minister Kobie Coetsee last week

The result of more than five years' work, the report includes a bill of rights which, while still uniquely South African, has been flavoured by the constitutional experiences of dozens of other countries

When the commission's draft report was published in March 1989, it caused a stir in legal and political circles because of its unequivocal acceptance of the principle of one person, one vote and its equally categoric rejection of any constitutional protection of "group rights"

In the last two years the original report has undergone substantial revision and modification, says the Law Commission's deputy chairman, Mr Justice Pierre Olivier

In an interview, Mr Justice Olivier said the response from academics, political parties and the public to the original document had been overwhelmingly positive and more than 400 documentary submissions had been considered in the compilation of the interim report

One of the areas covered by the report which would generate the most discussion was the concept of "second generation" human rights

The "first generation" rights were those traditionally associated with bills of rights — the guarantees of rights to life, property, freedom of speech and others

Second-generation rights were socio-economic in nature, said Mr Justice Olivier, and included the rights to education, health, housing and employment

The "big debate" for the Law Commission, — apart from the question of whether these rights belong in a constitution or in political-party programmes — had revolved around how to make these rights "enforceable" and give them "real meaning"

Mr Justice Olivier said he was absolutely certain that the bill of rights as envisaged in the interim report would ensure protection of the rights of the ordinary citizen

He said he believed the commission's bona fides had been accepted, and there was no question that its submission would be independent and would not merely be "the policy of the National Party"

One of the biggest problems facing politicians at the negotiating table, he added, was the fact that South Africa was "not yet ripe for the introduction of a bill of rights There is at the moment no atmosphere of respect for human rights among the people" □

Pretoria mum gets R130 000

252

Dweba 13/8/91

A MAMELODI widow, whose husband died after being assaulted by three policemen at a music festival in Moretele Park two years ago, has been awarded R130 000 damages by the Pretoria Supreme Court.

By MONK NKOMO

Mrs Sarah Thibela initially claimed R147 957 from the Minister of Law and Order, Mr Adriaan Vlok.

Her husband, Mr Mohlabathi Pieter Thibela, who was an assembler at a motor manufacturing plant in Waltloo, died at the Kalafong Hospital after being "hit on the head with a revolver , and kicked in the face and body" by three black policemen at Moretele Park, Mamelodi, on or about December 4 1988.

He died on December 20 that year due to stomach injuries and other complications

In her particulars of claim, Thibela submitted that the three policemen who fatally assaulted her husband were acting as servants of the Minister of Law and Order and within the course and scope of their employment.

Thibela's attorney, Mr Willie Senti, yesterday confirmed that they had been awarded R130 000 damages plus legal costs by the Pretoria Supreme Court

Judges to rule on need for lawyers

(252) ARG 14/8/91

The Argus Correspondent

GRAHAMSTOWN — Legal history will be made this month when the Appeal Court considers whether an accused has to have a lawyer for a trial to be fair.

The issue has been the subject of conflicting decisions in various provincial divisions of the Supreme Court and for the first time goes before the Appellate Division

The decision will be binding on all divisions and could have a far-reaching effect on South Africa's legal system

It could mean that strict conditions would have to be met before a large number of trials could proceed without the accused having legal representation

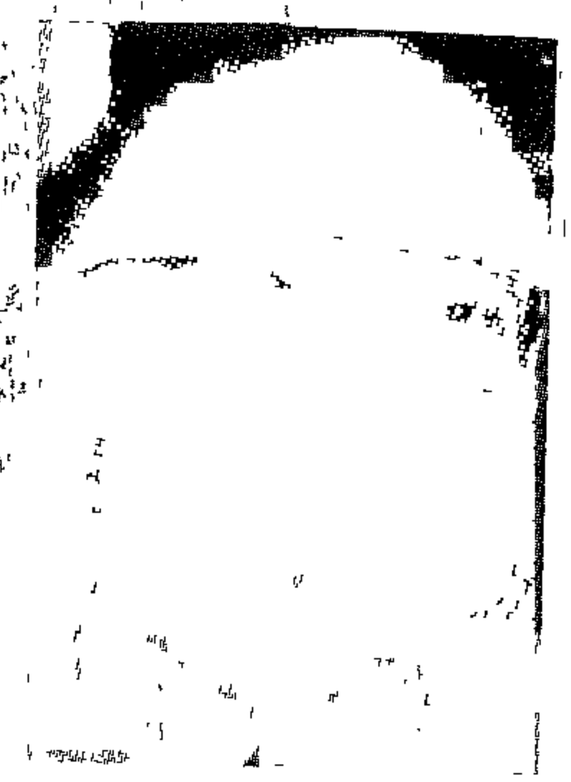
Five judges are expected to hear argument in the case, which has been set down for hearing on August 22 in Bloemfontein

The appeal is being brought by a team of lawyers from the Legal Resources Centres in Johannesburg and Grahamstown on behalf of Richard Johnson, Charles Rudman and Paulus Mthwana, who were convicted on criminal charges in magistrate's courts in the Eastern Cape and in Natal

They defended themselves because they could not afford lawyers

Mthwana, convicted of housebreaking, was sentenced to two years' jail, Johnson, convicted of assault with intent to do grievous bodily harm, was jailed for six months, Rudman, convicted of theft, was declared a habitual criminal

The issue to be argued is whether they had fair trials and whether there was a failure of justice because they did not have lawyers



Mr Justice Didcott

Mr Justice Didcott handed down a landmark judgment in the Khanyile case in Natal in 1988, ruling that all accused should be entitled to legal representation as the denial of this right would result in unfair trials

However the judge took the shortage of manpower into account, which made it difficult to rule that no trial could proceed without a lawyer representing the accused

But indicating how strongly he felt about the matter, he said "I make no bones about the tack I would have taken but for this want of manpower. For the time being we shall have to manage as best we can with a dimmer light"

So he made up a test which depended on three facts the gravity of the charge, the complexity of the case the accused's ability to defend himself The judge also laid down what should be done in every trial in which the accused was undefended

Referring to the tribulations of people defending themselves, he said "Additional and grave hardships are suffered in this land by those who happen to be black

"Much of our jurisprudence is alien to the culture and traditions of the society from which the black man springs So are some of our procedures

"Entangled in the workings of a legal machinery that bewilders him, he has the most to gain from a lawyer's help and the most to lose from the lack of it

"Yet the barrier of poverty stands highest in his very case

"We are thus beset by the burning problem that those in the community who can least afford legal representation are also those who need it most"

While Mr Justice Didcott confirmed the Khanyile judgment in another case a year later, a full Bench of the Natal Supreme Court ruled to the contrary in 1989

In that case (involving Paulus Mthwana) Mr Justice Howard found that the reasoning in the Khanyile judgment was flawed because it was based on a false premise that a lack of representation resulted in an unfair trial

Similarly, in the Eastern Cape division, Mr Justice Cooper dismissed appeals by the other two appellants, Rudman and Johnson, and held that failure to inform accused people of their right to legal representation did not jeopardise the proceedings

Lawyers for Rudman, Johnson and Mthwana will argue that Mr Justice Didcott was correct in his ruling in the Khanyile case and that judgments to the contrary should be overruled

Should the Appeal Court accept all the principles of the Khanyile judgment it could have a dramatic effect on the administration of justice, said Mr Jeremy Pickering, Director of the Legal Resources Centre in Grahamstown

"A large number of accused people would then be entitled, as of right, to legal representation and not merely to be advised of their right to legal representation"

Vrye Weekblad cost judgment reserved

Staff Reporter

Judgment on costs arising from the defamation claim brought against the Vrye Weekblad by Witwatersrand Attorney-General Klaus von Lieres und Wilkau has been reserved

Mr Justice A P van Coller reserved judgment after hearing counsel for both sides in the Rand Supreme Court yesterday

L Weinstock, SC, appearing for Mr von Lieres, argued that the newspaper's publishers, Caxton Publishers, should be liable for all costs up to the first day of the trial

An out-of-court settlement was reached on the first article published by the newspaper, but Mr von Lieres could not accept the tender on the second article

Bobby Levin, SC, for Vrye Weekblad, said the newspaper had offered to pay all costs This clearly meant Mr von Lieres need not have been concerned about costs concerning Caxton, he argued

Benchmark trial for HIV carriers

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W Mail 16/8-22/8/91

In the first case of its kind in South Africa, the privacy rights of a person diagnosed HIV positive will be tested in the supreme court

By JENNIFER POGRUND

A BUSINESSMAN who went for a routine medical examination is suing his doctor for R50 000 for breaking confidence after the doctor allegedly told friends and colleagues that he is an Aids carrier

In the first civil case of this kind in South Africa, the East Rand businessman is taking the Brakpan-based doctor to the supreme court next week for breach of confidence, invasion of privacy and breach of the rights of personality.

The young man — a university graduate now working in business — went to his doctor for a routine medical examination for insurance purposes This included an Aids test, for which he tested HIV positive

It is alleged that the doctor then let the test results be known to the man's business and social circle — a milieu that the doctor and he shared

The case, which will be heard on Tuesday, will establish for the first time the privacy rights of people diagnosed as HIV positive.

Expert witnesses — an internationally acclaimed microbiologist and a psychologist — will be called to explain to the court the adverse physiological and psychological effects stress has on the HIV positive patient, and the severe effect that disclosures of the patient's status can have on their social, pyschological and physical condition.

The clinical psychologist, Grania Christie, who heads the Aids Advisory Council of the South African Institute of Medical Research (SAIMR), had counselled the man when he discovered his HIV status

The microbiologist, Professor Steven Miller, heads the HIV clinic at the Johannesburg General Hospital

A lawyer involved in Aids and HIV work said the trial would be important in drawing attention to the duties of medical personnel in keeping a person's HIV status secret

Many lawyers and social workers believe human-rights abuses around Aids information are widespread, while health care professionals have long been alarmed at the lack of HIV confidentiality in hospitals and clinics

"As this is the first case of its kind, it will explore the roots of medical confidentiality and ethics, based on the plaintiff's stigmatisation and the adverse social reactions he has experienced," said the lawyer.

22 1991

SA's newest judge makes the courts acceptable

w/Mail 16/8-22/8/91

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LAW & THE COURTS

Carmel Rickard

AS South Africa's newest supreme court judge completes his first week on the Johannesburg bench, congratulations are still pouring in.

Delight that Mr Justice Ismail Mahomed has accepted an appointment appears universal.

His absence from the bench has been a scandal at least a decade long, a race-based slur which made many white colleagues uneasy about accepting appointments.

But the significance of his appointment goes beyond the fact that he is the country's first black judge.

For many years, possibly since the late 1940s, the courts have steadily lost status, their credibility tied to the appointment of judges whose hallmark (with a few exceptions) was a tendency to favour the rights of the government over the rights of the individual.

When human rights lawyers complained during the recent prolonged State of Emergency that the message from the courts was "pack your bags", they were noting a low point on the curve, not an aberration.

As the status of the courts declined, so did the desire of many senior counsel to accept an appointment.

But since the nadir of the Emergency, there has been a change

A happy coincidence of political reform with the appointment of a new chief justice has seen a distinct improvement in public regard for the supreme court and the Appellate Division.

One spin-off is that an appointment to the bench is again coming to be seen as the apex of a good lawyer's career, rather than as something to be held at arm's length as long as possible.

Transvaal lawyers claim an indication of this trend is the fact that several senior "commercial" advocates have recently accepted appointments

Mr Justice Mahomed's decision to accept an appointment is another barometer of the fact that the status of the courts — and the legal system — is improving (although there is obviously a lot of work still to be done).

His appointment is also significant because there have been relatively few judges with a history of political opposition to the government before their appointment. The rule was to prefer appointments unlikely to rock the boat politically.

Again Mr Justice Mahomed's appointment is significant — there is no doubt he comes from a background of strong opposition to apartheid and other anti-human rights features of the past decades.

The political activists he has represented read like a who's who of the country's anti-apartheid hierarchy, and this makes his appointment a clear statement by the government that it is prepared, far more than before, to tolerate a divergence of views on the bench.

Thirdly there is the fact of his appointment being the first one outside the white legal establishment.

It will have impact on his black colleagues, clearing the way for them to accept appointments when they are offered something they would have been reluctant to do until he had been elevated to the bench.

His white judicial colleagues will also be affected by his presence on the bench, and so will the black public. For the first time they will see on the bench, deciding their fate, a judge who has had the same experience of South African racial discrimination as they have had. While white judges might show empathy, his skin colour gives him a unique insight into the sting of race-based discrimination.

But while he was experiencing these racial humiliations — and the additional slur of being ignored for appointment, his brilliance was recognised in several neighbouring countries. He has been a judge in the Swazi Appeal Court for 12 years, is president of the Lesotho Appeal Court and sits on the Supreme Court of Namibia and Botswana.

The appointment of Thurgood Marshall to the US Supreme Court — that country's highest court — in the 1960s raises some possible parallels with that of Mr Justice Mahomed. Both played a leading role in civil rights litigation on behalf of black people. Both were expected to be judicial activists on civil rights issues. Mr Justice Marshall lived up to that expectation until his recent retirement. Mr Justice Mahomed has already shown, through key human rights judgments in Namibia, that he is unlikely to disappoint

●Carmel Rickard has been awarded a scholarship to study in the United States. This is her last column before leaving

Strife-torn Alex a stiff test for first official people's court 'judge'

MAN-SIZED Ben Dhlomo will play a key role in township law-enforcement

A UNIQUE project has been launched in Alexandra — the first township in the country to have an officially sanctioned "people's court". The man appointed to sit in judgment on local disputes is Ben Dhlomo. He talked to ABBEY MAKOE about the challenge.

STANDING about 1,2 m tall, slightly built, with a clean-cut appearance complete with neatly trimmed moustache, and displaying all the innocent enthusiasm of youth, Ben Dhlomo could easily be taken for a matric pupil.

But the responsibilities he is about to take on are man sized by any standards he is to become the key figure in the maintenance of law and order in strife-torn Alexandra township.

Overwhelming

For it is there that South Africa's first officially sanctioned "people's court" has been established — and Ben Dhlomo has been appointed to head it His first case goes to "trial" next month

One might have expected his age — he is only 30 — to spark opposition to his appointment, on the grounds that he lacks maturity and experience But the community has given him overwhelming support.

He and colleagues in the Alexandra Civic Organisation have been liaising with the Department of Justice over the court's role and how it will work.

Mr Dhlomo registrar-elect of the court, and 10 other would-be court officials are being trained by the Community Dispute Resolution Resource Committee

The committee was formed by the Centre for Applied Legal Studies at the University of the Witwatersrand and by the National Association of Democratic Lawyers

Justice Minister Kobie Coetsee had been briefed on the project, he added, and had expressed no reservations about it

Mr Dhlomo said his immediate aim was to reach a formal agreement with the Department of Justice to ensure that Alexandra's new community court would work hand in hand with other courts and the police

A matriculant who is married with two children, Mr Dhlomo is studying hard to equip himself for the immense task that lies ahead

Already, he is revising the manuals he received while attending a five-day course on "jurisdiction identification and mediation" at Wits — "the things I will specialise in when the sittings commence

His experience in dispute-resolution is informal. "It took place on the ground, but not in the kangaroo courts," said Mr Dhlomo

The 'kangaroo" courts were usually manned by youths, who ordered severe punishment — including floggings — for people of all ages, sometimes resulting in death

As time went on, Mr Dhlomo said, he would receive special training that would help him to function as a fully fledged court registrar

Part of a huge building in Alexandra's has already been earmarked for the court Had it not been for the current wave of violence in the township, Mr Dhlomo said, the furniture would already have been installed

An official of the local civic organisation and secretary of the street committee, Mr Dhlomo explained how he saw the court operating "I, as registrar of the court, will assess the nature of the dispute between the warring parties"

"I will decide if the dispute warrants mediation — to be provided by the court — or whether the case is so serious that it should be referred to the police or social welfare organisations"

He would not handle criminal cases such as rape, murder, armed robbery or child abuse

Explaining the typical case it would hear, he said. "Say 18 people are sharing a basket system toilet and they happen to agree that they will remove the basket in turns Then one does not comply with the agreement, but continues to use the toilet.

"It will be the duty of the court to point out to the accused the inconvenience and embarrassment he causes others"

Other cases might involve a quarrel over a shared washing-line or a water tap, where one person was accused of using more water than others.

Mr Dhlomo said the accused would not be physically taken to court if he or she refused to show up at the hearing "We will use every method of persuasion to get them to court."

There would be no floggings, he added, as this would not be in keeping with the main aim of the court — to rid the community of unnecessary conflict.

Where there was no trust between people, there was friction, which eventually led to violence

Mediation would be voluntary and would be the basic mechanism through which warring parties would reach settlement.

The requirements for mediators — "we will need many of them" — would be an ability to speak and write English They were also likely to be prominent members of the community

Mr Dhlomo was instrumental in pushing for a community court But where did he get the idea?

Influenced

He said that when the laws of the country were drawn up, black people were not represented As a result, they now saw the existing courts as unrepresentative

Mr Dhlomo, who was influenced by the ideas and courage of Nelson Mandela when he (Dhlomo) was at high school, said he was convinced community courts had a bright future

"They will be fully accepted by legal officialdom when the new South Africa emerges."

The law may be the only hope for eradicating racism

B/Dan 8/8/91.

DARIUS SANAI

252

T WAS as recently as 1964 that racial discrimination was declared illegal in the US Prompted by powerful dicial nudges by the supreme urt, President Lyndon B Johnn pushed through Congress the vil Rights Act which outlawed scrimination on the grounds of ce for the first time in the 188 ars of US history

How do President F W de Klerk s 90/91 reforms compare with 3J's? There are some similarities tween the two heads of state as lividuals in each case, a president om a conservative background ohnson was a Texan Democrat, lected by Kennedy as his vicesident as a sop to conservatives) rned against the racist establishent that had nurtured his political reer

But the end results are different hnson outlawed discrimination De erk, on the other hand, has apped the laws that made it mpulsory to discriminate

Those calling for legislation that itlaws discrimination in SA say De lerk has simply brought SA to the me stage the US was at before the vil rights revolution even began

John Dugard, law professor at Wits niversity, says "It is obvious that icism can and will continue in this ountry until anti-discriminatory gislation is passed"

Planning and Provincial Affairs inister Hernus Kriel — soon to beome Law and Order Minister — id earlier this year that governent would not be introducing antiscrimination laws Kriel said SA ommon law was sufficient to deal ith any cases of discrimination that ould arise

He did not elaborate, and his deartment would not add anything to s comments, but his argument is miliar — that any anti-discriminaon laws would be "interfering with e private domain", in the words of P spokesman and Potchefstroom niversity law professor Fanie acobs

Jacobs and the "personal choice" advocates say the freedom of the individual would be impaired if government made it a specified crime for someone to refuse a black person entry to his shop, or to refuse to rent an apartment to a black

But there is an important difference between two schools of thought here The advocates of "maximum personal freedom", as libertarian US academic Robert Nozick puts it, believe people should have the choice to discriminate or not — just as they should have freedom of speech and of movement

Jacobs and the CP take it that much further in their advocacy of a return to apartheid laws "The Population Registration Act was a good example of government protection of individual rights," says Jacobs

However, assuming the ghostly return of apartheid laws is neither desirable nor feasible, who is correct in the argument on whether government should step in and outlaw discrimination?

"The argument of government is 'we took racism off the statute books, therefore it doesn't exist'," says ANC Land Commission member and Wits law lecturer Hein Klug

But, says Klug, racism has never been on the statute books in most other countries — and yet laws like

□ JOHNSON

the Civil Rights Act in the US, the 1965 Race Relations Act in the UK and similar legislation in Scandinavian countries and Germany have been vital in combating racism

In France, a member of the right-wing National Front was recently prosecuted under a law that makes it illegal even to express approval of racist acts committed by others — a step too far in the eyes of many liberals

Klug and Dugard agree that racial discrimination cannot be prosecuted under common law in SA, as Kriel claims

"Under the US Civil Rights Act, people have protection from covert racism If a black man applies for an apartment and is told by the landlord that they are all taken, and a white man walks in five minutes later and is given the apartment, the landlord can be prosecuted for racial discrimination Race could be the only reason the black man was turned away," says Klug

In SA, turning blacks away from apartments in white areas used to be compulsory now, it is still legal As is much of what civil rights leaders like Martin Luther King in the US fought against — the right of a restaurateur to reserve his premises for whites only, for example It is only public segregation — by any council or government institution — that has been outlawed in SA

But given the lack of either a US-style constitution or of a campaigning judiciary in SA, how can the fairness of any anti-discrimination laws be guaranteed?

"Of course there must be an exception in the private sphere," says Klug Government cannot force a white man to have black friends, or lodgers "The private home is the exception under the US law if you live in a house with fewer than four rooms to let, you can choose whom to accept"

Jacobs says the private domain extends to all decisions made by individuals regarding association "Now that these (apartheid) laws have been scrapped, the private domain has grown to such an extent that the overwhelming sphere of influence is private"

But at some stage the private freedom of the racist becomes the encroachment on the liberty of the victim — which is where the debate starts again

On one side, protagonists argue that the society with the greatest freedom is one where individuals are constrained by the minimum of laws On the other, it is argued that, in a completely free society, racism invariably raises its ugly head

This debate should not be confused with that surrounding affirmative action unlike proponents of that doctrine, most advocates of anti-racism laws say that race should be ignored, not pandered to

Racists posing as campaigners for individual freedom — the whole segregation argument in the US South in the '50s was fought out as the "freedom of the southern states against federal statutes" — point out that racism is still rife in the US, in Britain, in France and even in Germany which enshrines an anti-discrimination law into its constitution

This argument works when used against affirmative action, which has proven side-effects But to argue empirically that anti-racism laws have increased racial tension in Western countries is simply to acknowledge defeat on the more powerful "freedom" argument Hitler and Verwoerd, after all, would both have been acting illegally under such laws — and the world would have been a better place for it

500 watch 'people's court' murder

ST Times 18/8/91. (252)

By DAVE LOURENS

A CROWD of 500 stood and watched as a man was stabbed, stoned and set alight after being tried by a "people's court" in Kimberley.

The victim, who cannot be named as his next of kin have not been told, was sentenced to death by the kangaroo court.

It is not known why he was tried

About 25 people stabbed and stoned him and as he lay bleeding on the ground they doused him with petrol and set him alight

They then turned his burning body into a bonfire by throwing logs on to the flames

Police spokesman Colonel Charl van der Westhuizen said the killing took place at Chris Hani Park, bordering Kimberley's Galeshewe township, at about 5 30pm on Friday.

A routine police patrol saw the crowd and stopped to investigate.

When they saw the police the attackers fled.

Colonel Van der Westhuizen said the crowd did nothing to help or hinder the police.

Tragic

"Luckily, the crowd remained passive, because with only two policemen the situation could have got out of control."

The policemen rushed into the fire to rescue the victim before dousing the flames, but they were too late to save the 26-year-old man, who died on the scene

"It is absolutely tragic that somebody could be so viciously murdered and nobody lifted a finger to stop it.

"We will not tolerate such barbaric actions," said Colonel Van der Westhuizen.

He said this was the first "people's court" incident he had heard of in Kimberley There had been incidents of violence in the past few months in which homes were petrol-bombed and buses stoned, but in the last two weeks the township had been quiet, he said.

An apology to o

WE apologise to readers wh the Sunday Times in recen spread sell-outs Demand f outstripped our expectations more papers will be availa

Legal firm raps Bar for 'arrogance'

S/Times 18/8/91

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By CATHY STAGG

THE Bar Council was this week accused of "arrogant" behaviour by a lawyer involved in a dispute over an advocate's fees

A series of letters, each more heated than the last, has been exchanged by Allan Levin and Associates and the Professional Sub-Committee of the Johannesburg Bar Council over the past three months

Mr Levin said this week that his firm had been told that unless it paid part of the fees owed to an advocate, Mr Jerris Fasser, the firm would be put on the "defaulters' list"

This means that until the advocate is paid — as well as all amounts owed to other members of the Bar, whether due or not — no member of the Johannesburg Bar can do work for that firm of attorneys

Because only advocates can appear in the Supreme Court, the firm's entire Supreme Court practice would come to a halt

"To threaten our livelihood when there is a genuine, unresolved dispute about the reasonableness of Mr Fasser's fee is highly improper," an indignant Mr Levin said this week

He claimed that most attorneys were fed up with the arrogance of the Bar Council and the Law Society had been asked to take up the issue with the Competitions Board

Reply

However, the chairman of the Bar Council, Mr John Myburgh SC, pointed out that Mr Levin's firm was not going to be blacklisted and that it did owe something to Mr Fasser

There will be a meeting of the Bar Council on August 27 and until then it would be inappropriate to comment on the merits of Mr Levin's complaint, said Mr Myburgh

"We don't litigate with attorneys through the Press, we correspond privately," he said.

A proper reply to Mr Levin's latest letter would be made, said Mr Myburgh

At various previous public forums, attorneys have expressed resentment that they have to act as "debt collectors" because they collect the fees for their own work as well as work done by the advocate

The Johannesburg Bar's local rules state that if the advocate's fee is not settled after three months, the attorney is given seven days' notice that he risks being barred

If there is no genuine dispute and the money is still not paid, the attorney is put onto the defaulters' list

Mr Levin and his partners claim they have a genuine dispute — yet claim the defaulters' list was used as a threat to make them pay a portion of the fees

Bloody footprints led to arrest

CP Correspondent

A VAAL policeman this week told the Sebokeng Regional Court how a bloody trail of footprints led him to arrest three suspected killers

Sergeant Louis Sibiwe testified that this happened soon after he had discovered a body lying spreadeagled in a Sharpeville street in the early hours of February 15 this year

John White, 25, Ben White, 26, and Joseph Phaka, 30, pleaded not guilty before Magistrate CJ Kruger to a charge of murdering Tshepo Chippa Mofokeng

Sibiwe told the court that when he later arrested the White brothers and Phaka, all had bloodstains on their shoes

The deceased's wife, Dineo Mofokeng, said in her evidence that her brother John first ejected her husband from her home after they had quarelled

She told the court that while drinking with the White brothers and Phaka in a shebeen on the same day, her husband arrived and had a row with the Whites and Phaka A fight between the four men started outside the shebeen

Her husband was repeatedly kicked by the accused and his body was discovered by police the following day

The case was postponed to September 3

Peoples' Court comes into being

(252) ARG 19/8/91

The Argus Correspondent

JOHANNESBURG. — A unique project has been launched in Alexandra, which has become the first township in the country to have an officially-sanctioned "people's court" The man appointed to sit in judgment of local disputes is Mr Ben Dhlomo.

From a distance, Mr Dhlomo,30, still could be mistaken for a matric student

However, there's no doubt this "youngster" has a man-sized responsibility — he's now a key factor in the maintenance of law and order in Alexandra

Yet Mr Dhlomo's standing in the township has prompted overwhelming support from the community, which will see its first case go to "trial" next month

He and colleagues in the Alexandra Civic Organisation (ACO) have been liaising with the Department of Justice over the court's role and how it will work

Mr Dhlomo, registrar-elect of the court, and 10 other would-be court officials are being trained by the Community Dispute Resolution Resource Committee (CDRRC)

The CDRRC was formed by the Centre for Applied Legal Studies at the University of the Witwatersrand and the National Association of Democratic Lawyers, says Mr Dhlomo

Mr Ben Dhlomo

Justice Minister Mr Kobie Coetsee has been briefed about the developments, says Mr Dhlomo, and has expressed no reservations, "more so as the court will minimise crime".

Mr Dhlomo's immediate aim is to reach a formal agreement with the Department of Justice, which will ensure Alexandra's new community-orientated court will work hand in hand with other, judicial courts and the police

Already, Mr Dhlomo is revising the manuals he received on a five-day course on "jurisdiction, identification and mediation" at Wits

His experience in dispute resolution is informal "It took place on the ground, but not in the kangaroo courts," said Mr Dhlomo, referring to those usually manned by youths who ordered severe punishment — including floggings

As time goes on, he says, he will get special training that will help him to function as a fully-fledged court registrar

An official of the local civic organisation and secretary of the street committee, Mr Dhlomo foresees the court proceedings "I, as registrar of the court, will assess the nature of the dispute between the warring parties, with utmost objectivity," he says

"I will decide if the dispute warrants mediation — to be provided by the court — or whether the case is so serious that it should be referred to the police or social welfare organisations"

Mr Dhlomo emphasises that his court will not handle cases like rape, murder, armed robbery, child abuse or any criminal case

There will be no floggings, he says They would not be in keeping with the main aim of the court — to rid the society of unnecessary clashes within itself

He believes where there is no trust, there is friction among people, which eventually leads to violence

Mediation will be voluntary and will be the basic mechanism through which warring parties will reach settlement

Mr Dhlomo is convinced community courts have a bright future

"They will be fully accepted in the corridors of legal officialdom when the new South Africa emerges."

Alexandra's community courts supremo speaks

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Sowetan 19/8/91

A UNIQUE project has been launched in Alexandra, which has become the first township in the country to have an officially-sanctioned "people's court" The man appointed to sit in judgment of local disputes is Ben Dhlomo. He spoke to *Sowetan* Correspondent ABBEY MAKOE about the challenge.

WHEN little Ben Dhlomo ran after anti-apartheid demonstrators in the dusty streets of Soweto years ago, it never occurred to him that he too would one day be in the front line of protest politics

And even today his youthful enthusiasm remains

From a distance, Dhlomo (30) could still be mistaken for a matric pupil Slightly built and standing about 1,2m tall, even his neatly trimmed moustache resembles that of a teenage boy.

But there's no doubt this "youngster" has a man-sized responsibility - he's now a key factor in the maintenance of law and order in Alexandra

Yet Dhlomo's standing in the township has prompted overwhelming support from the community, which will see its first case go to "trial" next month

He and colleagues in the Alexandra Civic Organisation have been liaising with the Department of Justice over the court's role and how it will work

Dhlomo, registrar-elect of the court, and 10 other would-be court officials are being trained by the Community Dispute Resolution Resource Committee

Developments

The CDRRC was formed by the Centre for Applied Legal Studies at Wits and the National Association of Democratic Lawyers

Justice Minister Kobie Coetsee has been briefed about the developments, and has expressed no reservations

Dhlomo's hopes to work with the Department of Justice, which will ensure the court will work hand in hand with other judicial courts and the police

With a matric certificate the major credit of his academic background, Dhlomo is studying hard to equip himself for the immense task that lies ahead

Already, he is revising the manuals he received whilst attending a five-day course on "jurisdiction, identification and mediation" at Wits - "the things I will specialise on when the sittings commence"

His experience in dispute resolution is informal

Special

As time goes on, he says, he will get special training that will help him to function as a fully fledged court registrar.

Dhlomo minces no words as he explains how he foresees the court proceedings in progress

"I, as registrar of the court, will assess the nature of the dispute between the warring parties, with utmost objectivity," he says

"I will decide if the dispute warrants mediation - to be provided by the court - or whether the case is so serious that it be referred to the police or social welfare organisations"

Dhlomo stresses that his court will not handle cases such as "rape, murder, armed robbery, child abuse or any criminal case"

Looking more determined, he gives examples of cases he has in mind

Said Dhlomo "Say 18 people are sharing a bucket-system toilet and they happen to agree that they will remove the bucket in turns Then one does not comply with the agreement, but continues to use the toilet

Dhlomo says the accused, who may refuse to show up at the hearing, will not be physically taken to court.

Flogging

There will be no floggings. That would not be in keeping with the main aim of the court - to rid the society of unnecessary clashes within itself.

Mediation will be voluntary and will be the basic mechanism through which warring parties will reach settlement.

Dhlomo was instrumental in pushing for a community court

But where did he get the idea? He replies that when the laws of the country were drawn up, black people were not represented Now, they see the present law courts as unrepresentative.

He was also influenced by the readings and courage of Nelson Mandela during high school, is convinced community courts face a bright future

Six killed as wave of anger over amnesty releases sweeps prisons

B Times 23/8/91. (252)

A WAVE of unrest is sweeping SA prisons as inmates protest against government's prisoner release programme which lawyers say is selective and arbitrary

At least six prisoners have died and Lawyers for Human Rights (LHR) has been informed of another four deaths

Justice and Correctional Services Minister Kobie Coetsee said yesterday that while "good order and discipline" had until recently been the hallmark of SA prisons, "due to the claims on a variety of grounds to be released, a spirit of unrest has been introduced"

In the latest incident yesterday six inmates of Barberton Prison died when mattresses were set alight in a communal cell The Correctional Services Department said they probably died from breathing the smoke Five others were hospitalised and the incident was being investigated departmentally and by the SA Police

In reaction to the Barberton deaths, Coetsee warned that if the prisoners' motive was to promote their release, "incidents caused by prisoners will not influence the authorities to (grant) ill-considered and unbridled releases"

LHR, which is preparing a court action to gain access to prisoners to test claims of killings and assaults, said it had received a report of a death at Baviaanspoort prison

PATRICK BULGER

An LHR spokesman said the death allegedly occurred during a mass assault by white warders on black prisoners earlier this week An LHR spokesman said 300 prisoners had been treated for injuries

A Correctional Services spokesman denied a prisoner had died and described the allegation as "ludicrous"

The spokesman said 67 prisoners around the country were refusing to take part in prison programmes

"Over the past few weeks a couple of incidents occurred where prisoners resorted to riotous behaviour necessary force was used to restore order In the process some prisoners sustained minor injuries and therefore the allegation of brutal assault is rejected," a spokesman said

LHR, however, claimed that a "task force" of white warders without identification tags was being transported from prison to prison to quell disturbances The claim was also denied

Correctional Services has admitted to six incidents of unrest at prisons over the past two weeks, excluding the Barberton incident A spokesman said they were being investigated The incidents include a hunger strike at Pollsmoor in the Cape, a bedding fire protest at Leeuwkop, a strike at Pretoria Central, a picket at Modderbee, a strike at Zonderwater, and the Baviaanspoort incident

LHR litigations director Ahmed Motala said there had also been disturbances at Potchefstroom and Pretoria Local prisons

"The situation is very inflammatory It arises from the dissatisfaction over the application of the one-third amnesty There is a lot of confusion and disparities in the way the prison authorities are handling the matter," Motala said

He said the family of a Modderbee prisoner had heard of three deaths there

"solvency problem"

Fund-raising for the compara- been declared, Capt Bluett said

'Target' shows bullet holes to court

CT 23/8/91

EAST LONDON — A witness in the Supreme Court trial of Mr Louis van Schoor yesterday pointed out bullet holes on a wall behind a shop here in an inspection in loco at the place where Mr Van Schoor is alleged to have shot him

Mr Van Schoor is charged with 19 counts of murder, 21 of attempted murder and three of assault arising from incidents when he was a security guard.

Mr Richard Khumalo was taken to a courtyard behind Jumbo Bazaars in Oxford Street where Mr Van Schoor is alleged to have shot him and three others on November 7, 1986

When the court re-convened, Mr P Daubermann, for the defence, asked Mr Khumalo if the two bullet holes he pointed out earlier were the same ones that the owner of the premises had pointed out in his presence on March 7, 1991, when a policeman took photographs

Mr Khumalo replied they were the same

Earlier, Mr Daubermann asked Mr Khumalo about conversations he had had with the prosecutor, Mr Alfonso Hattingh Mr Khumalo said he had begun describing events to Mr Hattingh when a communication problem resulted in an interpreter been called

The trial continues today.

Owners reject Oceanos criticism

PARIS — Lawyers acting for the owners of the Oceanos are closely studying a former captain of the liner's statement that it was a patched-up wreck unfit to sail in the dangerous waters of the South African eastern coast

A spokesman for Epirotiki Shipping said they were appalled by inaccuracies in comments made by former captain Frenchman Mr Jean Vachon who described it as a "patched-up wreck"

Mr Vachon told the Paris newspaper France Soir that the conversion of the Oceanos from a cargo-passenger vessel to a liner was dangerous and that it should have been scrapped years ago

He said three other sister vessels launched at the same time had been scrapped — but Epirotiki said they were in fact still sailing the seas safely

Epirotiki also angrily rejected Mr Vachon's claim that conversion to its cruising role had left the Oceanos top-heavy The owners said that as a former skipper Mr Vachon should be aware that the conversion had, if anything, made the Oceanos more seaworthy and very much less top-heavy

Piet 'Skiet' must appear in court

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CT 23/8/91

JOHANNESBURG — Rightwinger Mr Piet "Skiet" Rudolph, 54, has been acquitted on a speeding charge but has been summonsed to appear on a contempt of court charge.

Mr Rudolph, secretary-general of the Afrikaner Weerstandsbeweging, arrived at the Krugersdorp Magistrate's Court with several khaki-clad members of the Aquila guard yesterday

As he waited for his case to be called he was given a summons to appear on November 19 on a contempt of court charge This arises from his refusal, at his first appearance on the speeding charge, to be prosecuted by a coloured magistrate

Acquitting Mr Rudolph, magistrate Mr S W van Niekerk found the State had not proved his explanation for exceeding the speed limit was false — Sapa

Court asked to rule on 'fair trial'

Star 23/8/91

By Jo-Anne Collinge

BLOEMFONTEIN — The Appeal Court was yesterday asked to sanction a rule whereby judges and magistrates should, in certain circumstances, refuse to proceed with a trial unless the accused was provided with legal assistance

It was submitted that the criteria for invoking this delay should be the personal financial and social circumstances of the accused, the seriousness of the charge and its possible penalty, and the complexity of the issue before the court

"No matter how serious the case, how complex the issues and how inept the accused, are we really meant to say to an accused, 'Well, it's your fault — you didn't have the money for a fair trial'," Legal Resources Centre director Arthur Chaskalson SC asked a Bench headed by Chief Justice Corbett

He put it to the court that absence of legal representation could lead to an unfair trial and a failure of justice This was more likely in complex trials carrying serious penalties

Held

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The argument arose in the appeals of Paulus Mthwana and Richard Johnson and his co-accused against decisions of the Natal and Eastern Cape Supreme Courts, which held that legal representation was not a requirement of a fair trial This contrasted with the finding of Mr Justice Didcott in the benchmark Khanyile case The Appellate Division was asked to settle this conflict in favour of the Khanyile judgment

Mr Chaskalson said this right to representation for the poor should be extended without fail to all those who faced possible jail terms of six months and longer He said that according to a recent report of the Department of Prison Services some 45 000 such persons were sentenced in a year

He also said that the mechanism was in place in the form of the state-assisted Legal Aid Board, which had offered assistance in criminal cases at the rate of 11 000 in the first quarter of this year

"The problem is perhaps not as massive as we have sometimes assumed," said Mr Chaskalson He also noted that requirements for providing legal assistance were more stringent in most Western countries than those being asked of the court "The reason for this is that we believe we can't meet these standards — we don't have the resources"

He challenged the court to take "a cautious move forward to bring our criminal procedure closer to standards of fairness observed in countries of Europe, North America and the Commonwealth"

Conceded

He conceded there was a certain inconsistency in arguing that legal representation was essential to the principles of a fair trial and equality in the law and then asking that it be provided in only certain cases But the approach was one of pragmatism Were lawyers to take the attitude that if they could not achieve perfect justice they should abandon the effort?

Mr MJC Hodgen SC, for the State, argued that the right to legal representation might be universally recognised but "the provision of actual representation is not universally applied"

He said the number of persons requiring legal aid on the basis outlined in the Khanyile case would be far larger than Mr Chaskalson estimated

The practice raised the question of accused being recharged and "would bring our system of justice into disrepute"

He argued that experience in the US was that the demand was such that caseloads were impossibly large, lawyers often inexperienced and "sometimes the accused would be substantially better off without the guiding hand of counsel"

In addition, the proposed criteria for determining where legal assistance should be given were vague It introduced a factor of arbitrariness "Once you start applying the law it must be equal to all"

Decisions on who should get legal assistance would be best left to the Legal Aid Board and the courts should confine themselves to simply advising accused that such assistance was available, he added

Mr Chaskalson was assisted by Jeremy Pickering and Mohamed Navsa of the LRC and by Gilbert Marcus Appearing with Mr Hodgen for the State were Peter Blomkamp and J Bezuidenhout

Apartheid is still alive and well on the statute books

wl mail 23/8 – 29/8/91. 252

REPORTS of the death of apartheid have been much exaggerated

This is the inevitable conclusion one comes to after a cursory reading of Butterworths' Statutes At least 22 racial laws and hundreds of by-laws and provincial ordinances must be amended or scrapped before apartheid has been removed from the statute books

With the repeal of the Population Registration Act earlier this year, the government put out the word that apartheid was a thing of the past In fact, all that changed was new births would no longer be registered on a racial basis.

The National Party argues that the remaining racial laws are part of the "own affairs" package which can only be done away with once a new constitution has been negotiated, but the Democratic Party believes most of these could be changed immediately "Our policy is to start now in rolling back 'own affairs' provisions," says DP research director James Selfe

What the DP proposes is to use section 16 of the constitution, which empowers the state president to take control over the "own affairs" measures listed in section 14 of the constitution This, for example, would mean that apartheid in education, health and pensions could be eliminated immediately.

So far the government has rejected this approach. Among the apartheid statutes which remain in effect are.

1 The Republic of South Africa Constitution Act of 1983 is the cornerstone which creates the basis for most of the remaining apartheid statutes It is the legislative basis for the tricameral parliament and all that falls under its direct power — the separate, racially defined government departments, racial by-elections and referendums, and the exclusion of blacks from parliament

2 The Electoral Act of 1979 provides for the separate franchise for whites, coloureds and Indians, and none for blacks

Take a look at the statute books — you'll find apartheid is far from dead GAVIN EVANS lists some of the racial laws that still need to be scrapped or amended

3 The National States Citizenship Act of 1970 makes many blacks foreigners in the land of their birth Its consequences have been mitigated, but not removed, by the Restoration of South African Citizenship Act of 1986 It establishes the basis for the four "independent" homelands, each of which came into being through a separate Act — the Status of Transkei Act (1976), the Status of Bophuthatswana Act (1977), the Status of Venda Act (1979), and the Status of Ciskei Act (1981)

4 The Black States Constitution Act of 1971 enables the state president to confer "self-government" on homelands and is the basis for the existence of the six "self-governing states"

5 The kwaZulu Police Act of 1980 removed the KZP from the control of the South African Police and placed them under the control of the kwaZulu homeland government

6 The Black Administation Act of 1927 gives powers to the state president to depose tribal chiefs.

7 The Black Authorities Act of 1951 allows the state president to establish tribal, regional and territorial authorities, and describes their powers, functions and duties

8 The Aliens Act of 1937 allows for citizens of the "independent" homelands to be deported

9 The Black Local Authorities Act of 1982 provides for separate black town and village councils

10 The National Education Policy Act of 1967, as amended, lays down the relation between the minister of national education and the racially separate "own affairs" ministers, and sets up the budgetary allocation in terms of which the government still spends four times as much on each white child's education as on each black child's. It also establishes the basis for the cumbersome three-model system of segregated education

Four other Acts govern "own affairs" education and set up the four separate education departments These are the National Education Act of 1967, for whites; the Education Act for coloured persons, the Education Act for Indians, the Education and Training Act for blacks

11 The General Pensions Act of 1979, as amended, helps provide the basis for the government's 1991 pension allocation in which blacks receive R225 a month, coloureds and Indians R263, and whites R304

12 The Health Act of 1977, as amended, and the National Policy for Health Act of 1990 refer to the separate "own affairs" health departments created in terms of the constitution. While hospitals in the Cape are now fully integrated, the existence of separate health departments helps set the basis for the segregation that exists in certain hospitals in the Transvaal

13 The Provincial Government Act of 1962 is the enabling legislation which validates the hundreds of discriminatory ordinances passed by the provinces over the years Among these are ordinances regulating racially separate municipalities, local authorities and municipal voting rolls. The 1991 Interim Measures for Local Government Act allows for negotiations to alter previous local arrangements, subject to government approval.

14 The Defence Act of 1957 provides the basis for whites-only conscription It states that all males are liable for compulsory military service except those "who are not white persons as defined in section one of the Population Registration Act of 1950" Legal opinion is divided on whether the continuing whites-only call-up is valid

A judge for the new SA

Star 24/8/91 (252)

JO-ANNE RICHARDS

THE JUDGE leant forward, frowning slightly at the witness. Silent now under his scrutiny, she had just finished explaining: "And I had to pay the boys, my Lord."

Suddenly the judge spoke "And how old are these boys, madam? Do you mean to tell me you employ child labour?"

Mr Justice Ismail Mahomed, the country's first black judge, has been on the Bench for two weeks now, and already anecdotes are being told and retold among those who have and those who have not yet seen him in action

With a fresh directness, he has allowed no vestige of racism to pass him by without strong criticism This week, it was a hapless new translator who found himself in the line of fire

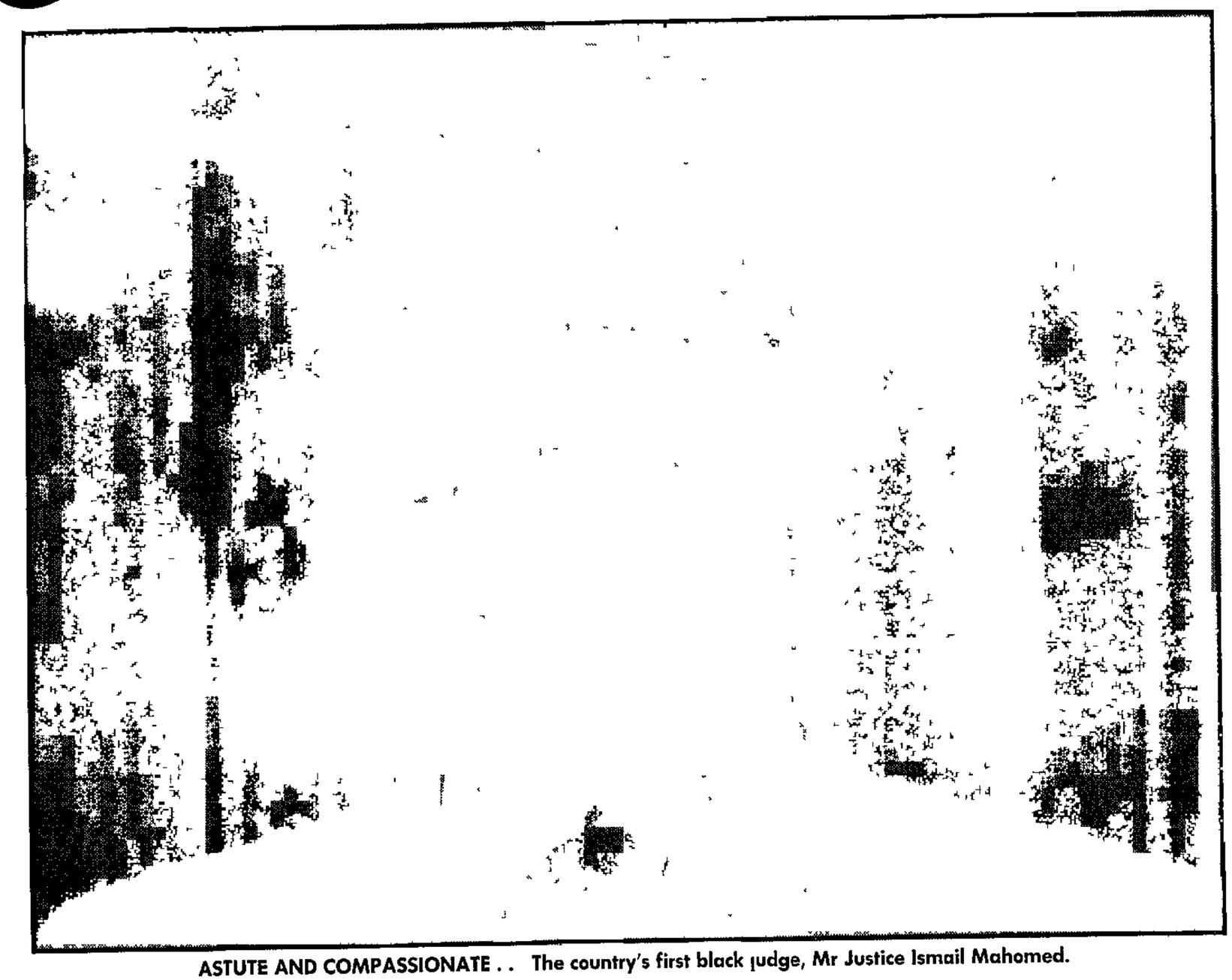
Making application to be admitted as a sworn translator, he probably expected his court appearance to be a formality But instead, he was held with a stare and asked "You state in your papers that you are an adult European male What is the relevance of that?"

Mercifully cutting short the man's stuttered explanations, Judge Mahomed commented "This is a residue of racial feeling which has no place in this court It has no bearing I'm just interested in whether you are competent to do the job"

"The issue of racism is very important to him in court," explains attorney Priscilla Jana, a good friend "It may appear that these are little incidents, but they are not so little in the broad context

"Blacks have always felt insecure and inadequate in white-dominated courts, while now at last we are starting to see a different attitude Judge Mahomed is already setting a trend for a new society"

Another case which drew his comment this week was an application to remove restrictive conditions in the title deeds of a property



ASTUTE AND COMPASSIONATE . . The country's first black judge, Mr Justice Ismail Mahomed.

Brilliant in some of SA's famous trials

AS AN advocate, Mr Justice Mahomed acted in — and succeeded against great odds — in some of South Africa's most famous trials, writes JO-ANNE RICHARDS

In 1985, he led the defence team in the Maritzburg treason trial of 16 United Democratic Front members

His brilliant cross-examination of the State's key witness, RAU academic Isaak de Vries, led to the collapse of the State case and the acquittal of 12 of them.

His recent defence of Umkhonto we Sizwe member, Ebrahim Ebrahim, in the Appellate Division after his conviction of high treason led to the conviction and sentence of 20 years being set aside

Mr Ebrahim had unsuccessfully made application, at the start of his trial, for a declaration that the court had no jurisdiction to try him since he had been abducted from Swaziland

After Mr Mahomed had argued on appeal that his application should not have been dismissed, the court found his abduction was a "serious injustice" and that the trial should never have gone ahead.

Generally regarded as one of his greatest triumphs, his defence of Wilfred Marwani in the Appellate Division in 1981 was a severe test. Arguing before 11 judges — only the third time in the country's history that an advocate has done so — he was upheld in his submission that Marwani's conviction under the Terrorism Act in Bophuthatswana was invalid.

He acted for Solomon Mahlangu in the Goch Street shooting trial and, as part of the defence team, for Braam Fischer and others in one of his early political trials in the 1960s.

He was known as an expert on the Group Areas Act and co-wrote a book on the subject. He also led several innovative challenges to the states of emergency

He was briefed to act for Swapo in the negotiations for setting up the constitution and bill of rights in Namibia just before independence. He settled a draft of the constitution and bill of rights, which was the basis of the final draft.

This bill of rights, say advocates, is regarded as one of the most advanced in the world and, significantly, abolished the death penalty

rather than the public-interest cases for which he became famous as an advocate

The political implications of his appointment are obvious, both on a symbolic level and because of his track record Known, according to Mrs Jana, as "the country's foremost human rights lawyer, who has fought against repressive legislation with more passion and vigour than anyone else", his judgments on the Bench in surrounding countries have also been noteworthy and progressive

ONE of these was his decision in the Namibian Appeal Court that corporal punishment, by the State or in schools, was unconstitutional"

Another was his brave decision, also in Namibia, to refuse the State further postponements when its case had made little progress This led to the withdrawal of charges against Donald Acheson, accused of killing national hero Anton Lubowski

While many people are expecting similar, progressive decisions here, South Africa's lack of a bill of rights does not make this easy "But he feels so strongly about the liberty of the person that I have no doubt he won't compromise his integrity, even in the absence of a bill of rights," says Mrs Jana

WHILE, according to an advocate, "the irony is not lost on peo

AMONG the conditions was one which declared that the property was not to be occupied by "any coloured persons other than the servants of the owner or occupier"

"I think that is a disgraceful condition, which has no place in any civilised society," burst out the judge "I propose to order its deletion immediately"

His outspoken attitude follows a tradition he created as a judge and judge of appeal in Swaziland and Namibia, chief judge of appeal in Lesotho and judge in Botswana.

The story is told of an advocate from the Pretoria Bar, who also applied for admission to the Botswana Bar, a fairly common formality Appearing before Judge Mahomed, he was asked "I understand that the Pretoria Society of Advocates has a rule preventing people of colour from being members?"

When the advocate assented, he was told this was "prima facie evidence that you are not a fit and proper person" to be admitted. Judge Mahomed demanded an affidavit to be prepared on the man's attitude to the rule.

"The reaction I have received about him so far in Johannesburg is that the entire atmosphere in his court is different from preceding ones," Mrs Jana commented

"He almost gives us a glimpse of a new society — of the future"

An anecdote which well illustrates this is told by an advocate who appeared before him in his first week on the Bench.

He said his client, "a very ordinary, conserva-

The Star
24/8/91

tive white businessman", asked to meet the judge after losing his case

Feeling understandably anxious, he nonetheless introduced them The man told the judge his son was studying law

"And I hope that he will one day turn out to be such a good judge as you As a proud South African, I think it a disgrace that you were not appointed earlier"

Among advocates, one cannot find a word spoken against him, unless one counts the comment of an advocate who often appeared as his junior in the past "Yes we've all been dreading appearing before him He's a very clever judge who doesn't let things lie or pretences stand

"He has a very sharp tongue and mind He forces one to motivate every proposition But above all, he is a very humane man"

To hear him in Motion Court — where matters are presented on paper with no evidence given — is to believe this of him Far from merely looking at the legalities of who owed what to whom or who wanted what in the hundreds of cases passing by him, he paused often to comment on the people involved and the effect of the claim on them

His clever, humorous remarks mark him as something of a showman "Well, I suppose there is political precedent for not reading a document for fear you'll discover the truth!" But his attitude is plain in his comment to an advocate "The process of the law shouldn't be used to frustrate a man to such an extent that he says goodbye to his claim"

He was also heard to comment that it was on this kind of level that justice was really done, that he was a judge in so many other places before being offered an appointment here", Judge Mahomed is known to have had reservations about accepting it

Before doing so, he approached and received support from key figures in various political organisations, lawyers and friends "I think he's been convinced that the time has come to set the pace and make way for a new society," says Mrs Jana

As a strong opponent of the death sentence, he is also believed to have taken into account the abolition of the mandatory death sentence in making his decision

SA human rights group takes over

(252)

ST Times 25/8/91.

By NORMAN WEST
Political Reporter

A NEW body has been established locally to take over from London-based human rights organisation, the International Defence and Aid Fund for SA

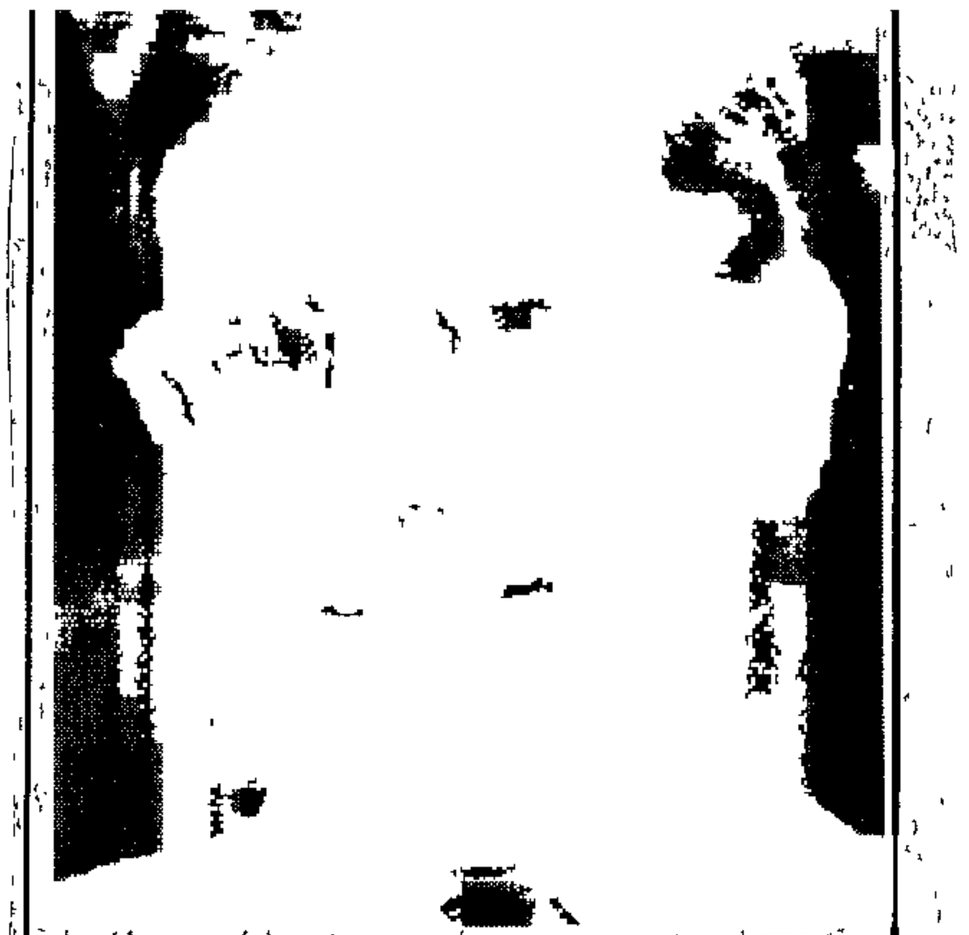
The SA Legal Defence Fund will have its head office in Observatory, Cape Town

Dr Beyers Naude, a member of the board of trustees of Saldef, said the organisation has been formed to take over the funding of human rights-related legal costs of the now-defunct IDAF which operated from London since its banning in 1961

Mr Patrick Maqubela has been appointed national director with Cape Town civil rights lawyer Mr Ebrahim (Ibbi) Mohamed his deputy

The board of trustees includes representatives of the Black Lawyers Association, the Legal Resources Centre, Lawyers for Human Rights (LHR), the National Association for Democratic Lawyers, the ANC, PAC and Azapo

Serving on the board in their private capacities are Mrs Sheena Duncan, the Rev Frank Chikane, Mr Arthur Chaskalson SC, advocate Dulla Omar and Dr Beyers Naude



Mr Justice Ismail Mahomed

(252)

ARG 27/8/91

As an advocate he acted in some famous trials . . .

JO-ANNE RICHARDS, The Argus Correspondent

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While his trials are too numerous to mention, some are impossible to ignore.

In 1985 he led the defence team in the Maritzburg treason trial of 16 United Democratic Front members. His brilliant cross-examination of the State's key witness, RAU academic Mr Isaak de Vries, led to the collapse of the State case and the acquittal of 12 of the accused.

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252 ARG 27/8/91

Setting a trend for a new

JO-ANNE RICHARDS
The Argus Correspondent

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But instead, he was held with a stare and asked "You state in your papers that you are an adult European male. What is the relevance of that?"

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"Blacks have always felt insecure and inadequate in white-dominated courts, while now at last we are starting to see a different attitude Judge Mahomed is already setting a trend for a new society."

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"I think that is a disgraceful condition, which has no place in any civilised society," burst out the judge "I propose to order its deletion immediately"

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Before doing so he approached and received support from key figures in various political organisations, lawyers and friends "I think he's been convinced that the time has come to set the pace and make way for a new society," says Mrs Jana

As a strong opponent of the death sentence, he is also believed to have taken into account the abolition of the mandatory death sentence in making his decision

His first two weeks on the Bench show hopeful signs that he could sweep away many old cobwebs and customs associated with the office. It is understood that, while he has so far followed the judicial tradition of not granting interviews, he will be far more open to the public once he has settled into the position

SOWETAN Wednesday August 28 1991

Warrant out for suspect in pub attack

Sowetan 28/8/91

A SECOND man who was arrested in connection with the shootings at a tavern in Sebokeng last month in which 10 people died failed to appear in court yesterday.

By SONTI MASEKO

The magistrate, Mr PA Coetzer, yesterday authorised a warrant for the arrest of Mr Dakhi Chonco (24), whose address was given as KwaMadala Hostel in Sebokeng

Chonco was arrested late last month He was later granted bail of R1 500

His co-accused, Mr Thabo Thiliso Mofokeng, was remanded until the next appearance on September 27

Mofokeng was earlier granted bail of R3 000 but subsequently while in police custody he was tried, convicted and sentenced on another unrelated offence

Mofokeng and Chonco are held in connection with the fatal shooting of five people and the attempted murder of 10 others at Erika Tavern in Zone 7, Sebokeng, on July 7.

Cabinet to rule on fasting rightwingers

By Tos Wentzel and Shirley Woodgate

Star 28/8/91 (252)

The Cabinet is expected to decide today on the fate of three right-wing hunger strikers, seriously ill in HF Verwoerd Hospital, Pretoria

Their lawyer, Wim Cornelius, had been expecting a decision at any time from President de Klerk after representations for indemnity made on the men's behalf to the State President's advisory committee

One top Government source in Pretoria said the Cabinet was unlikely to give in to what he described as "blackmail" from the right-wing activists

The feeling in Government circles is that the entire legal system will be given a serious blow if the Government bows to pressure and decides to release the three

Another argument against them being released is that they have not yet stood trial

On claims from the Right that ANC prisoners who had committed serious offences had been indemnified while this was being refused in the case of rightwingers, Government sources said all ANC prisoners who had been released had stood trial and served part of a sentence

As the condition of the hunger strikers deteriorates, the ANC today planned to send a representative to visit them in hospital

Mr Cornelius said the ANC's public support of the hunger strikers was deeply appreciated

"We give them 10-plus for their humanitarian stance"

Fears have been expressed that Briton Henry Martin (49), who enters his 52nd day without food, or Adrian Maritz (43), now in the 46th day of his protest, will slip into a coma

"It is now a distinct threat and, if that occurs, we will have massive problems," said Mr Cornelius

He said Dr Lood van Schalkwyk (53), in his 39th day of fasting today, showed signs that his liver was collapsing

FIVE women succeed ... auspices of the International Amateur Ath- ... miston...
because of, nor despite.

Faction in NP opposed to De Klerk, claims journal

B/Day 29/8/91

TIM COHEN

A FACTION in the NP, including four Cabinet ministers, considers him lacking in experience and political astuteness, an article in the ANC's official journal Mayibuye claims

The article, written by an unnamed "researcher", details the history of the SADF's Special Forces and concludes that the five reconnaissance regiments, 31 and 32 Battalions and the Civil Co-operation Bureau should be disbanded

It states that recent revelations by "certain patriotic soldiers" have indicated that the Recce regiments continued to be used after De Klerk's election to undermine the negotiations process

"Some observers make the point that De Klerk's difficulties are made even more problematic by the presence of an anti-De Klerk faction with the NP "

The group, Mayibuye says, includes Defence Minister Magnus Malan, Finance Minister Barend du Plessis, Planning, Provincial Affairs and Housing Minister Hernus Kriel and Education and Culture Minister Piet Clase

"This faction, it is argued, believes that De Klerk does not possess the political astuteness or the managerial experience to secure a favourable outcome for the NP at the negotiating table "

Mayibuye says the faction also believes a more aggressive campaign against the ANC is needed

Military Intelligence and Special Forces are well situated to realise these objectives, the article says

"Indeed the present Chief of the SADF (Gen) Kat Liebenberg was Officer Comanding the Special Forces between 1982 and 1985, a period when the bulk of Special Forces external operations were conducted and the CCB was formed

"It is significant that De Klerk, supposedly committed to democracy appointed Kat Liebenberg to this position," the researcher writes

The article states that the Department of Military Intellegence and Special Forces control the R4,1bn Special Defence Account which is not subject to public audit

The article also alleges members of 5 Recce Regiment were used in recent train massacres, "often posing as Inkatha impis"

NEWS IN BRIEF

Sebina to return

ANC spokesman in Zambia Tom Sebina and about 270 exiles were expected to return to SA tomorrow, Sebina said in Lusaka yesterday Sebina has not been home for 27 years

Grant for science

SANLAM has given R100 000 to the Urban Foundation for its programme to upgrade science tuition in black primary schools Sanlam chief legal adviser and secretary Emel Linde presented the sum to the foundation's western Cape regional director Vernon Rose in Cape Town yesterday

Call for interim bill of rights

B/Day 29/8/91

TIM COHEN

THE ANC intends arguing for the adoption of a "transitional bill of rights"

The call for a transitional bill of rights is a new facet of the ANC's demand for an interim government which, in the ANC's view, will be established by an all-party congress and will rule the country until democratic elections take place

The latest issue of the official ANC journal Mayibuye, due for publication tomorrow, says the bill of rights will set out people's rights during the transitional period

An ANC source said yesterday the bill of rights would be temporary until a final bill of rights was accepted in either a referendum or by the newly elected Parliament

However, the temporary and the final bill of rights might contain the same or similar provisions, the source said

In an article on the interim government, Mayibuye argues that the Inkathagate exposures have shown government cannot be trusted to supervise the transition

"The government is neither willing nor capable of clearing obstacles to negotiations

"There cannot be any serious movement forward if (President F W) De Klerk's administration is still in place "

New legal defence body open soon for business

(252)

South 29/8 - 4/9/91.

A NEW legal defence fund to be headed by former political prisoner Mr Patrick Maqubela, 42, is geared to receive about 300 cases a month.

Maqubela, who spent 10 years in jail for high treason, has been appointed national director of the South African Legal Defence Fund (Saldef), a national trust fund which will assist in providing legal defence and promoting human rights in South Africa.

It opens its doors in Observatory in October and will operate along similar lines to the International Defence and Aid Fund (Idaf) which closes shop in London at the same time.

"It is vital that the work of Idaf be continued and the position is a big challenge to me," said Maqubela

Idaf has provided legal defence for thousands of South Africans, Maqubela among them. Last year it spent about R35 million on trials and related legal costs in South Africa

The head of Idaf's legal programme, Ms Hilary Rabkin, who is in Cape Town helping Saldef set up its national headquarters, said about 300 new cases were coming to Idaf each month "I expect that Saldef will be dealing with the same volume of cases," she said

SALDEF LINE-UP: From left, Horst Kleinschmidt, Beyers Naudé, Kwedi Mkalipi (PAC), Zola Skweyiya (ANC) and attorney Dullah Omar

PIC: YUNUS MOHAMED

Maqubela says the question of funding is one of the major challenges facing Saldef.

Maqubela, Dr Beyers Naudé, who is chairperson of the trust, and Idaf's director Mr Horst Kleinschmidt, are overseas to secure funding for the South African trust fund.

Saldef's board of trustees includes representatives of the African National Congress and the Pan Africanist Congress, human rights organisations and organisations representing civil rights lawyers

Maqubela, an attorney who obtained an honours degree in law while in prison, was sentenced in 1982 to 20 years for high treason, but was released in April this year

Civil rights lawyer Mr Ebrahim Mohamed has been appointed the fund's legal director.

Appeal against people's court sentences

252 253

South 29/8 – 4/9/91

By HENRY LUDSKI

NINE George community leaders jailed for up to 30 months for assaulting two people at a people's court, have appealed against their conviction and sentences

The sentences have been described as "disturbingly inappropriate" by their legal counsel in their notice of appeal to the Cape Supreme Court

The nine were recently convicted on charges of assault after Mr Patrick Dyala and Mr Zalisele Noko were sjambokked when a people's court in the Sandkraal township found them guilty on charges of assault.

The people's court offences took place during April and May 1990.

Two of the accused, Wilson Sipati and ANC education officer Mr Mbuyiseli Dukumbana, were given suspended sentences while the seven others were given sentences of between 20 and 30 months

Afrika Booi Johannes Vur-Vur, David Nole and Forman Madikane were sentenced to 30 months with10 months suspended for four years, with Headman Maneli, Khulekele Nomsatha and Jimmy Stokwe were sentenced to 20 months with nine months suspended for four years.

In the appeal, legal counsel argued that the magistrate, Mr E Engelbrecht, had not attached "due weight" to the evidence of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) and the director of the University of Cape Town's Institute of Criminology, Mr Wilfred Schaft, who supported the imposition of community service orders.

"Sending people who volunteered to serve their community to prison for something the community itself approved of, would be manifestly wrong," Schaft argued.

The court also failed to establish that the accused were not acting in the execution of the decisions of a responsible informal dispute settlement structure widely accepted by the Sandkraal community, the legal counsel argued.

Killing of boy: AG refuses plea for appeal

252

South 29/8 – 4/9/91

LAWYERS have failed in the attempt to persuade the Attorney-General of the Northern Cape to appeal against the sentence of an Upington policeman who shot dead a 15-year-old schoolboy who was being held in custody

Constable John Short, who shot Pieter Booysen in January this year while playing a "game" with him with his firearm, was given a R2 000 fine and a 12-month suspended sentence after being found guilty of culpable homicide last month.

According to the port-mortem report, Booysen was shot in the head from a range of about 15cm.

The Lawyers for Human Rights supported the request for the AG to appeal a sentence which they described as "totally inappropriate" Booysen was convicted of rape in December and was in custody awaiting transfer to a reform school when he was killed.

The Northern CapeAG turned down the request on the grounds that there was "no reasonable prospect" of the appeal being successful.

In a letter to the AG, Ms Sandy Liebenberg, a lawyer, said that an aggravating circumstance was the fact that the victim was a minor who had been entrusted to the safekeeping of the SAP who are "under a strong duty to ensure that persons in their custody are properly looked after and kept in safe custody". Short is still employed by the SAP, police have confirmed

Boland constable 'unfamiliar' with rules of arrest

252

South 24/8 – 4/9/91

A BOLAND policeman with 11 years experience has admitted in the Stellenbosch Magistrate's Court to not being familiar with the regulations under which he arrested a farm worker who he "unlawfully" detained for three days.

Detective Constable Gerrit van Schalkwyk made this admission in the case of Mr Karel Joubert, who was last week awarded damages of R3 000 by the Minister of Law and Order for the unlawful arrest and detention

Van Schalkwyk told the court that when Joubert was arrested last January 19, he was not aware that in terms of police regulations he needed a warrant to arrest him

Joubert, who was arrested on a charge of assault with intent to do grievous bodily harm, also spent the Friday and the week in jail after Van Schalkwyk failed to bring him before a local magistrate to be granted bail or released on a police warning.

Van Schalkwyk also admitted to having regularly arrested people on similar charges without a warrant

By Guy Jepson
Crime Staff

Police resort to lethal force too easily, say lawyers

Do South Africa's policemen use their firearms too readily in apprehending suspects?

The question was raised by two Johannesburg-based human rights lawyers in the wake of Tuesday's fatal shooting by police Burger Olivier (22) at the end of a high-speed car chase

According to Dawie Coetzer (22), who was in Mr Olivier's car during the chase, one of the two policemen who confronted him afterwards demanded to know why they had been chasing around in a stolen car"

After the shooting the police announced murder charges were being investigated against the two policemen involved

Spokesman Captain Eugene Opperman maintained the police car involved in the shooting was clearly marked but conceded that another unmarked police car took part in the early stages of the chase

Nicholas Haysom, deputy director of Wits University's Centre for Applied Legal Studies, said the shooting had not merely sparked debate on the use of unmarked police vehicles in pursuing suspects, it had also raised the fundamental question of the use of "lethal force"

Professor Haysom said, in terms of the law, before a policeman could resort to lethal force to apprehend a fleeing suspect, he had to have "a good belief" that the suspect represented a danger to society and first use alternative methods to effect the arrest (eg fire warning shots)

"The law further says the suspect must have an indication the police are trying to arrest him," said Professor Haysom

He said in his view, the police "resort to lethal force too easily and in inappropriate circumstances — not only in relation to the arresting and subduing of suspects, but also in crowd control situations"

Ahmed Motala, director of litigations for Lawyers for Human Rights, said it was important to ask how, for example, the unarmed London bobby managed to function effectively without using lethal force

While recognising the police were often faced with heavily armed criminals recent events would seem to indicate police seem to resort to force more often than they need to

Law and Order Ministry spokesman Captain Craig Kotze said each situation needed to be judged on its own merits

'In the main our police are remarkably restrained when you consider how well criminals are armed these days and scores of policemen have been killed this year"

12 held over massacre

Cpress 11/9/91

252

By MARTIN NTSOELENGOE

FIVE men joined seven others who appeared in the Krugersdorp Magistrate's Court this week in connection with the Swanieville massacre, which left 29 people dead and many injured

They were not asked to plead before magistrate M Du Plessis, and their case was postponed to September 20

They are Mzwanya Sithole, Vumisane Majole, Sizakha Majole, Joseph Mphiye Khanyile, Barker Dlamini, Bhekowakhe Moffat, Hekabantu Jali, Payi Mhlongo, Phillip Mlambo, Alpheus Ndebele, Bhekezakhe Khumalo, and Vilamiya Khuzwayo

The 12 men are facing 29 counts of murder, arson and attempted murder

Merge half-empty northern suburbs white schools — MP

By Shirley Woodgate 8 Star 4/9/91

Half-empty white schools in Johannesburg's north and north-eastern suburbs must immediately be rationalised to allow black pupils to take over, says MP Tony Leon (DP Houghton)

Calling on education authorities to cut red tape and investigate proper use of the severely under-utilised premises, he said the number of pupils at Northview High which can hold 1 200 had been slashed to only 404, Highlands North which has a capacity for 649, has 391 scholars and 401 pupils attend Waverley High which has a potential of 729

"The primary schools from Bramley to Houghton and Sandringham can accommodate 7 183 pupils But they are less than half full, with 3 551 children now being taught in half empty buildings (S2)

"Considering the plight of the black pupils, this situation is an absolute disgrace

"Not every Alexandra child can go to a white school, but it is possible to rationalise and allow the DET to take over certain schools where they can bring the children up to an acceptable standard, then reappraise the school," he said

Mr Leon said that in Houghton alone there were three high schools within 2 km of each other It would be possible to immediately hand over one and merge the other two

Teargas: Ministers sued for R1,4-m

By MONK NKOMO

THE Ministers of Defence and Law and Order are being sued for R1,4 million by Mamelodi residents who were injured when security forces allegedly fired tearsmoke into the local stadium last year.

A total of 122 residents have served summonses on both Ministers, claiming they were injured last July when security forces blocked the main gates at HM Pitje Stadium and fired tearsmoke into a crowd attending a public meeting.

A test case involving one of the plaintiffs, Mr Jeremia Tlou, is scheduled to be heard in the Pretoria

To Page 2

Two Ministers are sued for R1,4-m

From Page 1

Jeremia Tlou, is scheduled to be heard in the Pretoria Supreme Court on November 29

Tlou, who sustained a compound fracture dislocation of his left ankle, is claiming R207 002 in damages from both Ministers.

The two Ministers have indicated they would defend the action

In the claim, Tlou, a truck driver, said he had attended the meeting in July last year when security forces blocked the main entrance to the stadium and fired tearsmoke into the crowd.

This gate, he added, was the only entrance and exit into the ground

Tlou submitted that police broke up the meeting and he and other residents were forced to flee to avoid the effects of the tearsmoke

"The plaintiff accordingly scaled the high wall surrounding the stadium and in the course of jumping from it to the outside of the stadium, he sustained a compound fracture dislocation of his left ankle," the claim said

The 122 plaintiffs submitted that the injuries they sustained were due to the wrongful, unlawful or negligent conduct of the security forces

Tlou said that as a result of the security forces' action he was now disabled and disfigured. He had also suffered a loss of earnings and his earning capacity had been permanently diminished

Nats plan strategy to keep reins

THE Government has developed a "New Total Strategy" to hold on to power while ensuring the reintegration of South Africa into the international community, the Human Rights Commission claimed yesterday.

The document was released to the media at a briefing in Johannesburg by HRC commissioner Dr Max Coleman

The HRC claimed the Government was using a twin-track programme of community repression and negotiations This approach was developed out of the ashes of the "Total Onslaught" philosophy of the 1980s.

According to the report, the "new approach" was evidenced in the statistics of violence, monitored by the HRC from July 1990 to June 1991.

Vigilantes

The HRC, which claims to be an independent body but has close links with the ANC and Cosatu, said the statistics showed there was collusion between the security forces and so-called vigilantes in the destabilisation of township communities.

A total of 3 180 people were killed in the 12-month period Of these, 238 deaths were the result of security force action, while 2 640 were vigilante related.

A further 30 deaths were the result of "hit squad" action, 24 deaths were at the hands of the rightwing, while 258 were of an uncertain nature.

The HRC noted that security force deaths had showed a steady decline on a month-on-month basis during the 12 months monitored, but arrests had shown a steady increase.

The security forces were also alleged by the HRC to have not acted in violent situations when they should have, and to have assisted attackers in some cases - *Sapa*

World eyes police unit, abuse cited

Sowetan 5/9/91

(252)

By IKE MOTSAPI

TRADE union movements and Amnesty International have protested the detention and torture of four Khutsong residents at the Welverdiend Police Unrest Unit in Carletonville last week.

And individuals from all over the world have written to State President FW de Klerk to register their protest of the arrest and torture of Mr Frans Mahuma, Mr Thomas Mavundla, Mr Thomas Monene and Mr Elliot Rampau

The four were arrested and allegedly tortured while in detention by members of the Welverdiend Police Unrest Unit, which is under police investigation

Police began a high-level investigation of the unit after the Sowetan exposed allegations of torture, unlawful arrests and detentions, cases of missing detainees and murder of Khutsong residents

The investigation is headed by General Ronnie van der Westhuizen, assisted by Major Dries Stear

Allegations

In a letter to De Klerk, Amnesty International said "'An immediate and impartial investigation into these allegations are needed

"'In addition, all police officers alleged to have been involved in any torture or other human rights violations should be suspended immediately

'We respect and ask that you exert your influence so that all prisoners be treated within the guidelines set forth in the United Nations Universal Declaration of Human Rights and the standard minimum rules for the treatment of prison ers, which established that prisoners are to be given fair and speedy trials, given access to legal counsel and their families and also receive adequate medical care.'

Meanwhile, 10 policemen attached to the unit have been suspended from duty pending investigations

Also, a man who applied for a job at the Carltonville police station has claimed that he was asked to kill his cousin, Ms Mongi Mogale, who is a witness in investigations against policemen

Stear confirmed that he had received an affidavit from the man's sister regarding the allegations

"Police are investigating the incident," Stear added

HRC claims govt has new total strategy

DAVE LOURENS

GOVERNMENT had developed a "new total strategy" to hold onto power while ensuring that SA was reintegrated into the international community, the Human Rights Commission claimed yesterday

The commission launched a special report on community repression which alleges that township violence is like a tap which can be turned on or off at will.

Commissioner Max Coleman said in Johannesburg the violence enveloping townships had taken on the character of an orchestrated onslaught which the commission believed was a new total strategy which had replaced the repression enforced under the state of emergency (Bday 51991)

The commission identified the four main sources of repression as the security forces, vigilantes, hit-squads and the right wing

The report claimed there was compelling evidence that the state had embarked on a deliberate strategy of orchestrated destabilisation, with the ultimate objective of defeating a weakened and divided liberation movement at the polls by an alliance of moderate forces (252)

The report, which examines the period from July 1990 to June 1991, attributed 3 180 deaths and 6 855 injuries to the four groups.

Vigilante action was allegedly responsible for 2 640 deaths, security force action for 238 deaths, hit-squads for 30 and right-wing acts for 24

The causes of a further 248 deaths were listed as uncertain

The commission noted that deaths which could be attributed to the security forces had shown a steady decline during the 12 months, but arrests had shown a steady increase

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NOTICE 828 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

The Director-General Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port as referred to in paragraph (a) thereof, by such persons

KENNISGEWING 828 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Biyela	Mduduzi Kenneth	1974–04–14
Booi	Nomvo	1929–05–16
Cele	Bhekizenzo	1968–08–23
Digashwa	George	1972–04–24
Dlukulu	Malcolm Mbuyiselo	—
Ebrahim	Ahmed Gora	—
Fihlela	Justice Zimela	1969–07–07
Gama	Moses	1972–09–03
Gqobose	Mfanasekhaya	1917–08–07
Gumede	Moosa Peter	1971–12–16
Gwaza	Johannes Peter	1969–07–07
Hlatshwayo	David Jabulani	1970–03–08
Hlatshwayo	Thami	1963–09–14
Kgopane.	Bernard Motsumi	1961–08–12
Khumalo	Mpho	1974–04–06
Khumalo	S'boniso	1975–05–11
Kohla	Vincent	1974–01–12
Komani	Simon	1963–09–11
Kunene	Zithulele Wiseman	1972–12–06
Leedile	Andries	—
Leeuw	Isaac	1973–12–08
Letupu	Ronny	1967–10–09
Mabaso	Raphael Mbuyi	1971–10–06
Magagula	Mphama Norman	1968–01–15
Mahlalela	Fish	1961–08–29
Mahlalela	Mosawe Nkosi Michel	1966–12–25
Majola	Thami	1968–02–12
Makhanda	Lesawana	1942–07–12
Maseko	Obed Gift	1966–09–02
Mathe	Effort	1973–08–25
Mbutho	Innocent	1974–07–07
Mchunu.	Shadrack	1971–06–28
Mfaxa	Cebisani	1965–01–17

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Mfaxa	Elliot	1926–08–22
Mhlongo	Mazwani Lawrence	1970–01–03
Mjandana	Lovemore Thanduxolo	1969–11–11
Mkhize	Innocent Mbuso	1962–05–13
Mkwanazi	Joseph	1928–05–20
Mngadi	Sandile	1974–12–12
Mngadi	Sipho Eric	1973–07–03
Mngaza	Vuyani	1932–03–30
Mnisi	David	1964–06–06
Mnyandu	Jabulane	1970–10–30
Moabi	Joe	—
Monwana	Mike	1962–11–12
Monyake	Sello	1959–03–22
Mosetsane	Isaac	1970–03–23
Mthethwa	Solomon Bongane	1968–11–26
Mwandla	Bongani	1970–04–14
Myeza	Vusumuzi Sifiso	1970–02–28
Mzulivini	Charles	1974–01–12
Ndemande	Vusi Tomas	1971–11–02
Ndlovu	Mbongeni	1970–12–16
Nemadzivhanani	Maxwell	—
Njikho	Mgaba	1972–03–03
Ntuli	Isaac M	1964–02–02
Nxumalo	Dululu	1969–05–20
Nyasheng	Wordsworth	1972–07–16
Phakathi	Vela	1973–06–19
Phara	Daniel	1970–08–06
Pheko	Motsoko	—
Qawa	Xolile	1964–03–02
Qhoboshigane	Samson Bhabho	1967
Radebe	Nuzi Michael	1968–08–08
Radebe	Victor	1973–01–01
Ramabodu	Klaas	1971–10–22
Sambothi	Joseph	1967–09–08
Seitheisho	Tlhage Jacob	1959–05–10
Sekano	Andrew Mogotsi	1970–04–18
Shabalala	Lindiwe	1972–11–12
Shangase	Zwelinjani	1969–11–02
Shangose	Bheki	1969–12–23
Shihlabane	Samson	1967–03–28
Shongwe	Jabu	1936–04–06
Sibeko	Elizabeth	1958–10–22
Sibeko	William	1956–04–08
Sibiya	Sibongiseni	1968–02–24
Sithole	Gregory Thamsanqa	1965–02–11
Skhahlane	Rorbert	1972–06–31
Smith	Benno Leo	1956–04–11
Somzana	Nkobenhle	1974–06–30
Swakamisa	Kenneth Alphonsus	1939–12–08
Thabane	Cele	1973–10–14
Tlhatlogi	Lazarus	1955–12–07

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Toboti	Waters	1939–02–02
Tsikanci	Patrick Klini	1958–10–17
Tyatyantsi	Slulami Vusumzi	—
Vundla	Khayelihle S	1966–03–12
Zikhali	Edmond	1973–12–23
Zondi	Victor	—
Zulu	Bhekani	1970–10–25
Zungu	Bethwell	1970–09–09
Zweni	Oscar	1972–10–26

(6 September 1991)

NOTICE 829 OF 1991

DEPARTMENT OF JUSTICE (252)

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development, and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No 74 of 1982), as the case may be

KENNISGEWING 829 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No 501 van 6 Maart 1991 onderskryf het, en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No 74 van 1982), na gelang van die geval

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Biyela	Mduduzi Kenneth	1974–04–14
Bothelezi	Chaels	1956–04–06
Buthelezi	Brian	1973–10–10
Buthelezi	Thulani	1970–09–19
Cele	Bhekizenzo	1968–08–23
Cele	Mfanaphothi Magwegwe	1970–07–25
Cuthuli	Mage	1971–11–22

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Daka	Hanson	1955–12–19
Dubazana	Barnabas Zamani	1966–10–26
Dube	Peter	1971–06–15
Dube	Rosemary Ntombikayise	1969–05–22
Duma	Sipho	—
Dunjane	Nelson Sililo	1963–03–31
Fihlela	Justice Zimela	1969–07–07
Gumede	Moosa Peter	1971–12–16
Gwaqaza	Sanyweni Jappy	1970–06–28
Hlatshwayo	Thami	1963–09–14
Jokazi	Happiness Thokozani	1973–04–21
Khuboni	Seboniso	1969–12–23
Khumalo	Veli Gift	1972–12–29
Khuzwayo	Ignatious	1970–09–24
Khuzwayo	Vava Sandile Dennis	1972–12–26
Komani	Simon	1963–09–11
Kubeka	Sezakele Abigale	1973–09–04
Kubeli	Benson Bheki	1968–07–07
Kunene	Zithulele Wiseman	1972–12–06
Lushabe	Thembikosi	1973–11–11
Machitje.	Esau Chechela	1961–01–28
Madondo	Seboneso	1973–04–04
Mahlalela.	Mosawe Nkosi Michel	1966–12–25
Mahlangu	Hamilton Sbusiso Johannes	1969–01–01
Mahlangu	Johannes Seboseso	1969–01–01
Mahlasela.	Johannes Mojalefa	1957–03–19
Maiebese	Mlungisi Patrick	1963–09–25
Makhula	Vusi	1974–05–14
Manei	Adriaan	1969–09–06
Matshaba	Protus Motladi	1970–12–25
Mbane	William Andile	1958–07–06
Mbeje	Xolane Danis	1972–11–24
Mbongwa	Bheki Themba	1965–05–21
Mchunu	Goodenough	1969–05–05
Mhlongo	Mazwani Lawrence	1970–01–03
Mkhize	Arnold Sianda	1971–09–17
Mkhwanazi	Eric Mbongeni	1971–05–15
Mkwanazi	Valley S'lendile	1972–03–26
Mlambo	Thulane Sidwell	1970–05–28
Mngadi	Sipho Eric	1973–07–03
Mnisi	David	1964–06–06
Mnyandu	Jabulane	1970–10–30
Mofokeng	Simon	1968–04–21
Moraka	Daniel Ramolora	1957–12–03
Motseothata	Masego J	1953–09–08
Motsepe	Junior Josph M	1970–08–03
Mpetha	Matthews Shimi	1972–06–26
Msomi	Mbuso	1971–03–04
Mthethwa	Solomon Bongane	1968–11–26
Mtshali	Bongani Wiseman	1973–03–04
Mtshali	Eliakim S'boniseleni	1969–05–26
Ndemande	Vusi Tomas	1971–11–02

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Ndlovu	Mbongeni	1970–12–16
Ndlovu	Thabane Pat	1969–03–02
Nene	Bongınkosı Welcome	1971–01–21
Nene	Kosı	1972–06–15
Ngcobo	Sthembıso Chaels	1972–10–07
Ngıdı	Sthembıso To	1973–12–29
Ngobese	Derrıck Vusimuzı	1956–02–17
Nkosı	Madoda Alex	1951–11–30
Nkosı	Mkıtı Vıncent	1969–12–13
Ntsıbande	Zephanıa Zakhele	1968–06–05
Pempenı	Madoda	1969–06–12
Radebe	Mzewathe Peter	1965–12–12
S'Khakhana	Robert Nhlanhla	1967–09–18
Seabelo	Tryphına Feına	1970–05–07
Sekgotodı	Jack Puku	1965–10–10
Selepe	Lerato Amos	1972–07–28
Shabalala	Vusı	1963–01–15
Shangase	Zwelınjanı	1969–11–02
Shange	Thembınkosı S'thembıso	1972–09–23
Somı.	Sthembele Edwın	1962–03–24
Songqushwa	Aubrey	1970–01–08
Tsotętse	Thulane	1974–07–12
Vezı	Sızwe Hendry	1971–07–14
Vezı	Thuthukanı Bongane	1971–05–04
Vılakazı	Mfana John	1950–07–10
Wadula	Patrıck Bonganı	1965–03–17
Zigubu	Lucky	1961–03–03
Zulu	Bhekanı	1970–10–25
Zwane	Nhlanhla Lucky	1972–08–10

(6 September 1991)

NOTICE 830 OF 1991

THE FINANCIAL SERVICES BOARD

FINANCIAL MARKETS CONTROL ACT, 1989

APPOINTMENT OF A FINANCIAL MARKETS ADVISORY BOARD

It is hereby notified for general information that the Minister of Finance has, by virtue of the powers vested in him by section 3 of the Financial Markets Control Act, 1989 (Act No 55 of 1989), appointed the following persons to be members of the Financial Markets Advisory Board for the period 7 August 1991 to 31 December 1993

Dr C J de Swardt (Chairman)
Mr P J Badenhorst
Dr P E J Brooks
Mr C J H Dunn
Dr H B Falkena
Dr A P Faure
Mr G T Ferreira

KENNISGEWING 830 VAN 1991

RAAD OP FINANSIELE DIENSTE

WET OP BEHEER VAN FINANSIELE MARKTE, 1989

AANSTELLING VAN 'N ADVIESRAAD OP FINANSIELE MARKTE

Hierby word vir algemene inligting bekendgemaak dat die Minister van Finansies kragtens die bevoegdheid hom verleen by artikel 3 van die Wet op Beheer van Finansiele Markte, 1989 (Wet No 55 van 1989), die volgende persone as lede van die Adviesraad op Finansiele Markte vir die tydperk 7 Augustus 1991 tot 31 Desember 1993, aangestel het

Dr C J de Swardt (Voorsitter)
Mnr P J Badenhorst
Dr P E J Brooks
Mnr C J H Dunn
Dr H B Falkena
Dr A P Faure
Mnr G T Ferreira

previously made several vain appeals to big companies to help.
■ Pic: EVANS MBOWENI

Justice is done as council loses

City Press 8/9/91

JUSTICE was not only done, but was seen to be done in the Roodepoort Small Claims Court this week when the Dobsonville Town Council was ordered to pay R1 100 compensation to homeless Maria Thiko for building materials they confiscated when they demolished her shack last year.

The court found that although the demolition was carried out in terms of a court order, the council had undertaken to keep Thiko's materials until she had a legal site.

When Thiko claimed her materials, the council could not return them.

Court commissioner Daniel Potgieter said in his judgment that Thiko and her witnesses had given detailed evidence of her dealings with Dobsonville Town Clerk Tony Roux, on both the day of the demolition in July last year and when she tried to reclaim her materials in March.

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Her witnesses had corroborated her evidence in every respect.

Roux denied categorically he had made any undertaking to Thiko to keep the materials.

He told the court he had instructed her to complete an affidavit listing her materials.

After doing this, she had found her materials were not in the council's storage yard.

The commissioner found that, for Thiko and witness Cecilia Phenithi, the experience of being arrested and having their homes bulldozed had been a very dramatic one which had been "engraved on their hearts forever."

He said that, for this reason they could remember every detail.

For Roux, this drama was part of his work, and was not a once-in-a-lifetime experience, so it was possible he would not remember the small details of events that day with the same clarity.

The demolition of Thiko's home followed a failed application by the homeless people to prevent the council from demolishing their shacks on open ground between Dobsonville and Extension 4.

The Prevention of Illegal Squatting Act states that structures may be demolished and removed, but does not say what must be done with the demolished materials.

In this case, the commissioner ruled, the agreement between Roux and Thiko overruled the provisions of the Act.

The commissioner pointed out that in terms of the Act, the council had had no obligation to store or safeguard Thiko's goods. They had tried to [illegible] by storing the goods.

However, because Thiko's goods had not been stored safely and returned to her, the town clerk was ordered to pay damages of R1 100.

Roux said he would take the commissioner's ruling on review.

Thiko was overjoyed at the outcome and told City Press she would use the money to buy materials to build a home on her new Doornkop site.

State power plan alleged

By S'BU MNGADI

THE Human Rights Commission (HRC) believes the State has embarked on a new strategy of "orchestrated destabilisation" similar to the "total strategy" of the eighties C|Pven 8|9|91.

In a special report released in Durban this week, the HRC said the explosion of violence since July last year was an orchestrated onslaught aimed at maintaining power

HRC commissioner Dr Diliza Mji told the media his organisation examined records from July 1990 to June this year, focusing on security forces, vigilantes, hit squads and rightwing elements.

Compelling

"There is compelling evidence for believing that the State has embarked upon a deliberate strategy of orchestrated destabilisation and this raises the question of the origins and motives behind such a strategy," the HRC said

According to the report, during the 12-month period

- Security forces were responsible for 238 deaths
- 4 211 people were arrested
- Vigilantes were responsible for 2 640 deaths or 83 percent of all politically-related deaths
- 1 004 deaths occured in Natal, at a steady rate of about 80 deaths a month.
- Vigilante-related deaths in the PWV region were characterised by dramatic swings, with 570 deaths in August 1990 and 13 in February 1991
- The rightwing was responsible for 14 bombings that killed 24 people and injured 246

Vigilante

"There seems to be a correlation between certain political events and the ebb and flow of vigilante attacks in the PWV area, and this pattern, combined with the apparent ability to deploy forces from one locality to another within the PWV, suggests a strong measure of orchestration," the HRC said.

"The overall toll on township life has been devastating, with more than 3 000 lives lost, about 10 000 injured and maimed, more than 8 000 arrested and tens of thousands displaced from their homes"

Law clinic opens

(252)

By DAN DHLAMINI

HUMAN rights violations and people not getting fair trials in courts in rural areas have prompted Lawyers for Human Rights (LHR) to establish a Law Clinic in the Western Transvaal

Speaking this week at the launch of the clinic at a Klerksdorp hotel, LHR director Brian Currin said their priority would be to address the right to legal representation

He said 85 percent of people appearing in the country's courts went unrepresented, and therefore did not always get a fair trial

Last year LHR established an office in the Western Transvaal which is run by regional organiser Sam "Levy" Present

The office has now been converted into the law clinic

Currin said the LHR had not established the clinic to compete with local lawyers, but to fill the gap because most people in the area could not afford litigation fees

Asked how the clinic would serve the entire Western Transvaal, the clinic's new fulltime regional director, lawyer Igbal Motala of Klerksdorp, said they would use the Pro-Bona Scheme through which lawyers who supported the organisation's ideals could take up cases on its behalf

Policemen in court over shootings

252 Star 10/9/91.

Vereeniging Bureau

Nine policemen, who have been charged with murder following a report by the Goldstone Commission of Inquiry into violence in Sebokeng last year, appeared briefly in the Vanderbijlpark Magistrate's Court on Friday

The group, all from the Vaal Triangle and Krugersdorp areas, were scheduled to appear in court yesterday, but were instructed by the Attorney-General's office to appear on Friday.

The Goldstone Commission was appointed to investigate the circumstances surrounding the Sebokeng shootings which occured on March 26 last year At least 10 people were killed

The nine policemen, who are each facing six counts of murder, one of attempted murder, and a charge relating to the negligent use of a firearm, were not asked to plead before Mr G J Reynders on Friday

They are Sergeant Seab van Rhyn (26), Constable William Joseph John (22), former Constable Gideon Johannes Jakobus Joubert (22), Detective-Constable James van der Mescht (21), and assistant constables Mart Samuel Lesikara (28), Oujan Mohoboko (22), Peter Khumalo (31), Tumani Ratomo (26) and Samuel Visimuzi Cekiso (29)

The group has already applied for indemnity The hearing was postponed to February 3.

management had met the workers yesterday to discuss issues that prompted the "unlawful" work stoppage.

BOTHA

Emergency services to be privatised

B15 aug 11/9/91.

TANIA LEVY

THE Benoni Town Council last night voted to privatise its fire and ambulance service

The council believes it will be Africa's first emergency service to be privatised

Management committee chairman Danie Taljaard said the privatisation would save the council and its ratepayers about R15m in the next five years

The decision had not been taken lightly and the privatisation committee had deliberated for almost 15 months, he said

Benoni's fire chief Stephen Barber said the council would contract out its fire and ambulance service to a private company, which would be bound to maintain the standard of service at no extra charge to users

Fire and ambulance staff would be kept on by the company, which would lease Benoni's fire station from the council

Town clerk Deneys Conradie said the agreement also marked the first time a local authority would own shares in a private company

Shares would be split between the council, First National Bank, the Fire and Emergency Services Holding Company and the company's employees

Judge orders boxer not to harass family

SUSAN RUSSELL

INTERDICT proceedings launched against former boxing champion Gerrie Coetzee after he allegedly threatened to have the wife of a Randburg boat dealer raped by a hit squad, were settled in the Rand Supreme Court yesterday

An order interdicting Coetzee from assaulting, harassing or threatening Ronnie Arenson and his family was granted yesterday by Mr Justice Flemming by agreement of both parties

Arenson in turn agreed his company, Waterworld would return a boat Coetzee lodged as part deposit on a boat he had ordered from the company

The boat will be returned when Coetzee pays R4 000 for costs incurred during the transaction

The Randburg boat dealer initially obtained an interim interdict agains' Coetzee two weeks ago after the former world heavyweight boxing champion allegedly threatened him and his wife

Coetzee had until yesterday to show cause why the interim interdict should not be finalised

In an affidavit, Arenson said Coetzee had threatened to "sort him out" and have his wife raped by a hit squad He then reported the threats to police

Arenson said he, his wife, two-year-old son and two-month-old daughter then left their home under police escort to live elsewhere Security guards were hired to protect his home and business premises

He said he and Coetzee had negotiatied a deal for the purchase of a new boat which was to have been imported from the US

Coetzee gave the company two boats as a trade-in, one of which Waterworld valued at R25 000, Arenson said

He added that it was a term of their contract that the deposit on the new boat would be forfeited if the deal fell through at the instance of the purchaser

Arenson said the deal fell through after his company had incurred expenses of R7 500 and Waterworld had kept the R25 000 vessel

Official 'people's court' opens today

B1 Daily 11/9/91 · (252)

WILSON ZWANE

SA's first official "people's court", to be called a community dispute resolution centre, will open its doors in Alexandra township today

A Community Dispute Resolution Resource Committee official said the opening would, however, be low key "A formal launch will take place within a few weeks after we have found our feet," she said

The centre, in Wynberg near Alexandra, will deal with minor community disputes and will be the first of its kind in SA The committee has said it would be the forerunner of similar centres in other townships

The committee — formed by the Wits Centre for Applied Legal Studies and the National Association of Democratic Lawyers — has trained 12 people who will mediate in disputes

Alexandra Civic Organisation president Moses Mayekiso has said the negative reaction of Alexandra people to the "white" judiciary, as well as rising crime, had prompted his organisation to work towards establishing community oriented courts

The Justice Department has said the establishment of the dispute resolution centre has much in common with its desire to make the administration of justice accessible to all

Bail granted

JONATHON REES

LOOD van Schalkwyk, one of three hunger strikers

First approved 'people's court'

Own Correspondent (252) CT 11/9/91

JOHANNESBURG — South Africa's first officially approved "people's court", a community dispute resolution centre, opens its doors in Alexandra township today.

A Community Dispute Resolution Resource Committee official said there would be a formal launch "within a few weeks, after we have found our feet"

The centre, forerunner of similar centres elsewhere, will deal with minor community disputes.

The committee — formed by the Wits Centre for Applied Legal Studies and the National Association of Democratic Lawyers — has trained 12 people who will mediate in disputes.

Alexandra Civic Organisation president Mr Moses Mayekiso said the negative reaction of Alexandra people to the "white" judiciary, as well as rising crime, had prompted his organisation to work towards establishing community-oriented courts

The Justice Department has said the establishment of the centre is in line with its desire to make the administration of justice accessible to all

Courts must act to end needless attacks - judge

Sowetan 11/9/91

252

THE courts must act to stop the increasing number of unprovoked attacks on blacks by whites, a Rand Supreme Court judge has said

Mr Justice M Stegmann said this in sentencing Ettiene Thomas Ferreira (19) to 12 years in jail and a 16-year-old youth to a reform school for beating an unidentified black man to death in Germiston

Mr Deon Meyer (25) was acquitted of murdering the man on November 12 last year

Summing up the aggravating factors, the judge said "You armed yourselves and went to look for a victim You came across a sleeping man and cruelly assaulted him."

It appeared this kind of crime was on the increase and the courts should act to stop it, he said

Ferreira and the youth said they had armed themselves with nunchaka sticks and a wooden bed leg and walked to a veld opposite their house

A black man, who had been sleeping, leapt up and they attacked him

They fetched Meyer, who accompanied them to see if the man was injured The man lunged at Meyer and they assaulted him again

They returned a third time and found the man trying to climb out of a ditch

Meyer was not present during the main assault -- Sowetan Correspondent.

A-G will decide on 'assault' by police

252

Sowetan 12/9/91

INVESTIGATIONS against six policemen who allegedly assaulted four suspects, one of whom was "necklaced" have almost been completed, say police.

By MONK MKOMO

Mr Sipho Mazibuko, a builder from Soshanguve, is claiming R50 000 in damages from the Minister of Law and Order, alleging that he and three colleagues were assaulted at the Pretoria North Police Station on August 11

Mazibuko alleges that a tyre was placed around his midriff, methylated spirits sprinkled over it and set alight.

The four were suspected of being in possession of a firearm - an allegation they deny

Police liaison officer Major Willie Vlotman yesterday said probes against the suspected policemen were almost complete

"The docket will soon be referred to the Attorney-General, who will decide whether or not to prosecute

They knew black man could die, says State

252

Sowetan 12/9/91

By SONTI MASEKO

A PROSECUTOR yesterday asked a Rand Supreme Court judge to convict four white teenagers charged with the brutal murder of a black man.

Mr Herman De Beer, said the teenagers - Mr Brian Derek Scheepers (19), Mr Brenden Greig Hastings, (18), Mr Craig Lambton-Carr (18) and Mr Gary Richard Martin (19), all of Edenvale - were poor witnesses, had selective memories and at times deliberately lied

Judgment is to be handed down on Friday by Mr Justice Labuschagne and two assessors.

De Beer said the youths attacked and killed the dead man, Mr Sicelo William Mbethe, in Edenvale in the early hours of May 26 while he was on his way to work.

Mbethe died from a fractured skull, cerebral contusions and penetrating incisive wounds in the lungs. He had allegedly been bumped with a car, assaulted with a hammer and a hockey stick and stabbed

A total of 45 different wounds were found on Mbethe's body - 19 of them, including two incisive wounds penetrating the lungs, in the upper body.

Thirteen different injuries likely from a blunt object were found on the head.

The accused could be convicted of murder on the doctrine of common purpose alone.

All four have admitted assaulting Mbethe

De Beer submitted that the accused should be found to have had a direct intention to kill because of the places in the body where the wounds were inflicted, the nature and the number of wounds.

While he accepted that the accused were under the influence of liquor at the time of the crime, the court could not find that they had reached a state of not being criminally responsible for their actions.

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SA may link up with UN agencies

TIM COHEN

GOVERNMENT was thinking of associating itself with the Universal Declaration of Human Rights and could soon participate in a number of technical UN agencies, former ambassador to the UN Jeremy Shearar said yesterday.

Shearar said in an interview it was unlikely SA would try to resume its seat at the UN General Assembly immediately

"We feel we should allow the fruit to ripen of its own volition," he said.

Shearar was recently replaced as ambassador to the UN by former ambassador to Rome, Jim Steward

He said SA would require support from in particular, the OAU before it could take its seat and this would take time.

SA would also have to negotiate the question of the R60m in fees it owed the UN before it could vote in the General Assembly SA has not paid its fees since being suspended in 1974

Shearar said he felt SA should now participate in the "more technical" agencies of the UN, such as the World Health Organisation and the UN's telecommunications and ecological organisations

He said SA had not signed any human rights accords since 1948, often because it was impossible to do so as many included stipulations about apartheid.

But Shearar pointed out that Foreign Minister Pik Botha had suggested in his maiden speech to Parliament in 1970 that SA should associate itself with the declaration on human rights

Government had not signed the declaration in 1948 because it felt at the time that if it did, it would be required to bring its law into line with the declaration

● See Page 3

New people's court 'has Govt's blessing'

Star 12/9/91

By Montshiwa Moroke (252)

South Africa's first legal "people's court", replacing the feared kangaroo court, was launched officially in Alexandra yesterday

The community court has the blessing of the Justice Department, a spokesman for the Community Dispute Resolution Resource Committee (CDRRC) said

The Alexandra Justice Centre, as it is called, is the brainchild of the Alexandra Civic Organisation (ACO) and will be manned by a registrar at its Wynberg offices

It is a joint project of the Centre for Applied Legal Studies at the University of the Witwatersrand and the National Association of Democratic Lawyers

The centre, which will deal with community disputes, replaces the infamous kangaroo court of the mid-'80s known as "the people's court"

Unlike the previous "court", this court will have trained mediators and will respect the traditional values of the people, but will not act arbitrarily as was the case previously, according to a member of the CDRRC

The kangaroo courts of the past were born out of the protracted violence between 1984 and 1986

Political activists rejected all forms of Government structures and took over the running of the township

Battle lines were drawn between the police and black local authorities and other State bodies on the one hand and the community on the other

Residents saw the "white man's courts" as nothing more than institutions meant to enforce the laws of an unjust system They sought an alternative forum for conflict resolution at community level

Justice Minister Kobie Coetsee, who in 1987 described "people's courts" as "medieval", said in February this year that the Government and the ACO had found "much common ground" after discussions about reforming the courts

This week, The Star met the mediators Their ages ranged between 22 and 52 Fifteen people had gone through the mediation course

They have all had informal experiences in dispute resolution

The court will be formally opened in a month's time The registrar is Ben Dlomo (30), who went through an intensive 60-hour or five-day training course at Wits on "jusrisdiction, identification and mediation"

As a registrar, his function will be to take down details of a dispute between two parties and assess the nature of the dispute He will decide whether the dispute calls for mediation or refer the matter elsewhere or to social workers

"The difference is that people will be coming on a voluntary basis, to come and have their disputes resolved But that will be between the two parties as the centre will merely be a facilitating machanism

"We will not be handling serious cases such as rape, child abuse and murder We will be dealing with family disputes between tenants, such as a child breaking a window or a dispute that may arise out of a person using more water than the rest of the people," Mr Dlomo

Mr Dlomo said the mediation process would involve introducing the two parties, story-telling, problem-solving and agreement.

Members of the mediation team The Star met were family men and women, most of whom have regular jobs

The hearings will be held during weekdays and at weekends on a roster basis.

At the moment, up to 30 cases a week are being received by the advice centre office that were potential mediation cases The belief was that there were many disputes that could be resolved through mediation

Advocate Steven Goldblatt, who is one of the trainers, said mediators were chosen on the basis of their personal intergrity, and how they commanded respect among peers and members of the community

They have been trained by the most skilled negotiators, mediators and arbitrators

By Heather Robertson

Human rights activist Davis is gentler but as angry as ever

THE UNITED STATES Communist Party (USCP) reflects male supremacy, says human rights ctivist and party member Angela Davis

There is a kind of ingrained male eadership, as in the South African 'ommunist Party (SACP), she adds.

It was only constant challenging by vomen in the US party that led to the lection in 1968 of Charlene Mitchell s the party's first black woman presidential candidate

A number of Mitchell's colleagues a the CUSCP were hesistant to work or her because she was a woman and nore particularly a black woman.

"But at that stage the American emunist movement was just beginning o express itself so we improvised and hallenged them all the time," says Davis Today the tables are turned Mitchell — now the president of the Jational Alliance Against Racism — as a male secretary

How has the demise of socialism in ne Soviet Union and Eastern Europe ffected the American Communist 'arty?

"If we examine what happened there /e will find that there was not only a ack of democracy — political, ecoomic and social — but also a lack of ttention to the private spheres that ave been traditionally excluded from olitical discourse," says Davis

"I say this because it is clear to us as ve move forward in the US that we must acknowledge the political character of the traditional oppression that women have suffered.

'If we are going to maintain that socialism is on the agenda we must recognise the need to understand the degree to which the psychology of the individual intercepts with society This lack of respect for the individual and the lack of democracy were definite downfalls of the systems that recently collapsed."

But Davis, coming from an "advanced capitalist state", adds that capitalism is only triumphant by default.

"In America it is clear that vast wealth is in the hands of a few and when this happens there is increased poverty

"I will not accept that the downfall of Eastern Europe and the Soviet Union means the historical supremacy of capitalism I can show people who think this is so the consequences of capitalism in places like Harlem, Soweto and Khayelitsha '

Davis' solidarity work for her brothers and sisters' in South Africa, the cause of women, Native Americans and America's drug-ridden, unemployed and imprisoned youth has its roots in a passionate concern.

Angela Davis

"Some 25 percent of black males are in prison in America — more than the number of black males in universities — because they don't have opportunities for jobs or education. I don't know if it s possible to create a united movement to solve these problems."

But she lashes out at the presumption of superiority on the part of African Americanswho feel their First World experience gives them the right to come back and reshape Africa.

Clad in a purple leather jacket for a tour of Cape Town's townships with the Women's League of the African National Congress (ANC), the tall slender Davis looks remarkably more gentle than the 1960s pictures of her wild Afro hair and anti-establishment snarl Then she was the most wanted woman on the CIA list, accused of kidnapping and murder as a member of the militant Black Panthers

Now Davis has echoed Nelson Mandela s call for the indemnity of right wing hunger strikers in South Africa, a stance incongruous with that of her student past.

She is quite frank about the differences between current complexities compared to what appeared in the past to be the straightforward issues.

' In my nostalgic moments I yearn for the simplicity of the 1960s when we knew who our enemies were and everything was literally black and white Now when we organise a rally about the war in the Persian Gulf, we must have a variety of speakers — an anti apartheid activist a gay rights activist and an environmentalist. It's far more complex, but it's wonderful that we understand now the interrelatedness of these issues."

At present Davis and the National Alliance Against Racism are trying to create a broad movement in America that weaves together a consciousness of racist violence, anti-semitic violence violence against women and anti gay violence. They are also involved in campaigns against the death penalty

The movement is noted for its multicultural identity which insists on acknowledgement of differences.

"While we insist upon unity and togetherness, at the same time we insist upon the recognition of people s cultural differences, ethnic and historical differences," Davis says

Davis and her colleague Charlene Mitchell have been visiting trouble spots in Soweto and Khayelitsha on a fact-finding mission for the Alliance so that they can inform the American public about South Africa.

Besides campaigning for sanctions against South Africa, the Alliance is involved in a campaign to guarantee implementation of an anti genocide law in America, Davis reveals

But Davis is most passionate about the strengthened links between Native Americans and African Americans which Nelson Mandela inspired when he was in America.

Native Americans assisted Africans to escape slavery There s also a great deal of common ancestry In this period we are trying to cement ties between African Americans and indigenous Americans Nelson Mandela s speech inspired solidarity between the two groups "

New killing trend as old order decays

Star 13/9/91.

(345) (358) 252

In the past month, Transvaal courts have heard evidence in four separate cases in which gangs of white men killed, or were accused of killing, innocent black men. JACQUELINE MYBURGH reports.

ON THE NIGHT of September 14 1990, Deon van Deventer (24) and Evert Boonzaaier (23) assaulted a crippled black man, Johannes Masango, who was walking near the Newclare railway station

They beat him, poured beer over him, urinated on him and necklaced him

The two men were sentenced to 25 years each in prison

On November 12 1990, Ettiene Ferreira (19) and a 16-year-old youth who may not be named beat an unidentified black man to death with a wooden bed-leg and karate sticks in Germiston

Ferreira was jailed for 12 years and the minor will spend five years in a reformatory A third man was acquitted.

These are two of the four cases that in the past month have pointed to an increase of white-on-black violence

Two similar cases are currently being heard in the Rand Supreme Court and the Pietersburg Magistrate's Court

In one, four Edenvale youths have been accused of bludgeoning to death a black man on his way to work The State has claimed they attacked the man with a hammer, knocked him down with a car, hit him with a hockey stick and stabbed him Judgment was due to be handed down today

And in Pietersburg, six whites have been arrested and charged with murdering a black worker The case was postponed until September 30 for the Attorney-General's decision

Why all this violence?

Fink Haysom, deputy director of the Centre for Applied Legal Studies, offers two explanations for the apparent increase in white-on-black crime

On the one hand, there had been a general increase in interracial violence — arising out of the growing insecurity of whites — and the increase in the number of trials might indicate more effective policing of the crimes

There had been a change in the political attitudes to crimes committed by whites against blacks, Mr Haysom added Now there was pressure on the police and judiciary to be seen to be prosecuting whites as vigorously as they prosecute blacks

The words of a Supreme Court judge this week illustrate this change in attitude

In sentencing Ferreira and the minor earlier this week, Mr Justice M S Stegmann said the courts had to act to stop the increasing number of unprovoked attacks on black people by whites

Similarly, Mr Justice M M Joffe pointed out that the two men who had murdered Johannes Masango had done so only because the crippled man had been black Defence counsel had argued in mitigation that the men had not been brought up to respect blacks

Graeme Simpson, acting director of the Project for the Study of Violence, said white South African males were struggling to cope with the new South Africa.

In the process of moving towards the new dispensation — with negotiations and the peace process being the order of the day — white male South Africans who had previously been accustomed to exclusive access to political and economic power now felt threatened.

A combination of the objective political reality, the economic recession and the required adaptation to a new lifestyle had resulted in a feeling of a loss of power

The consequence was that they felt impotent "The sources of the loss of control were inaccessible, and they did not feel there was anything they could do to influence the political or economic situation," Mr Simpson said

"That's when we find this reassertion of control taking a symbolic form"

He added that the violence was reflected in other dimensions and not only in the political sphere these included child abuse, wife battering and assaults on domestic workers

The ultimate expression of the white male's feeling of impotence was the family killing — men asserting their control in the only remaining arena they felt they commanded

He said the only solution to this worrying phenomenon was the start of a real peace process to allay white fears

The project earlier suggested that in unbanning the ANC and other political organisations, what President de Klerk had done was to unshackle the enemy within — rather than convince whites that these were no longer external enemies

"It may sound like a hack comment, but that is when society turns on itself to purge the pain within," Mr Simpson said. □

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b/g fired

CT 14/9/91

Probe into conduct of Boerevolk lawyer

Staff Reporter

AN investigation into Orde Boerevolk defence lawyer Mr Wim Cornelius was launched yesterday by the Law Society of the Transvaal after complaints of alleged "professional misconduct" regarding events around the three hunger strikers

Mr Cornelius represented the hunger-striking trio of Mr Henry Martin, Mr. Adriaan Maritz and Dr Lood van Schalkwyk, who apparently refused food for 63, 56 and 49 days respectively

A Law Society official said yesterday that investigations were being launched after complaints about professional misconduct relating to the three hunger strikers had been filed.

The official would not be specific over the nature of the complaints or who had filed them.

Mr Cornelius could not be contacted for comment last night

Bar Council rejects new bill

Own Correspondent

JOHANNESBURG — The General Council of the Bar yesterday rejected a bill empowering the Supreme Court to permit an attorney appointed by the judge president to act as an advocate

The council, which represents advocates in South Africa, said the amendment to the Admission of Advocates Act was "ill-conceived, badly timed and unnecessary"

Workers, hit man 'killed 5'

By MARTIN NTSOELENGOE

CHILLING evidence of how five scabs were gunned down in cold blood was heard in the Rand Supreme Court this week Citizen 15/9/91

The murders follow an illegal strike allegedly initiated by members of the National Union of Metalworkers of South Africa (Numsa) at Haggie Rand, Cleveland, in October 1989 252

Appearing before judge Du Plessis and two assessors are Richard Khazamula Ngobeni, 38, Jeffrey Sipho Mtshali, 34, Malvert Ngubane, 40, Malan Khumalo, 42, Joseph Mdumiseni Bhengu, 24, and Samuel Kgosiekgolo Malepo, 39

The accused pleaded not guilty to five counts of murder, nine attempted murders and two of arson The State alleges five of them were employed by Haggie Rand, while Bhengu was a hired hit man

A State witness, who may not be named, said he was ordered by Ngobeni and Khumalo to hunt down scabs

The State alleges that on November 24, 1989, Khumalo and Bhengu attempted to kill Abel Matsapo near the Haggie Rand Jupiter Hostel

It further alleges that on December 6, 1989, Ngubane, Khumalo and Bhengu attempted to murder Johannes Mabaso

On January 27 last year, Ngubane and Khumalo allegedly shot dead Samuel Ntshuntsha and attempted to kill Lawrence Maseko and Abram Mbatha'

On March 28, Khumalo, Bhengu and Malepo allegedly shot dead Bernard Marakane in Katlehong

On April 3 last year, Khumalo and Bhengu allegedly shot dead Dugmore Bongani April in Thembisa

Fourteen days later Mtshali and Khumalo allegedly shot dead Meshack Bhekuyise Mabizela The next night Mtshali and Khumalo allegedly attempted to shoot dead Elias Ntsibanyoni

Last April, Ngobeni, Khumalo and Malepo allegedly shot dead James Mokoena Mothokoa

Law Society investigates their attorney's conduct

By DE WET POTGIETER

THE Law Society of Transvaal has launched an investigation into the conduct of Pretoria attorney Wim Cornelius, who represented the three right-wing hunger strikers.

The vice-president of the society, Mr Tony Hutchinson, confirmed yesterday that "the wheels had been set into motion" to probe certain actions of Mr Cornelius.

"If any transgression of any rules or regulations of the Law Society has taken place, appropriate steps will be taken against Mr Cornelius," Mr Hutchinson said.

Among the questions raised about Mr Cornelius's conduct were statements on behalf of his clients on several occasions claiming that they were near death.

On August 15, Mr Cornelius stated publicly that the starving trio at that stage virtually had only "several hours" left to live.

Mr Cornelius also compared the conditions of Henry Martin, Lood van Schalkwyk and Adrian Maritz to Belsen concentration camp victims.

After the first pictures of the "dying" activists were published a week ago, doubts about the seriousness of their condition, as claimed by Mr Cornelius, increased further. Mr Cornelius's claims were publicly challenged by Democratic Party MP Peter Gastrow.

In addition, an official medical report published this week denied that the three men were at any time in danger of dying.

Mr Cornelius, a well-known legal adviser in right-wing circles, was also involved in the much-publicised representation to President FW de Klerk for an indemnity for convicted mass murderer Barend "Wit Wolf" Strydom.

Changing face of the Bench

S/Times 15/9/91

CATHY STAGG weighs the arguments in favour of making the judiciary more representative of the new South Africa

(252)

THERE are 141 permanent judges and 11 acting judges in South Africa There is one woman judge and one black judge The judiciary, to put it mildly, does not represent the diversity of our population

Lawyers agree that if the present system of selecting judges is adhered to, it will take decades before the predominantly white male face of the judiciary is substantially changed

The question is, does it matter?

There are two schools of thought on the question

One is that provided the judges are fair and efficient, it makes no difference what their gender, race or background may be Our justice system has been internationally recognised, so why tamper with it?

Others argue that to a large portion of the population, fairly or unfairly, justice is seen as "white man's business" They urge that something should be done about the crisis of legitimacy facing the judiciary

At the Bar Council conference in Durban recently, the keynote speaker — Canadian appeal court judge Madame Justice Louise Abour — said there was no doubt that gender, race, class, upbringing and natural tastes and talents of judges would contribute to their views of the world and the outcome of a particular case

"Pluralism on the Bench not only increases the public's perception that the courts are a fair and responsive forum, it also brings to official adjudication a point of view that would otherwise be absent," she said

This applied particularly to appelate adjudication, she said, where collegial deliberation was the norm and listening to a different point of view increased impartiality by forcing a confrontation with cultural bias

Judge Abour only learnt to speak English when she took up law As a Francophone Catholic from Quebec, she knows about the expectations which the public sometimes holds

Attending law school and making one's way up through the ranks of the legal profession to the Bench would hardly produce a revolutionary, she said Yet diversity was desirable

In South Africa, a judge is appointed because the Minister of Justice deems that person to be suitable So, in theory, there is nothing to stop even a non-lawyer being appointed But in practice, judges are usually chosen only from the ranks of senior advocates

To become a senior advocate, one needs not only many years' experience at the Bar but also access to big, important and complicated cases Litigation is expensive and the clients tend to be captains of commerce and industry — usually white men more at ease dealing with other white men

No amount of affirmative action in the legal field is going to change this until women and blacks hold positions of power in commerce and industry

So should the pool from which judges are chosen be widened?

Opinion is divided on whether academics, attorneys, members of the staff of attorneys-general and regional court magistrates should be candidates for judicial appointment

Traditionalists believe that advocates, who are independent, make the best judges

Milton Seligson SC, chairman of the General Bar Council, agrees with the traditional approach that judges be appointed from the ranks of senior counsel But he is in favour of the Bar being representative of the broader community which it serves He would like to see more blacks and women, chosen on merit, being appointed to the judiciary

Many attorneys feel they have just as much experience as advocates, apart from appearing in the Supreme Court Mr Ed Southey, chairman of the Association of Law Societies, said "There are very many senior attorneys — more than senior advocates — who have the standing, integrity, qualification and experience to hold judicial office with distinction"

Academics have no "hands on" Supreme Court experience and the traditionalists feel this disqualifies them for judicial appointment But some lawyers feel that the research skills of academics should not be overlooked and that they could play a useful role, particularly in future, should the country have a constitutional court

Those against the appointment of members of the Attorney-General's staff stress that they are criminal law specialists — and only prosecute.

On the other hand, it is pointed out that specialisation in tax law, patents or other particular fields have not been a barrier to senior advocates becoming judges who adjudicate in other fields of law, including criminal trials which they may have last tackled 20 or more years ago as juniors. Yet these judges are able to make the adjustment quite easily

Another argument advanced in favour of members of the staff of attorneys-general being eligible for judicial appointment is that deputy attorneys-general regularly take decisions on whether to prosecute or not, considering the possibility that the accused is innocent without any representation

Magistrates, too, are regarded by some as mere public servants who only have expertise in narrow fields of law and who are negatively associated in the public mind for imposing unpopular laws But the counter viewpoint is that top magistrates might have as much to offer as judges

The only issue on which all lawyers seem to be united is that whoever becomes a judge must be someone with the correct legal training and many years' experience No one wants to have political hacks appointed to the Bench

The Human Rights Commission focuses on what constitutes a political offence

Is defence of apartheid defensible?

252 Star 16/9/91

THE HRC has long held the view that a political prisoner in the South African context is one who finds himself or herself in prison as a direct result of involvement in resistance to the system of apartheid.

This simple definition is not in conflict with the criteria agreed on by the ANC and the Government in Pretoria on August 6 1990 and would, for example, exclude anyone who acted in his own self-interest rather than promoting the cause of the demise of apartheid It would not exclude, as the Pretoria Minute does not, the element of violence in any act of resistance. So the issue is clear, even if the Government has chosen to fudge it, and continues to act in an inconsistent manner

Leaving that aside for the moment, we need to address a related but, in fact, totally separate issue. The issue is simply whether acts committed in support of, or in furtherance of, the system of apartheid should also be regarded as political offences, and their perpetrators be given the same consideration and treatment as anti-apartheid "offenders".

Here, again, the simple HRC definition is clear, since it is based on the universally held perception that apartheid is a crime against humanity and has indeed been declared as such. Acts in support of apartheid cannot be seen in the same light as those in resistance to apartheid.

Acts of support for apartheid take us into the realm not only of right-wing terrorism, so much in focus recently, but also of hit-squad assassinations, security police torture and many other crimes committed in defence of apartheid power. To grant pardon or indemnity for such crimes falls outside the moral or even legal right of the existing Government, and for two reasons in particular.

The one is that this Government and its progenitors bear direct responsibility for creating the system that engineered or encouraged these crimes. The other is that this Government has thus far shown no sign of remorse, accepted no moral responsibility, for the devastating consequences of apartheid and the crimes committed in its name. "An experiment that has failed", is as far as it is prepared to go.

How then can it make judgments on the culpability of individuals, who in a sense were also the victims of apartheid, witting or unwitting tools of a system rooted in apartheid power?

Such judgments can only fall to some future government which has no interest in maintaining apartheid power, or at the very least to an interim government which enjoys legitimacy independent of apartheid power — but there is now increasing urgency about the necessity to take decisions of this kind.

Lest the above remarks be misconstrued, the HRC hastens to say that it will be in the forefront of those who support a climate of reconciliation, a putting behind of the past in order to get on with the task of building a new and democratic South Africa □

Train case accused are freed

IN SPITE of evidence linking five unemployed Zulu hostel dwellers to SA's worst train massacre in September last year, the case has been struck off the court roll and the accused freed

The evidence is based on statements made by the accused, their "pointing out" physical details relating to the attack at the scenes of the crimes, their producing weapons — one of which was linked to the killings through SAP ballistic tests — and an identification parade

The five men were arrested at the end of September last year after two incidents. In the first, on September 6, armed men opened fire at a crowded Jeppe Station taxi rank, killing six people. A week later a group of armed men boarded a peak hour Soweto-bound train and opened fire on commuters, killing 15.

The five were charged with 21 counts of murder and 45 of attempted murder, but pleaded not guilty (252)

PATRICK BULGER

State advocate H J Broodryk said yesterday police investigations were continuing and that the matter could still come before court

The men were granted bail of R20 000 each following a successful application before Mr Justice Spoelstra in the Rand Supreme Court on December 24 last year

Broodryk said the case had been struck off the roll after a magistrate refused a request at the end of May for a further remand because police had not collected sufficient evidence for the case to proceed.

The accused were also contesting the validity of their statements, alleging that these had been extracted under torture

☐ To Page 2

B Day 17/9/91

Train case

B Day 17/9/91

Recently a sixth man, alleged to be one of three leaders of the attacks, was arrested and released on bail

Charges had not been withdrawn.

In arguing against the bail application, prosecutor Herman de Beer said the bail money was not being paid by the accused themselves and that they had nothing to lose financially by not appearing for trial.

Freeing them would unite them with other members of their gang and enable them to continue killing.

The five men — Martin Ngcobo, 49, Basi Nkosingondile, 27, Mmengela Magabane, 54, Solomon Khumalo, 33, and Mabinela Mazozi, 23 — subsequently hired a lawyer. The lawyer, Ian Small-Smith, said the men had raised bail by collecting money from hostel dwellers

(252)

☐ From Page 1

It is understood that the men have made statements to police saying they were angered by commuters singing anti-Inkatha songs on trains

De Beer, in opposing bail, said a magistrate had heard evidence linking all the accused with the crimes

The judge said the State had not indicated when the case would be brought to court and that the men could not be deprived of their freedom indefinitely

He agreed to R20 000 bail each and ordered that they report to Jeppe police station twice a day However, just over a week later Jeppe police station commander Capt N de Wet informed Johannesburg's chief magistrate that none of the accused had complied with their bail conditions

22 600 fail to appear in court

(252)

ARG 17/9/91

LIBBY PEACOCK
Court Reporter

A STAGGERING 16 870 people charged with traffic offences and 5 800 in criminal matters have failed to appear in Cape Town's lower courts this year —and magistrates are cracking down on the culprits with heavy fines

Negligence and forgetfulness cost time and money, Cape Town Magistrate's Court magistrate Mr B J van Eck said.

Warrants of arrest had to be issued for those who failed to appear and the extra paperwork multiplied the workload three-fold.

The maximum sentence for failing to appear is a R300 fine or three months' imprisonment.

People who failed to appear did not usually intend wasting the court's time, but were negligent, inconsiderate, forgetful or "too tied up in their work".

"In Court 16, which deals with petty crimes such as loitering and prostitution, only about one percent of people come to court"

He ascribed the high figure partly to ignorence of the law.

Chief magistrate Mr W P Theron said people's failure to appear in court had a destructive effect on the roll.

Court figures show that 5 868 arrest warrants were issued between January 1 and last week for 'no-shows in Cape Town's magistrates' and regional courts; last year 6 870 warrants were issued.

Even more traffic offenders fail to appear.

Between January 1 and last week 10 370 people failed to appear in the traffic court

Mr Gert van Rheede, clerk of the municipal court, said about 65 percent of people summonsed to the traffic court failed to appear

"Our big problem is taxis. The drivers often give false names and addresses. People just have no respect," Mr Van Rheede said.

My clients were at death's door, insists lawyer

The Argus Correspondent

PRETORIA — The lawyer representing three Orde Boerevolk "hunger-strikers", Mr Wim Cornelius, is confident he has broken no professional or ethical rule — and has stuck by his earlier comments that his clients were "on the verge of death"

Mr Cornelius is to be investigated by the Law Society of the Transvaal for his statements on behalf of his clients on several occasions claiming they were near death The investigation begins tomorrow, Mr Cornelius said.

Henry Martin, Adrian Maritz and Lood van Schalkwyk stopped their fast a week ago and were pictured eating heartily in a Sunday newspaper over the weekend

The strike has been widely criticised as a media ploy and claims have been made that the men did take nutrients

Medical reports showed minor damage had been caused to vital organs — but medical experts have maintained the strikers should have been in a far worse condition if they were receiving no nutrition for so long

However, Mr Cornelius hit back at the media yesterday, saying he had no fear concerning his future as a lawyer.

"I am tabling all my documents and notes before the Law Society and I believe I acted professionally and ethically at all times. In fact, I approached the Law Society before to ask how I should handle the media explosion over the hunger-strikers"

Witness fails to pick out police he accused

252

Own Correspondent Star 18/9/91

MARITZBURG — Sipho Madlala, key witness in the inquest into the death of Chief Mhlabunzima Maphumulo, yesterday failed to correctly identify, during a courtroom line-up, two security policemen whom he claimed in earlier evidence were involved in aspects of the chief's murder.

Mr Madlala has implicated himself and members of the security and military police in the murder of Chief Maphumulo, who was gunned down at his Havelock Road home in Maritzburg on February 26

In earlier evidence, he referred to two special branch policemen, Sergeant van Tonder and Warrant Officer van Rooyen.

He said Warrant Officer van Rooyen had driven the getaway car after the fatal shooting of the chief.

He named Sergeant van Tonder as one of the policemen who was later involved in a plan to leak misleading information to the press

However, during yesterday's courtroom line-up of five policemen, Mr Madlala wrongly identified one of the men as Sergeant van Tonder and failed to recognise the true Sergeant van Tonder in the court.

Asked by Mr Kobus Booyens SC, representing the South African Police, whether he could identify Warrant Officer van Rooyen, Mr Madlala said he could not see Van Rooyen in the line-up

Warrant Officer van Rooyen was in fact the second policeman in the line-up, but Mr Madlala said he had never seen him before

Mr Madlala said his big problem was that "they all tend to look alike".

(Proceeding)

Bill allowing attorneys to act as advocates 'ill-timed'

B/Day 19/9/97 (252)

THE General Council of the Bar yesterday rejected a Bill empowering the Supreme Court to permit an attorney appointed by the Judge President to act as an advocate

The council, which represents advocates in SA, said the ammendment to the Admission of Advocates Act was "ill-conceived, badly timed and unnecessary"

TIM COHEN

But Association of Law Societies president Ed Southey welcomed the Bill and said it did not go far enough

The present Act allows a judge to permit an attorney to discharge the functions of an advocate "if there is no advocate available or willing to act"

The Bill removes the limitation and empowers a judge to permit an attorney to appear before him even if there is an advocate available and willing to act.

The council said this was a radical departure from the existing system, which denied attorneys a right of audience in the Supreme Court other than in the most exceptional cases

Southey said the Act had provided a chink in the armour of the advocates' monopoly, but was very seldom used The passing of the Bill would be the first substantial crack

However, Southey said the association thought the Bill did not go far enough Suitably qualified attorneys should have the right to appear without having to be called by a judge

In its statement, the council said explanatory memorandum accompanying the Bill alleged that "available advocates do not always have sufficient experience or the capability to appear in certain specialised cases or in cases of a serious and complicated nature in the Supreme Court"

"The notion that the advocates who are available lack sufficient experience or the capability to appear in certain specialised cases, or those of a serious and complex nature in the Supreme Court, but that there are attorneys available who do, is ludicrous and without factual foundation," the statement said

"It is well known that invariably it is the advocates who have specialist skills and experience in litigation Even where attorneys have a right of appearance before certain specialised tribunals presided over by a judge, they virtually never exercise that right in practice"

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SA seeks ways to enter the human rights fold

Star 11/9/91
252

South Africa is investigating what steps would enable it to meet international requirements on human rights, and investigating how other countries implement these rights, reports ESTHER WAUGH of the Political Staff.

WITH the improvement of human rights in South Africa already widely acknowledged, South Africa is considering associating with the Universal Declaration of Human Rights and acceding to other human rights conventions

"It must be done in good faith — not as a gimmick," says Gert Grobler, director of the Multi-Lateral Political and Humanitarian Affairs Directorate at the Department of Foreign Affairs

Mr Grobler adds "In the international community the conviction existed over the years that human rights in South Africa were being contravened — this was also the conviction of a great number of people in South Africa

"I believe with the scrapping of apartheid laws and the reform process, we can now associate ourselves with the declaration's principles"

During 1985 and 1986 a gradual realisation dawned that the attiude towards human rights in South Africa was causing increasing problems for the country "South Africa was put to a lot of criticism in various forums throughout the world

"After 1986 there was a very definite change of heart"

"There is virtually a universal acceptance in South Africa today that we should respect human rights

"We are paying more attention to human rights, not to facilitate our entry into the rest of the world, but because they are norms in any democratic society and a moral necessity

"These are the important factors for us switching our approach and wanting to adhere to sound implementation of human rights

"The South African Law Commision's final report therefore advocates the acceptance, as part of a new constitution, of an honest complete charter of human rights which is judiciable by an independent bench and which is based on the principle of equality of all people before the law"

The directorate is collecting information abroad which would enable South Africa to meet international requirements on human rights and investigating how other countries implement these rights

It is also looking into which human rights conventions the country could accede to or ratify since the abolition of apartheid legislation in consultation with other Government departments

As a result of renewed contact during the last year with many organisations which shunned South Africa as a result of its apartheid policies, the spotlight has fallen on the directorate — which is preparing South Africa for her re-entry into international organisations and joining international agreements

Crossed

Referring to the agreement between the United Nations High Commissioner for Refugees and the Government, Mr Grobler said "We have crossed the threshold in a sense in that we now have an agreement with one of the UN's agencies We are moving back but obviously the time is not yet ripe to have fully fledged relations We don't want to be rebuffed It is like a ripe fruit which cannot be squeezed"

Mr Grobler said the timing of the joining of international bodies would be determined by domestic political developments and mainly by progress made in the negotiations process

Meanwhile possibilities, such as dialogue and attending international conferences as observers, existed

The last year also witnessed a greater interest by organisations to send representatives to South Africa on fact-finding missions

Today's world is characterised by significant and profound changes, not only in relationships between nations but also within nations and communities, he said These changes during the last year have resulted in growing inter-dependence among nations and a blurring of the traditional division between internal and foreign interest stakes

South Africa could no longer avoid the necessity of achieving harmony internally and with the rest of the world, Mr Grobler said

No State could today rely only on domestic resources to meet the growing demands of welfare and security Secondly, many compelling issues such as environmental concerns, human rights and disarmourment, define the "spirit of our time" and with which the nations of the world will increasingly have to align themselves

For these reasons, and after decades of limited international interaction, the department will have to investigate ways of gradually moving back into international organisations No state will be able to realise its national interests and goals if it remains outside the mainstream of international life Hence the revival and expansion of the department s multi-lateral division

"Perhaps the time is not quite right but that does not mean we should not try to enter into dialogue with these organisations

"Take the United Nations We have the problem in South Africa that there is a very negative perception about the UN in the country

"We should change our attitude and consider how we can use the UN, employ the UN to our benefit, he said □

Amendment plan 'ludicrous'

Star 19/9/91

(252)

CAPE TOWN — A proposal to change the law in order to allow judges to appoint attorneys to appear in the Supreme Court even when there were advocates available, was ill-conceived, unnecessary and based on ludicrous reasoning, the General Council of the Bar said in a statement yesterday

The Council said the Admission of Advocates Amendment Bill, which was published recently, represented "a piecemeal tampering with our legal system" and urged that it be dropped

At present, the Admission of Advocates Act gave a judge discretion to permit an attorney to perform the functions of an advocate if there was no advocate available or willing to act

Under the amending Bill a judge would be able to permit an attorney to appear before him in the Supreme Court even if an advocate were available and willing

"The amendment therefore proposes a radical departure from the existing system whereunder attorneys do not enjoy a right of audience in the Supreme Court, other than in the most exceptional circumstances"

The explanatory memorandum to the Bill claimed that available advocates did not always have sufficient experience for specialised or complex cases in the Supreme Court

"The notion that the advocates who are available lack sufficient experience to appear in such cases but that there are attorneys available who do, is ludicrous and without factual foundation"

As far as the Council was able to ascertain, the judiciary had not been consulted in advance about the Bill, nor did they support it The existing law allowed sufficient flexibility and gave the court a sufficiently wide discretion to appoint an attorney to appear where this was essential — Sapa

wines
gold's weakness
preference dividends

Cape Times, Friday, September 20 1991

Tough Bill to stamp out bribes

Political Correspondent

A TOUGH new Bill designed to stamp out bribery and corruption was tabled in Parliament yesterday

The Corruption Bill, which is based on recommendations of the SA Law Commission's report on bribery, aims to "criminalise corruption anew in order to provide for proper combating of that evil"

The short Bill avoids elaborate definitions in a bid to prevent restricting the categories of persons who may be bribed

It also envisages providing for those instances where a benefit is offered to persons other than the bribee himself or his family

Implications for homelands

The Bill, which will be considered by Parliament in 1992, also proposes criminalising corruption committed outside the Republic of South Africa if this has an effect inside the country

This could have major implications for acts or alleged acts of corruption committed inside the "independent" TBVC homelands, in particular.

The Corruption Bill also envisages providing for an "unlimited discretion" in the assessment of sentence within the punitive jurisdiction of the court concerned

A memorandum attached to the Bill states that "all interested parties" were consulted by the SA Law Commission during its investigation

ADVICE

ARG 20/9/91

A giant LEAP for legal rights in rural areas

252

The Legal Education Action Project (LEAP) was established to train community-based legal advisers in the rural areas. Staff Reporter DAVID YUTAR tells how these advisers or para-legals are equipped to give basic legal advice and assistance as well as to educate communities on their legal rights.

OUT of the burnt-out remains of Crossroads in 1986, the beginnings of an ambitious and far-reaching legal rights and training programme were born

The Legal Education Action Project (LEAP) was an initiative by the Institute of Criminology to rally to the assistance of victims of township factional violence

UCT's Criminology Institute director, Mr Wilfried Schärf, describes LEAP as the "systematic spreading of a rights culture in rural areas which endeavours to compensate for the inadequacy of legal services in these areas"

Mr Schärf says the LEAP programme was designed to address the problem of the majority of black people being without legal resources because of lack of finance and and societal prejudice

"The reality is that if a black person has a problem which needs to be solved through recourse to the court system, most rural attorneys are not prepared to take on the matter," says Mr Schärf

He points out that too often such attorneys are dependent on work from local companies and employers and are reluctant to jeopardise this dependable source of work by acting for parties traditionally outside of or in opposition to the establishment

After the Crossroads violence of 1986, the institute began to recruit volunteers to take statements from refugees of Crossroads and KTC

The project continued to work for victims of repression during the successive states of emergency in the late '80s

"Because the professional community had not responded in a proactive way, we worked with the Legal Resources Centre to distribute work to a dozen or more firms of attorneys, each of which would take on about 200 cases," explains Mr Schärf

One result of this drive was the four-year court battle for KTC, which resulted in a recent payout for R1,5 million to township dwellers made homeless by township violence

Another was the formation of LEAP to try to come to the help of communities needing legal assistance and protection

"The project started from being a 'legal ambulance' during the emergency phase (when para-legals would go out with cameras and word processors and teach the community what to look out for) to a far broader and more comprehensive watchdog service"

he result was an upsurge of cases in which abuses of power were brought to the notice of the courts and the public

LEAP co-ordinator Beatty Hofmeyr says LEAP has now shifted its focus to the training of rural community advisers and para-legals.

"These para-legals try to educate their communities about their legal rights and give basic legal advice," she says

"They also act as a link between rural areas and urban resources"

NOTICE 860 OF 1991

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

1 I, David de Villiers Graaff, Deputy Minister of Trade and Industry and Tourism, acting on behalf of the Minister of Trade and Industry and Tourism, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 232 of 30 March 1990 which report was published in Notice 164 of 1991 and being of the opinion that it is in the public interest, do hereby declare, by virtue of the powers vested in me by section 12 (6) of the Harmful Business Practice Act, (Act No 71 of 1988), the business practice set out in paragraph 2 to be unlawful

2 The business practice referred to in paragraph 1 is any business practice whereby any person—

(a) helps any credit receiver to breach a credit agreement, or

(b) excepting the credit grantor or with the permission of the credit grantor, purports to arrange the transfer to another person of the rights or obligations of a credit receiver under a credit agreement

D. GRAAFF,
Deputy Minister of Trade and Industry and Tourism
(20 September 1991)

KENNISGEWING 860 VAN 1991

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

1 Ek, David de Villiers Graaff, Adjunkminister van Handel en Nywerheid en Toerisme, handelende namens die Minister van Handel en Nywerheid en Toerisme, is na oorweging van 'n verslag deur die Sakepraktykekomitee na aanleiding van 'n ondersoek waarvan in Kennisgewing 232 van 30 Maart 1990 kennis gegee is, welke verslag in Kennisgewing 164 van 1991 gepubliseer is, van oordeel dat dit in die openbare belang is, en verklaar hiermee ingevolge die bevoegdheid kragtens artikel 12 (6) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No 71 van 1988) aan my verleen, die sakepraktyk soos in paragraaf 2 uiteengesit onwettig.

2 Die sakepraktyk in paragraaf 1 vermeld is enige sakepraktyk waarby enige persoon—

(a) enige kredietopnemer behulpsaam is met die verbreking van 'n kredietooreenkoms, of

(b) uitgesonderd die kredietgewer of met die toestemming van die kredietgewer, voorgee om die oordrag van die regte of verpligtinge van 'n kredietopnemer kragtens 'n kredietooreenkoms na 'n ander persoon, te reël

D. GRAAFF,
Adjunkminister van Handel en Nywerheid en Toerisme
(20 September 1991)

NOTICE 861 OF 1991

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DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

Die Director-General Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No. 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons.

KENNISGEWING 861 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone

SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Bottoman	Lancaster Ntozakhe	1956–08–11
Buthelezi	Jabu Phillip	1963–07–18
Coleman	Catherine Lovey	1954–09–20
Dlamini	Charles	1972–08–18
Dludlu	Bethuel Petros	1969–11–05
Dludlu	Merica Phumzile	1961–09–16
Hlatshwayo	Sipho Limmit	1972–12–23

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Hlophe	Hamilton Vusumuzi	1971–08–18
Jandick	Gloria	1965–05–06
Jele	Tshimane Charles	1970–01–01
Khoza	Alfred Majawodwa	1975–04–29
Khoza	Mphumelelo Christopher	1973–03–23
Khoza	Richard Douglas	1972–09–11
Khumalo	Fanny	1969–03–31
Kubayi	Steven Fanoty	1972–03–03
Kuhlane	Dumisani Welington	1973–11–20
Lubisi	Abdul James	1972–11–26
Luphoko	Ephrium Phelemba	1969–04–03
Mabaso	Laurence	1975–11–17
Madontsela	Busangani Josiah	1970–03–26
Magagula	Sakkie Site	1971–03–26
Magwaza	Bongani	1974–08–23
Mahlalela	Sipho Absolom	1972–08–22
Mahlalela	Titus Senzele	1970–10–03
Makamo	Collen Bhekithemba	1970–11–22
Makhubela	Orphan	1975–08–09
Mamani	Phindiwe Ethel	1964–11–12
Maphukatha	Xolani	1971–04–15
Martins	Siyabulela	1970–01–04
Masemola	Fanny Robsin	1971–06–14
Mashabane	Alpha Mandla	1970–03–22
Mashego	Jerry Thibeni	1967–09–13
Mashele	Johane Peter	1972–05–26
Mashele	Lucas Hleki	1962–01–16
Masilela	Ernel Majawondua	1975–09–02
Masimong	Steward Khotso	1972–06–12
Masinga	Benjamin	1953–10–31
Mataung	Fano	—
Mathe	Clara Maropeng	1960–09–12
Mathebula	Robert Thulani	1973–07–13
Mazibuko	Bhekizwe Sipriam	1972–06–06
Mbatha	Boneni Pelstin	1971–03–13
Mbele	Vusi	1975–06–01
Mbuyisa	Robert Alex	1968–02–20
Mgumane	Solomon	1939–10–26
Mhlongo	Patric David	1973–02–09
Mkhabela	Tsepo Henry	1976–01–29
Mlangeni	Wiseman Simpiwe	1970–12–07
Mndebele	I. Vusi	1957–01–07
Moboeneng	Paul Thulani	1971–08–14
Mohlamonyane	Philemon Ramothogelo	1951–12–01
Mthembu	Vusi Gumugumu	1972–06–22
Nala	Themba	1953–01–01
Ndashe	Lucky Jabulane	1972–05–02
Ndhovu	Elvis Russel	1967–12–07
Ndlovu	Moses Thulani	1971–10–23
Ndlovu	Simon Kubanjwa	1973–02–02
Ngwamba	Musa	1975–02–28
Nkabinde	Jabulani Gabriel	1957–06–10

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Nkosi	Madoda Alex	1951–11–30
Nkosi	Sharon Thandekile	1970–11–15
Nkosibomvu	Layiso	1967–12–08
Nsingwane	Florence Busie	1976–02–15
Ntho	Samuel	1970–07–27
Ntimane	Nelson Simangaliso	1972–07–05
Nyambi	Noah Alfred	1968–10–19
Nyawose	Keke Lungelo	1973–02–05
Ohoboshiyane	Siphokazi Elizabeth	1974–07–23
Pompi	Huddleston	1969–12–17
Sambo	Alfred Galelo	1965–04–07
Sambo	Thandi Winnie	1975–02–15
Seroto	Joyce	1961–07–23
Shabagu	Lucky Nhlanhla	1970–12–14
Shabangu	Douglas Jabu	1973–08–02
Shisano	Jabulani Churchil	1972–03–03
Shonge	Siyabonga	1972–10–25
Sibitane	Basie Helen	1970–01–21
Sibiya	Patrick Nosho	1965–11–21
Sibiya	Paulos Makhunda	1972–08–05
Simelane	Andrew Bongani	1974–05–05
Simelane	Sakhile Riginald	1971–05–18
Simelane	Soliwe Henry	1960–12–30
Sithole	Mandla Welcome	1971–09–23
Songqushwa	Obrey Sipho	1970–08–01
Tema	Thembinkosi Jabulani	1962–08–23
Thanda	Mbuyisele France	1973–07–27
Thengile	Hamilton Sandile	1966–01–03
Thumbathi	Nhlakaniphe Alfred	1970
Zulu	Evelinah Nozipho	1976–08–14

(20 September 1991)

NOTICE 862 OF 1991

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DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development, and

KENNISGEWING 862 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No 501 van 6 Maart 1991 onderskryf het; en

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No 74 of 1982), as the case may be

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No 74 van 1982), na gelang van die geval

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SCHEDULE • BYLAE

Surname Van	Full christian names Volle voorname	Date of birth Geboortedatum
Allie	Abdul Ra'oof Faqi	1961–05–05
Buthelezi	Agri	1974–05–30
Cele	Mondli	1969–09–27
Dube	Eric Mahdla	1960–08–27
Jilaji	Christian Ndoda	1958–04–16
Khulekane	John Ndlela	1972–07–01
Khumalo	Brian S'Khumbuzo	1971–12–20
Lekoape	Patrick	1932–09–25
Luthuli	Lucky Stanly	1967–09–20
Madiba	Gidion Thabo	1972–07–16
Magidela	Simphiwe	1968–03–14
Magubane	Nompumelelo	1962–01–06
Mashigo	Elvis Motlemeng	1965–05–11
Mashiya	Vusimuzi	1969–04–04
Masisi	Philemon Serame J.	1958–12–26
Masiya	Abraham Fanizane	1950–04–12
Matutu	Mvikeli	1957–08–11
Maxam	Moses Zamani	1927–02–11
Mdladla	Thabane Marvin	1972–12–24
Mjiyako	Bridgett Siphiwe	1959–11–21
Mlambo	Dumisane	1975–07–16
Mogoba	Sedibane Emmanuel	1942–06–19
Molate	Goodman Makgapa	1961–04–17
Moloi	Sam Tshakolo	1970–12–21
Moola	Lucky Ali	1973–05–07
Moripe	Tebogo	1968–01–18
Mthethwa	Mandla Wellington	1964–12–24
Mzimola	Mthokozisi	1967
Ndlovu	Sifiso	1971–10–10
Nene	Emanuel Thulane	1964–11–07
Ngwenya	Sipho Josia	1960–04–04
Oor	Olesitse Clement	1964–04–01
Sebogodi	Majafa	1948–10–22
Shabangu	Knowledge Mafotha	1973–04–08
Skomolo	Xoliswa Margaret	1944–02–27
Sondlo	Mercy Nobayeni	1966–01–09
Zwane	Duncan Bongeni	1970–03–23

(20 September 1991)

NOTICE 863 OF 1991

NOTICE OF APPLICATION FOR APPROVAL FOR THE ERECTION OF A NEW ABATTOIR IN TERMS OF SECTION 12 (1) OF THE ABATTOIR INDUSTRY ACT, 1976 (ACT No 54 OF 1976)

It is hereby made known in terms of section 12 (1) of the Abattoir Industry Act, 1976 (Act No 54 of 1976), that Mr L J van der Merwe, has in terms of section 11 of the said Act applied to the Minister of Agriculture for approval for the erection of a new abattoir on the remainder of subdivision 22 of the farm Paapkuils Fontein 819 Estcourt

If the application is granted, the abattoir will be used for the slaughter of 8 units per day for supplying meat to the abattoir owner and other dealers

Any person intending to submit representations or objections in regard to the above-mentioned application shall forward such representations or objections to the Chairman, Abattoir Commission, Private Bag X250, Pretoria, 0001, within a period of 30 days from the date of publication of this notice and in the manner set out in the regulations published under the said Act

Attention is invited to the provisions of regulation 11 (6) of the said regulations which require any person who submits objections to an application to the Minister to serve on the applicant concerned a copy of the document in which his objections are set out.

Note The Regulations require that objections be affirmed under oath and submitted in triplicate

(20 September 1991)

KENNISGEWING 863 VAN 1991

KENNISGEWING VAN AANSOEK OM GOEDKEURING VIR DIE OPRIGTING VAN 'N NUWE ABATTOIR KRAGTENS ARTIKEL 12 (1) VAN DIE WET OP DIE ABATTOIRBEDRYF, 1976 (WET No 54 VAN 1976)

Kennis geskied hiermee kragtens artikel 12 (1) van die Wet op die Abattoirbedryf, 1976 (Wet No 54 van 1976), dat mnr L. J van der Merwe, kragtens artikel 11 van genoemde Wet by die Minister van Landbou aansoek gedoen het om goedkeuring vir die oprigting van 'n nuwe abattoir te restant van onderverdeling 22 van die plaas Paapkuils Fontein 819 Estcourt

Indien die aansoek toegestaan word, sal die abattoir gebruik word vir 8 eenhede dag vir die voorsiening van vleis aan die abattoireienaar en ander handelaars

Iemand wat vertoe of besware in verband met bogenoemde aansoek wil rig, moet sodanige vertoe of besware aan die Voorsitter, Abattoirkommissie, Privaat Sak X250, Pretoria, 0001, rig binne 'n tyderk van 30 dae vanaf datum van publikasie van hierdie kennisgewing en op die wyse uiteengesit in die regulasies kragtens genoemde Wet uitgevaardig.

Aandag word gevestig op die bepalings van regulasie 11 (6) van die genoemde regulasies wat vereis dat iemand wat vertoe of besware teen 'n aansoek aan die Minister voorlê terselfdertyd 'n afskrif van die stuk waarin sy besware uiteengesit is op die betrokke applikant moet bestel

L W. Regulasies vereis dat besware onder eed bevestig en in drievoud voorgelê moet word

(20 September 1991)

NOTICE 864 OF 1991

DEPARTMENT OF MANPOWER

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LABOUR RELATIONS ACT, 1956

APPLICATION FOR VARIATION OF SCOPE OF REGISTRATION OF A TRADE UNION

I, David William James, Industrial Registrar, do hereby, in terms of section 4 (2) as applied by section 7 (5) of the Labour Relations Act, 1956, give notice that an application for the variation of its scope of registration has been received from the South African Association of Municipal Employees (Non-Political) Particulars of the application are reflected in the subjoined table

Any registered trade union which objects to the application is invited to lodge its objection in writing with me, c/o the Department of Manpower, 123A Manpower Building, 215 Schoeman Street, Pretoria (postal address Private Bag X117, Pretoria, 0001), within one month of the date of publication of this notice

TABLE

Name of trade union South African Association of Municipal Employees (Non-Political).

Date on which application was lodged 22 July 1991

KENNISGEWING 864 VAN 1991

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

AANSOEK OM VERANDERING VAN DIE REGISTRASIEBESTEK VAN 'N VAKVERENIGING

Ek, David William James, Nywerheidsregistrateur, maak ingevolge artikel 4 (2) soos toegepas by artikel 7 (5) van die Wet op Arbeidsverhoudinge, 1956, hierby bekend dat 'n aansoek om die verandering van sy registrasiebestek ontvang is van die South African Association of Municipal Employees (Non-Political) Besonderhede van die aansoek word in onderstaande tabel verstrek

Enige geregistreerde vakvereniging wat teen die aansoek beswaar maak, word versoek om binne een maand na die datum van publikasie van hierdie kennisgewing sy beswaar skriftelik by my in te dien, p/a die Departement van Mannekrag, Mannekraggebou 123A, Schoemanstraat 215, Pretoria (posadres: Privaat Sak X117, Pretoria, 0001)

TABEL

Naam van vakvereniging South African Association of Municipal Employees (Non-Political)

Datum waarop aansoek ingedien is 22 Julie 1991

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Interests and area in respect of which application is made All employees, whether fully or partly paid by their respective local authorities, engaged in the service of local authorities in the Republic of South Africa, as apprentices or in posts or job categories equal to or higher than that of the most junior typist/typist clerk or clerk grade III or clerical assistant or equivalent posts/job categories in terms of any evaluation scheme

For the purposes hereof "local authority" means any municipal council, borough council, town council, village council, town board, village management board or health board or the local Government Affairs Council (previously the Transvaal Board for the Development of Peri-Urban Areas), the Development and Services Board (Natal), regional services council or any such institution, including any other institution that has by virtue of privatisation or otherwise been entrusted with duties, functions or responsibilities previously vested in a local authority

Interests and area in respect of which registration is held·

(1) European employees (other than those on relief work) of local authorities, viz municipal councils, borough councils, town councils, city councils, village councils, health boards, town boards, village management boards, local boards, divisional councils or rural councils, whether fully or partly paid by their respective local authorities in the Republic of South Africa, and

(2) White employees (excluding workers subsidised by the State) in the employ of—

(a) the Local Government Affairs Council (previously the Transvaal Board for the Development of Peri-Urban Areas), in the Province of the Transvaal, and

(b) The Development and Services Board (Natal) [previously the Local Health Commission (Natal)], in the Province of Natal as it was constituted at 22 March 1978, and

(3) White persons in the Local Authority Undertaking, as undertaken by regional services councils in the Republic of South Africa, employed by regional services councils established in terms of section 3 of the Regional Services Councils Act, No 109 of 1985

For the purposes "Local Authority Undertaking" means the undertaking in which employers and their employees are associated for instituting, continuing and finishing any act, scheme or activity which is undertaken by a regional services council in accordance with the powers vested in such authority by the applicable legislation

Postal address of applicant P O Box 35343, Menlo Park, 0102

Office address of applicant SAAME Building, 47 Selati Street, Ashlea Gardens, Pretoria

Belange en gebied ten opsigte waarvan aansoek gedoen word· Alle werknemers, hetsy sodanige werknemers ten volle of gedeeltelik deur hul onderskeie plaaslike owerhede betaal word, in diens van plaaslike owerhede in die Republiek van Suid-Afrika as vakleerlinge of in poste of werkkategoriee gelykstaande met of hoer as dié van die mees junior tikster/tiksterklerk of klerk graad III of klerklikeassistent of gelykstaande poste/werkkategoriee ingevolge enige evalueringskema.

Vir die doeleindes hiervan beteken "plaaslike owerheid" 'n munisipale raad, stadsraad, dorpsraad, dorpsbestuursraad of gesondheidsraad of die Raad op Plaaslike Bestuursaangeleenthede (voorheen die Transvaalse Raad vir die Ontwikkeling van Buitestedelike Gebiede), die Raad op Ontwikkeling en Dienste (Natal), 'n streeksdiensteraad of enige soortgelyke instelling, met inbegrip van enige ander instelling aan wie uit hoofde van privatisering of andersins pligte, werksaamhede of verantwoordelikhede toevertrou is wat voorheen by 'n plaaslike owerheid berus het

Belange en gebied ten opsigte waarvan registrasie gehou word

(1) Blanke werknemers (uitgesonderd dié wat afloswerk doen) van plaaslike owerhede, nl munisipale rade, stadsrade, grootstadsrade, dorpsrade, gesondheidsrade, dorpsbesture, plaaslike besture, afdelingsrade of landelike rade, hetsy met volle of gedeeltelike betaling deur hul onderskeie plaaslike owerhede in die Republiek van Suid-Afrika, en

(2) Blanke werknemers (uitgesonderd Staatsgesubsidieerde werkers) in diens van —

(a) die Raad op Plaaslike Bestuursaangeleenthede (voorheen die Transvaalse Raad vir die Ontwikkeling van Buitestedelike Gebiede), in die provinsie Transvaal, en

(b) die Raad op Ontwikkeling en Dienste (Natal) [voorheen die Kommissie vir Plaaslike Gesondheid (Natal)], in die provinsie Natal soos dit op 22 Maart 1978 saamgestel was; en

(3) Blanke persone in die Plaaslike Owerheidsonderneming, soos onderneem deur die streeksdiensterade in die Republiek van Suid-Afrika, in diens van streeksdiensterade ingestel kragtens artikel 3 van die Wet op Streeksdiensterade, No 109 van 1985

Vir die doeleindes hiervan beteken "Plaaslike Owerheidsonderneming" die onderneming waarin werkgewers en hul werknemers met mekaar geassosieer is vir die instelling, voortsetting en voltooiing van enige handeling, skema of werksaamheid wat deur 'n streeksdiensteraad onderneem word ooreenkomstig die bevoegdhede by die toepaslike wetgewing aan sodanige owerheid verleen

Posadres van applikant Posbus 35343, Menlo Park, 0102

Kantooradres van applikant SAAME-gebou, Selatistraat 47, Ashlea Gardens, Pretoria

Attention is drawn to the following requirements of sections 4 and 7 of the Act

(a) The representativeness of any trade union which objects to the application shall, in terms of section 4 (4), as applied by section 7 (5), be determined on the facts as they existed at the date on which the application was lodged and, as far as membership is concerned, only members who were in good standing in terms of section 1 (2) of the Act as at the aforesaid date shall be taken into consideration

(b) The procedure laid down in section 4 (2) must be followed in connection with any objection lodged

D. W. JAMES,
Industrial Registrar

(20 September 1991)

Die aandag word gevestig op onderstaande vereistes van artikels 4 en 7 van die Wet

(a) Die mate waarin 'n beswaarmakende vakvereniging verteenwoordigend is, word ingevolge artikel 4 (4), soos toegepas by artikel 7 (5), bepaal volgens die feite soos hulle bestaan het op die datum waarop die aansoek ingedien is, en wat die lidmaatskap betref, word alleen lede wat ingevolge artikel 1 (2) van die Wet op voormelde datum volwaardige lede was, in aanmerking geneem.

(b) Die prosedure voorgeskryf by artikel 4 (2) moet gevolg word in verband met 'n beswaar wat ingedien word

D. W. JAMES,
Nywerheidsregistrateur

(20 September 1991)

NOTICE 865 OF 1991

DEPARTMENT OF POSTS AND TELECOMMUNICATIONS

REVISED POSTAGE RATES TO FOREIGN COUNTRIES

It is hereby made known in terms of section 2B (3A) of the Post Office Act, 1958 (Act No 44 of 1958), that the Postmaster General, acting under section 2B (1) (e) of the said Act and with the approval of the Minister of Economic Co-ordination and Public Enterprises, has determined that the fees set out in the undermentioned Schedule are to be demanded or received in respect of the services concerned

KENNISGEWING 865 VAN 1991

DEPARTEMENT VAN POS- EN TELEKOMMUNIKASIEWESE

HERSIENE POSTARIEWE NA DIE BUITELAND

Hiermee word ingevolge artikel 2B (3A) van die Poswet, 1958 (Wet No. 44 van 1958), bekendgemaak dat die Posmeester-generaal, handelende kragtens artikel 2B (1) (e) van genoemde Wet en met die goedkeuring van die Minister van Ekonomiese Koordinering en Openbare Ondernemings, bepaal het dat die gelde uiteengesit in onderstaande Bylae ten opsigte van die betrokke dienste geeis of ontvang moet word

SCHEDULE

1.0 The Tariff for Letter-Post Articles to Foreign Countries promulgated under General Notice 239 of 15 March 1991 is replaced by the following with effect from 30 September 1991

"TARIFF FOR LETTER-POST ARTICLES TO FOREIGN COUNTRIES

1 Surface-mail rates of postage for letters, postcards, printed papers and small packets for delivery in foreign countries, excluding Botswana, Burundi, Lesotho, Malawi, Swaziland and Zimbabwe,

Class of mail matter	*Rate*	*c*
Letters	Up to 20 g	50
	Above 20 g up to 100 g	115
	Above 100 g up to 250 g	220
	Above 250 g up to 500 g	420
	Above 500 g up to 1 000 g	730
	Above 1 000 g up to 2 000 g	1 220
Postcards	Each	45
Printed papers	Up to 20 g	45
	Above 20 g up to 100 g	65
	Above 100 g up to 250 g	115
	Above 250 g up to 500 g	210
	Above 500 g up to 1 000 g	345
	Above 1 000 g up to 2 000 g	500
	*Thereafter per 1 000 g	245
Small packets	Up to 100 g	65
	Above 100 g up to 250 g	115
	Above 250 g up to 500 g	210
	Above 500 g up to 1 000 g	345
	Above 1 000 g up to 2 000 g	500

* Applies only to books with a mass of more than 2 000 g but not more than 5 000 g

Case studies show Govt inconsistency, claim lawyers

Star 23/9/91.

By ESMARÉ VAN DER MERWE

LUCKY Dilizintaba Nomganga was sentenced to death for having whistled, a gesture the court believed triggered off a clash between mineworkers and mine security officers.

Priscilla Mkonza was sent to jail for 10 years for a murder in a Soweto shebeen although she was not present at the killing.

Lawyers believe these two political prisoners convicted under the common purpose doctrine illustrate the inconsistent manner in which releases and pardons are handled.

The Human Rights Commission notes that it is difficult to give examples of people whom it believes should be freed because the consolidated list of "political" prisoners gives few details of the relevant offences.

Only a closer look at the cases provides details which, lawyers believe, should be grounds for the granting of indemnity, pardon or release.

● Lucky Dilizintaba Nomganga was convicted of murder under the common purpose doctrine in June 1988 for his role in a clash between a large crowd of mineworkers and security officials at Western Holding Gold Mine in Welkom in June 1987.

His motivation for indemnity included an argument that labour disputes were inseparably linked to the political struggle and that he had had no personal motive for his actions.

● Priscilla Mkonza was found guilty on charges of murder and sentenced to 10 years in jail under the common purpose principle in November 1988.

She was charged as the co-accused of MK soldier Oupa Alex Seheri, who was sentenced to death for killing two people in a Soweto shebeen in 1988.

Her lawyers submitted that she had not been present at the crime and had merely pointed out the house to Seheri.

Her case was referred to the indemnity committee some four months ago, but no response has been received. Her motivation was that she had acted to further the aims of the ANC □

Attorneys plan court battle over indemnity

Star 23/9/91

By Jo-Anne Collinge 252

Two Johannesburg attorneys are preparing to take the State President to court to challenge his refusal to grant indemnity to their clients in terms of the ANC/Government agreement on political offenders.

They hope to penetrate the close secrecy that surrounds the indemnity procedure and to discover the reasoning behind seemingly contradictory decisions.

The planned action contrasts with the position of Minister of Correctional Services Adriaan Vlok who reiterated on Friday that all political prisoners who qualified for release in terms of "the accepted guidelines" had been set free.

According to official figures, 215 applications for amnesty have been refused to date A total of 9 284 applications have been received, of which 84 percent have been processed

"We have instructions to review the State President's decision on Jacob Rapholo, a member of Umkhonto we Sizwe. We are presently drafting documents, and are expecting to file papers in about a week," attorney Chrystal Cambanis said

Rapholo, jailed in Pietersburg, has been refused indemnity for the murder of a soldier on the Botswana border in 1988 and three counts of attempted murder, involving a civilian and two policemen.

Ms Cambanis said Rapholo had been acting at all times as a member of Umkhonto we Sizwe (MK) and others who had committed similar actions had been freed.

Ministry of Justice spokesman Nic Grobler commented that "that the nature and seriousness of the offence is always taken into account" even where applicants fall within a category generally eligible for indemnity. "For example, indemnity is only acquired for attempted murder if a dangerous wound was not inflicted."

Attorney Chris Watters has expressed dismay about the failure to grant indemnity to another MK member, Joseph Koetle, who is charged with the murder of a Soweto policeman.

Mr Watters said that if further representations failed, review proceedings would be instituted in the Supreme Court.

Mr Grobler stressed that Mr Koetle's case had not yet been finalised.

Lawyers are outspokenly critical about the secrecy that surrounds the indemnity process. They state that:

- The fact that the State President is not obliged to give reasons for refusing indemnity leads to confusion
- They have no way of knowing whether their representations to a judge of the indemnity committee failed or whether they managed to convince the judge, whose recommendation was rejected by the State President. This and the previous point make it impossible to build up a body of quasi-legal precedent
- Lawyers do not know what other information concerning their clients is submitted either to the indemnity committee or the State President and they therefore have no way of countering it.

Mr Grobler points out that the granting of indemnity is not a judicial process but an executive function vested solely in the State President. Since indemnity committees only advise in this process "it is difficult to understand how the fact that a committee has recommended indemnity or not, could assist an attorney in building up precedent".

● Haze still blurs political releases — Page 13

Case studies show Govt inconsistency, claim lawyers

Star 23/9/91

By ESMARE VAN DER MERWE

LUCKY Dilizintaba Nomganga was sentenced to death for having whistled, a gesture the court believed triggered off a clash between mineworkers and mine security officers

Priscilla Mkonza was sent to jail for 10 years for a murder in a Soweto shebeen although she was not present at the killing

Lawyers believe these two political prisoners convicted under the common purpose doctrine illustrate the inconsistent manner in which releases and pardons are handled

The Human Rights Commission notes that it is difficult to give examples of people whom it believes should be freed because the consolidated list of "political" prisoners gives few details of the relevant offences

Only a closer look at the cases provides details which, lawyers believe, should be grounds for the granting of indemnity, pardon or release

● Lucky Dilizintaba Nomganga was convicted of murder under the common purpose doctrine in June 1988 for his role in a clash between a large crowd of mineworkers and security officials at Western Holding Gold Mine in Welkom in June 1987

His motivation for indemnity included an argument that labour disputes were inseparably linked to the political struggle and that he had had no personal motive for his actions

● Priscilla Mkonza was found guilty on charges of murder and sentenced to 10 years in jail under the common purpose principle in November 1988

She was charged as the co-accused of MK soldier Oupa Alex Seheri, who was sentenced to death for killing two people in a Soweto shebeen in 1988

Her lawyers submitted that she had not been present at the crime and had merely pointed out the house to Seheri

Her case was referred to the indemnity committee some four months ago, but no response has been received. Her motivation was that she had acted to further the aims of the ANC □

No jail for farmer who tortured, but he still has to pay:

The price of freedom

Youth to get R40 000 from farmer

Sowetan 24/9/91 (252)

From Page 1

suffering second-degree burns that took more than four months to heal

Mokwatı also told the court that a policeman summoned by Van der Westhuizen had kicked him as he writhed in pain, still welded to the table

He said the policeman had taken him, handcuffed, to the back of an open van to Messina Police Station where he was kept for several hours before being taken to hospital

Van der Westhuizen pleaded not guilty but admitted through his lawyer that he had welded Mokwatı's hand

He did not give evidence and his lawyer did not oppose the application by Mr Morris Pogrund, for the State, that Van der Westhuizen be found guilty of attempted murder

Before yesterday's proceedings Mokwatı's attorney, Mrs Catherine Owen, spent more than two hours pushing for the out of court settlement that left Mokwatı with R40 000

Van der Westhuizen agreed in the settlement that he would pay the amount if he was not sentenced to a prison term

The court heard that the Van der West-huizen earned R2 000 a month and only possessed a motorbike

His employers were, however, prepared to give him a R40 000 loan to pay any fine imposed on him if he was not sent to to jail He would then repay the money to them

Mokwatı confirmed before the court that he had accepted the deal in full and final settlement of claims that he had made against Van der Westhuizen

The money will be paid in three instalments, the last on November 15

Sowetan 24/9/91 (252)

Welded boy gets R40 000

By MATHATHA TSEDU

A WHITE farmer who torched a 15-year-old boy and then welded him to a table near Messina last year was yesterday fined R5 000 or two years' imprisonment.

In addition the magistrate, Mr GJJ van Deventer, sentenced Johan van der Westhuizen in the Louis Trichardt Regional Court to five years' suspended imprisonment on condition he pays R40 000 in damages to the youth, Frank Mokwatı

The sentence was a climax to a bizarre incident in which Van der Westhuizen (31) accosted Mokwatı on Hayoma farm near Tshipise on December 8 last year and promised him a job

Kicked

Mokwatı told the court that instead of the job, Van der Westhuizen had

* Punched and kicked him all over the body,
* Chained his feet and then welded the chain around his feet,
* Welded his left hand to a steel table before pouring petrol over him and setting him alight using sparks from the welding arc,
* Laughed as the screaming youth burnt his face, chin, neck and hands,

Van der Westhuizen - suspended sentence

CP man's appeal fails

THE appeal by the national secretary of the Conservative Party against his 14-day prison sentence has failed in the Pretoria Supreme Court

Andries Beyers refused to disclose the identity of his source for a report claiming State Intelligence kidnapped a witness in the "Winnie Mandela trial"

Mr Justice van Dijkhorst yesterday said the reasons offered by Beyers for not revealing his source were insufficient Sowetan 24/9/91

Beyers was appealing against the finding of a Pretoria magistrate, who sentenced him to 14 days' imprisonment for not disclosing the source for the report "State abducts witness" which appeared in the February 15 issue of the CP mouthpiece *Die Patriot*

Although Beyers testified and disclosed all the information he said he had, he refused to give any information which could lead to the identification of the source

Mr Justice Roos was also on the Bench.

Van Dijkhorst said Beyers' first reason for not disclosing his source because he had given his source his word, was insufficient.

So too was the second that, as it was the duty of the official Opposition to make known allegations of alleged malpractices by the Government, their sources would dry up should they disclose their identities.

He said it was strange that, although Beyers could have made the information known in private before a magistrate, he chose to testify in open court - *Sowetan Correspondent.*

CP man must go to jail — judges

252
24/9/91

PRETORIA — The Conservative Party chief secretary, Mr Andries Beyers, was yesterday ordered by the Supreme Court here to serve 14 days' imprisonment for refusing to identify a source who claimed National Intelligence had kidnapped a key witness in the Winnie Mandela kidnap and assault trial

Mr Beyers had appealed against the sentence imposed on him by a Pretoria magistrate

Mr Justice Van Dijkhorst and Mr Justice Roos dismissed Mr Beyers's appeal against his conviction and sentence, saying reasons he gave for his refusal were not valid

Mr Beyers claimed that he could not identify the source because he had given his word not to do so and feared identification could harm future sources of information Mr Justice Van Dijkhorst said that merely to claim a crime had been committed without allowing police follow up was not in the interest of the public — Sapa

Boerestaat leader supports Beyers

Star 24/9/91

252

By Kaizer Nyatsumba
Political Staff

Boerestaat Party (BP) leader Robert van Tonder yesterday pledged support for CP chief secretary Andries Beyers, whom the Pretoria Supreme Court yesterday ordered jailed for 14 days

The Supreme Court, following an appeal by Mr Beyers in March, ordered Mr Beyers to serve 14 days in jail for refusing to identify a source who claimed National Intelligence had kidnapped a key witness in the Winnie Mandela kidnap and assault trial

The claim was made in a story headlined "State abducts witness" on the front page of the CP's mouthpiece, Die Patriot, on February 15

Mr Beyers agreed to testify and disclose all the information he said he had, but refused to give any information which could lead to the identification of the source

Mr Justice van Dijkhorst and Mr Justice Roos dismissed Mr Beyers' appeal against his conviction and sentence, saying his reason for refusing to identify his source was not sufficient

The CP chief secretary, who was released on bail of R500 pending appeal, had said he could not identify the source because he had given his word not to do so and feared identification could harm sources of information

Uproar

Ordering Mr Beyers to report to prison within a week to begin his sentence, Mr Justice van Dijkhorst said that to merely claim a crime had been committed without allowing police to follow up the information was unacceptable and not in the interest of the public

When The Star asked to talk to Mr Beyers at the CP office in Pretoria yesterday, it was told he was not in and would be away "for the next three weeks"

BP leader Mr van Tonder warned that if the Government went ahead and jailed Mr Beyers it would cause an uproar

He said it seemed that the Government was scared of having things said about the National Intelligence Service, and therefore wanted to silence Mr Beyers.

"We fully back Mr Beyers and call on the Government to back off," he said

The leader of the Orde Boerevolk, Nic Strydom, said he hoped in future the laws of the country would be changed to protect sources, especially if the information they had given was for publication If this did not happen, Mr Strydom said, "then people will not be likely to come forward with information"

CP MP for Overvaal Koos van der Merwe said the party would issue a statement on the Supreme Court's decision

Bill widens constraint on corruption

Life imprisonment could be the penalty for those guilty of corruption in any position of power — even as a lowly paid employee — when the new Corruption Bill is passed in Parliament next year

The Bill, published last week and adopting resolutions made by the Law Commission, makes it a crime for a person in a position of power to accept any remuneration in exchange for favours which exceed or neglect the mandate of their power.

The law also makes it an offence for anybody to give or offer such remuneration

Sentencing is in the hands of a judge Only the death penalty does not apply

252

'Govt has new total strategy'

Star 29/9/91

Political Staff

The Government stood precariously poised between the threats of economic collapse and loss of power, and had consequently embarked on a "new total strategy" to ensure its survival, according to the Human Rights Commission (HRC)

In its latest publication, "The New Total Strategy Twelve Months of Community Repression", the HRC says to avert the threat of economic collapse, it was "absolutely imperative" for the Government to break the stranglehold of isolation from the international financial system

To this end it had embarked upon "a major diplomatic and propaganda offensive" to create the impression that repression and apartheid were things of the past, that sanctions were crumbling and that South Africa was now a safe country to invest in

According to the HRC publication, the measures which Pretoria has to take to convey the impression of change — namely, the withdrawal or modification of oppressive and apartheid legislation — raised the spectre of the loss of power

Risk

"In responding to the legitimate demands of the liberation movement, the Government runs the very real risk of having to transfer power to the majority

"As yet there is no evidence whatsoever that there is a readiness on their part to do that — in fact, quite the contrary"

The HRC says the Government is adopting a twin track of negotiating and destabilising

The negotiation track includes a vigorous programme to woo support from the white Left and the moderate and conservative sectors of the black community for the ruling National Party

The destabilisation track involves "a whole host of less legitimate activities" which had resulted in the loss of thousands of lives

The HRC says the overall strategy of the "twin track approach" was to enhance the chances of the NP winning an election

Asvat's killer escapes the noose

(252)

Sowetan 25/9/91

THE man who was sentenced to death for the murder of Dr Abu Baker Asvat in Soweto yesterday succeeded in his appeal against the death sentence, but lost his appeal against his convictions for the murder and robbery

The Appeal Court in Bloemfontein substituted imprisonment of 20 years for the death sentence on Thulani Shelela Johannes Nicholas Dlamini - of unknown address

The court ordered that - sentence, together with eight years for the robbery of Asvat and eight years for another robbery, for which Dlamini had been refused leave to appeal, should be concurrent to the extent that he is effectively imprisoned for 25 years

Asvat, who was a well known personality in Soweto, was killed in his Rockville surgery on January 27 1989

Dlamini and Zakhele Mbatha were convicted by Mr Acting Justice RA Solomon in the Witwatersrand Local Supreme Court on

Sapa

November 2 1989

Mbatha was refused leave to appeal

Yesterday Mr Justice Nicholas (acting judge of appeal) said it was clearly proved that Dlamini had the intention to kill Asvat, at least in the form of dolus eventualis - that he must have foreseen that death could occur

The conclusion was that Dlamini was rightly convicted of the murder

It was proved that after the robbery, some R145 was missing from the middle drawer of Asvat's desk This sum was his calculated takings from patients on January 27 1989 It followed that the conviction for robbery of Asvat was also correct

The trial court found that Dlamini had not established any extenuating circumstances The trial judge - as he was obliged to do under the Criminal Procedure Act at the time - sentenced Dlamini to death

However, under the 1990 Criminal Procedure Amendment Act, the judge must now impose the death sentence only if he is satisfied, when due regard is had to all the factors, that the sentence of death is the "proper" sentence

Mr Justice Nicholas, with the concurrence of Mr Justice Hefer and Mr Justice Goldstone, said the crime was a heinous one

Dlamini shot and killed a man who was peacefully practising the healing art in his consulting room in Soweto

Major conference on law in October

BBDay 25/9/99

ANTHONY NDLOVU (252)

THE Association of Law Societies (ALS) has covened a major conference for next month, focusing on access to justice and legal education in SA.

The conference is jointly sponsored by the Ford Foundation of the US and the Attorneys' Fidelity Fund — a fund established to protect the public from malpractice by legal practitioners.

It will be opened by international legal expert Prof Mauro Cappelleti and takes place at the Council for Scientific and Industrial Research (CSIR) in Pretoria on October 3 and 4.

Other groups involved include the Association of University Legal Aid Institutions, the Black Lawyers' Association, the General Council of the Bar and Lawyers for Human Rights.

Speakers include Perm MD Bob Tucker, Wits University academic Lawrence Schlemmer and ANC constitutional expert Albie Sachs.

In a statement, the ALS said it had for some time been concerned about the issue of access to justice and entry into the legal profession. The statement said extending the range, reach and impact of legal services in a just legal system would be explored.

Justice for all through legal aid

252
Sowetan
25/9/91

THE International Bar Association resolved to call on all countries to provide properly funded legal aid schemes so that all have access to justice

The September issue of the law journal *De Rebus* said the resolution was passed unanimously by the recent Montreal conference organised by the IBA, the world's largest international forum of lawyers

The resolution is to be backed up by an inventory of actions being taken worldwide to press for the widespread government commitment and proper financial backing for legal aid schemes

Han Bruin, chairman of IBA's Legal Aid Committee said "The right to legal aid is a basic human right but all over the world lawyers are expected to bear the cost of its implementation themselves either in whole or in part" - *Sowetan Correspondent*

Judge sues The Star for damages: article defamatory, says lawyer

Star 25/9/91

252

25/9/91

By Helen Grange
Pretoria Bureau

A defamation suit against The Star by a Supreme Court judge — resulting from an article published last year about two tree murders — began in the Pretoria Supreme Court yesterday

In the first action of its kind to be heard in a South African supreme court, Mr Justice Louis Esselen is claiming R120 000 in damages from The Star's owners, Argus Printing and Publishing, former editor Harvey Tyson and the article's author, director of Lawyers for Human Rights Brian Currin

Mr Justice Esselen is arguing that his reputation as a judge has been damaged as a result of an article published in March 1990 entitled "A tale of two tree murders"

Mr Currin, in the report, detailed the circumstances of two murder trials — one entailing a black labourer fatally beaten and tied to a tree by white men in Louis Trichardt, and the other involving a white woman who was raped and tied to a tree by two black men in Witbank

The accused in the Witbank case were sentenced to death by the presiding judge (Mr Justice Esselen) before the Appeal Court overturned the ruling, while the Louis Trichardt accused had been given nominal fines, Mr Currin wrote

Mr Currin stated in his article that the cases "are 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"

The Star's counsel Gilbert Marcus SC, arguing a notice of exception yesterday, said the paragraphs being relied on by Mr Justice Esselen were not reasonably capable of conveying a defamatory meaning in the context of the article

It was also contrary to public policy to permit a judge of the Supreme Court to recover damages in an action for defamation based on criticism of a judgment delivered by him

Brian Southwood SC, acting for Mr Justice Esselen, replied that a "reasonable person" would understand the article to mean that Mr Justice Esselen had convicted and sentenced the accused because he was racially prejudiced

This would impute that the judge's conduct was dishonourable — an unquestionably defamatory imputation

Addressing the public policy on the right of a judge to sue, Mr Southwood said anyone had the right to sue for impairment of their reputation under South African law — and there was no South African legal precedent disputing this

He said further that criticism of a judge's decision was clearly permissable, but comment could not become an attack on the integrity of the Bench

Mr Justice Hattingh has reserved judgment on the argument of exception

Asvat's killer wins Death Row reprieve

Star 25/9/91. (252)

BLOEMFONTEIN — The man who was sentenced to death for the murder of Dr Abu Baker Asvat in Soweto won his appeal against the death sentence yesterday, but not against convictions for murder and robbery

The Appeal Court in Bloemfontein changed the sentence to 20 years' jail for Thulani Shelela Johannes Nicholas Dlamini

The court ordered that the sentence, and those of eight years for robbery of Dr Asvat and eight years for another robbery, should run concurrently So he will effectively serve 25 years

Dr Asvat, a well-known personality in Soweto, was killed in his surgery on January 27 1989

Dlamini and Zakhele Mbatha were convicted by Mr Acting Justice R A Solomon in the Rand Supreme Court on November 2 1989

Mbatha was refused leave to appeal

Yesterday Acting Judge of Appeal Mr Justice Nicholas said it had been clearly proved that Dlamini had the intention to kill Dr Asvat — in that he must have foreseen that death could occur

Dr Abu Baker Asvat killed in his Soweto surgery in 1989

It had been proved that after the robbery about R145 was missing from the middle drawer of Dr Asvat's desk

This sum was his calculated takings from patients on January 27 1989

The trial court found that Dlamini had not established any extenuating circumstances

The trial judge — as he was obliged to do under the Criminal Procedure Act at the time — sentenced Dlamini to death

However, under the 1990 Criminal Procedure Amendment Act, the judge must now impose the death sentence only if he is satisfied, when due regard is paid to all the factors, that the sentence of death is the proper sentence

Mr Justice Nicholas, with the concurrence of Mr Justice Hefer and Mr Justice Goldstone, said the crime was a heinous one

Dlamini shot and killed a man who was peacefully practising the healing art in his consulting room in Soweto The robbery was impudently committed

Moreover, Dlamini was not a youth but had, three years before, already embarked on a criminal career

The only mitigating factor suggested was that Dlamini was a young man, born in 1969.

Although still in his teens at the time of the murder, his history and the nature of the crime showed he was a man already seasoned in crime

Mr Justice Nicholas said Dlamini appeared to have led a shiftless existence.

The prognosis was not favourable, but the judge did not think it was so poor that rehabilitation could be excluded — Sapa

Key figures in probe arrested

By Jo-Anne Collinge

Carletonville police yesterday arrested a local ANC leader and a human rights activist who have been central in locating witnesses for the official investigation into the activities of the police unrest unit at Welverdiend

Sally Sealey of the Johnnesburg-based Independent Board of Inquiry into Informal Repression (IBIIR) and the ANC's Dan Ndzeku appeared briefly in court late yesterday and were granted bail of R500 each

They will be charged with intimidating a police officer, a western Transvaal police spokesman said Ms Sealey will also face charges of criminal injuria

Frustrate

"We are extremely concerned by the arrests Ms Sealey has been assisting police with an important investigation and we trust this is not an attempt to frustrate the investigation," a spokesman for the IBIIR said

As a result of the Welverdiend inquiry 11 policemen have been suspended and the police station closed down The inquiry was instituted in July in response to allegations that police were involved in the violent deaths of at least 17 youths from the township of Khutsong during 1990/91.

Some Khutsong residents who have given evidence to the commission have been arrested and charged with various offences since providing testimony And 20-year-old Enos Mhlongo has filed a formal complaint with the police, alleging that one of the suspended policeman shot him outside a shebeen late last month

Judge sues newspaper for R120 000 over article

252

ARG 25/9/91

The Argus Correspondent

JOHANNESBURG — A defamation suit against The Star newspaper by a Supreme Court judge has begun in the Pretoria Supreme Court

Mr Justice Louis Esselen is claiming R120 000 in damages from The Star's owners, Argus Printing and Publishing, former editor Harvey Tyson and the writer of the article, director of Lawyers for Human Rights Brian Currin

Mr Justice Esselen argues that his good name and reputation as a judge was damaged as a result of the March 1990 article "A tale of two tree murders"

Mr Currin detailed the circumstances of two murder trials — one of a black labourer fatally beaten and tied to a tree by white men in Louis Trichardt, and the other involving a white woman who was robbed, raped and tied to a tree by two black men in Witbank

The accused in the Witbank case were sentenced to death by Mr Justice Esselen before the Appeal Court overturned the ruling, while the Louis Trichardt accused had been given nominal fines, Mr Currin wrote

He wrote that the cases "are 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"

The Star's counsel Gilbert Marcus SC, arguing a notice of exception yesterday, said the paragraphs being relied on by Mr Justice Esselen were not reasonably capable of conveying a defamatory meaning in the context of the article

Mr Brian Southwood SC, for Mr Justice Esselen, replied that a "reasonable person" would understand the article to mean that Mr Justice Esselen had convicted and sentenced the accused in the Witbank trial because he was racially prejudiced

This would impute that the judge's conduct was disreputable and dishonourable — an unquestionably defamatory imputation

He said that criticism of a judge's decision was clearly permissible, "but must remain within legitimate bounds" Comment could not become an attack on the honesty and integrity of the Bench

Mr Justice Hattingh has reserved judgment on the argument of exception

`Hit squad' members identified

Sowetan 26/9/91.

TWO South African Defence Force men implicated in events surrounding the death of Chief Mhlabunzima Maphumulo were correctly identified by inquest witness Sipho Madlala at an identity parade yesterday

Fourteen SADF men in civilian clothes filed into the Maritzburg Supreme Court and Madlala was asked if he recognised any of them

He named the second man in the lineup as Sabasaba, one of three men he alleges shot Maphumulo and who was a member of an alleged SADF hit squad unit

He named the last man in the lineup as a Sergeant Grobler, who he claims was in charge of an alleged SADF hit squad unit

Madlala has claimed Grobler knew about the plot to kill Maphumulo and gave the unit its orders on other operations in which people were killed

He also recognised a third man in the parade who identified himself as a Gumede Although Madlala has named a Gumede as one of the men who shot Maphumulo, he said this was not the same man

The hearing is continuing - *Sapa*.

Soweto mother sues Minister for R880 000

Sowetan 26/9/91

252

By SONTI MASEKO

A SOWETO mother whose son was allegedly shot by police at Emdeni in September 1989 and left semi-paralysed is suing the Minister of Law of Order for R880 000

Mrs Paulina Monamodi, who is suing on behalf of her son David (15), claims the police fired shots at a crowd of mourners on September 16 1989 and injured her son.

The Minister has denied that the police injured the boy.

Disperse

Captain Jacobus du Preez, who was on duty on the day of the alleged incident, said after the police had fired shots to disperse mourners they checked the area to see if anyone had been injured or killed but found no one

A man later told him a child had been shot and was lying in a coalyard near Avalon Cemetery

Du Preez said when he arrived at the scene he was confronted by a crowd of about 500 "rowdy" people.

He stopped about 30m away and a man in the crowd fired at the police with a semi-automatic rifle The police returned fire

Asked why they did not use teargas, Du Preez replied "Our lives were in danger, it was either us or them"

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Youth recounts 'welding' assault

Star 26/9/91

By Willie Mashau
Northern Transvaal Bureau

A boy of 15 yesterday recounted the circumstances surrounding the assault on him by a white farm supervisor

Frank Mokwati, who was chained to a steel workshop table, doused with petrol and set on fire with sparks from welding wires, suffered second-degree burns

John van der Westerhuizen (31) set him alight on Hayoma Farm at Tshipise in the far northern Transvaal on December 8 1990

Van der Westhuizen was on Monday sentenced to a fine of R5 000 (or two years) and a suspended jail sentence of five years

He was also ordered to pay Frank Mokwati R40 000

Frank, of Tshituni-tsha-fhasi in Venda, said yesterday that he used to work at the farm while attending school but ran away in 1989 after Van der Westhuizen allegedly assaulted him and fired shots in his direction.

He went back to the farm on December 8 1990 when his mother, Johanna Lefoka, who worked at the farm had sent for him to give him money for the Christmas holidays

He said Van der Westhuizen found him at the farm gate and asked for his help in the workshop

"In the workshop Van der Westhuizen assaulted me He chained my feet and welded the chain to a cutting torch trolley

"Van der Westhuizen later came back with about half a litre of petrol and poured all of it over my shoulders and stomach When my clothes caught fire, he kicked me and left me engulfed in flames," he said

When asked how he felt about the whole affair, Frank tried to speak but could not.

CP demands jail comforts for official

(253) Binay 27/9/91

Business Day Reporter

THE CP has demanded that its chief secretary be transferred to Paarl's Victor Verster Prison so he can serve a 14-day sentence in the same comfort that was accorded to formerly jailed ANC president Nelson Mandela

Andries Beyers reported to Pretoria Central Prison at 2pm yesterday to begin the sentence

He was jailed for refusing to identify the source of a news report in which it was alleged that national intelligence elements had kidnapped a witness in the Winnie Mandela trial

CP deputy leader Ferdi Hartzenberg said in a statement yesterday he had asked Correctional Services Minister Adriaan Vlok to release Beyers on parole "as has happened to other similar cases"

He asked that Beyers alternatively be given a two-thirds reduction of sentence

Vlok said Beyers did not qualify for parole or a reduction of sentence

He could, however, be released, if he agreed to testify

Right to publish defended

Star 27/9/91

252

By Susan Smuts

The Star yesterday defended its right to publish investigative defamatory allegations, but was ordered not to publish evidence led in an application for an urgent interdict against it.

Trucking and cartage contractor Riaan Coetzee brought the interdict in the Rand Supreme Court to stop Star Line publishing defamatory allegations against him The Star's lawyer, Denis Kuny, SC, said the media had the right to publish defamatory comments.

The media had the right to risk paying damages if it could not justify any defamatory comments it made, he argued

"The press has a particular function in a democratic society to serve the public interest Freedom of expression is recognised and enforced by our law as an integral part of democratic goverment"

Restraining

Mr Justice S J Mynhardt granted an order restraining The Star from publishing any allegations made about Mr Coetzee which might emerge during the court proceedings The Star may publish judgment

Applying for an order to restrain other newspapers publishing details, Mr Coetzee's lawyer, Bruce Berman, SC, said "By reporting the proceedings, newspapers can repeat the defamation No newspaper should be able to publish the arguments"

Newspapers were obliged to report court proceedings fairly, but even if this were done it would effectively spread the defamation, Mr Berman said. The prejudice to the newspapers would "be limited" as it would either fall away or be upheld when judgment was given, he said.

Remedied

Mr Kuny said courts should be slow to grant final interdicts restraining publication of an article which was in the public interest. The media was entitled to make the truth known and to make fair comment on it. If it unjustly defamed someone, that could be remedied by further court action, he argued

When a court had to decide whether a story could be published, it should steer as close to the preservation of liberty as possible This was because freedom of speech was a "hard-won and precious asset, yet easily lost"

The freedom of the press was essential to free speech, since it was only by reaching a large number of people that such freedoms could be utilised for society's benefit, he argued

The interdict was brought against Argus Newspapers Limited, Allied Publishing Company Limited and Star Line reporter June Bearzi

The hearing continues today

Funding drought for human rights trials

w/Mail 27/9 - 3/10/91.

The flow of foreign money for legal fees in human rights cases has been reduced to a trickle and lawyers are battling to adequately represent clients

By **BELINDA BERESFORD**

MANY defendants in what would normally be regarded as political cases are going unrepresented because human-rights funding is drying up.

One attorney working for a major law firm told *The Weekly Mail* that their public-interest department had two clients facing capital charges whom they were unable to continue representing. He has had to give the same message to the family of a man allegedly electrocuted by the police: "We want to represent the family at the inquest, we want to institute civil proceedings, because we've got two reliable witnesses. But we can't take it further, because we don't have the funds."

Another attorney told of phone calls he kept receiving from a paralegal in the Eastern Cape who was trying to keep his law firm going — after his broke employer decamped to join a major corporation — from a tickey box on the local beach front. The aspiring clerk was checking in at his open-air "office" and making as many calls as coins and queues permit, phoning around the country in a despairing effort to get money and representation for frantic clients.

Recently, when asked by the Johannesburg lawyer why he had not gone to the African National Congress for help, the paralegal said he had tried: "Their switchboard kept him on hold for so long that he kept running out of money."

Although few public-interest lawyers are reduced to such straits, all are feeling the squeeze as the drought in human-rights funding continues. Specialist departments of major partnerships and some smaller firms are threatened with closure and some advocates are having difficulties collecting their fees.

Especially hard hit are the rural districts. According to one attorney: "There has been a flood, particularly in the *platteland* areas, of people having their attorneys withdrawn weeks or days before their trials come up — even in murder cases."

More sceptically, another lawyer said that although there was a drought in funding, it tended to be possible to get money for "genuine human rights work" such as removals. "Whereas before it (funding) was a wonderful tap that one could switch on whenever one wanted, that no longer exists. Which is not a bad thing at all."

Whatever its merits, the financial crunch appears to have been the product of a range of factors. One of them has been a bumpy hand-over to local control of the funding operations of the London-based International Defence and Aid Fund (Idaf). The London agency was to have shut down its operations in April, but the Cape Town-based South African Legal Defence Fund (Saldef) — which was to have taken over its fund-raising activities — failed to get its act together in time. Idaf had to be asked to keep going until the end of this month by which time Saldef hopes to be up and running.

Idaf's director in London, Horst Kleinschmidt, confirmed to *The Weekly Mail* this week that funding was slightly down on last year, when R35-million was sent out to South Africa by the agency to fund political trials. The agency had more than 150 attorneys and 80 advocates on its books in 1990.

The fall-off in funds is due partly to the rival attractions to donors of the Eastern bloc. As Kleinschmidt put it: "The money will never be quite at peak levels again. In times of repression we had an issue that we could trade around the world. Now it isn't as burning an issue as it was."

A perception is apparently developing among donors that it is time South Africa developed its own legal aid structures to fund defence lawyers. A campaign along those lines is expected to be a priority of Saldef when it finally gets going.

There is also seemingly a reluctance among donors to remit funds to a London-based agency when there is no longer any bar to their paying directly to South Africa. During the quarter of a century that it was outlawed by the National Party, Idaf ran an extraordinary covert operation by which it managed to smuggle an estimated £100-million to fund defence teams in political trials as well as supporting political prisoners and their families.

Other factors behind the funding drought include an apparent switch in the type of work demanded of public-interest lawyers as a result of changed political circumstances. Although political trials are continuing — in the form of public violence cases — a growing demand for legal assistance is reported in the area of developmental or "pro-active" work. Some, more critically-minded attorneys, argue that the "civil rights" experts are proving overly slow at making the transition.

A R40 000 payout for boy welded to table

A FARM mechanic escaped a jail sentence this week by paying R40 000 to the boy he almost killed.

Johan van der Westhuizen, 31, of Louis Trichardt made an offer in court of R40 000 to Frank Mukwatie, the 15-year-old boy he welded to a table and then set alight in December last year

After the proposal was placed before

By JOCELYN MAKER

Louis Trichardt magistrate, Mr GJ van Deventer, he told Van der Westhuizen that had he not made the offer he would "most certainly" have been sent to jail

Northern Transvaal Attorney-General Don Brunette said he had consulted with the attorneys involved before the proposal was presented to the court.

He said he was satisfied by the way the matter had been handled by defence advocate, Mr JLC van Vuuren, and the boy's attorney, Mrs Kate Owen, of the firm Deneys Reitz.

"The two attorneys discussed compensation for Mukwatie and, after drawing up a signed agreement, this was placed as evidence before the magistrate. He accepted it and enforced the agreement as part of the sentence"

Mr Brunette said this procedure was not uncommon.

Before sentencing, state prosecutor Morris Pogrund questioned the boy about his acceptance of the settlement

SCARRED FOR LIFE .. Frank Mukwatie shows the burns on his body Picture: BRIAN HENDLER

VAN DER WESTHUIZEN

Employer

Mukwatie told the court he was aware that if Van der Westhuizen's offer was accepted the accused would not be sent to jail

"It is good if he does not go to jail. No one has influenced me in my decision to accept the money," he said

Van der Westhuizen's instructing attorney, Mr Jan van Niekerk, told the court that if his client was sent to jail he would be unable to pay Mukwatie compensation for his suffering

"My client's employer is prepared to pay the R40 000 If Van der Westhuizen goes to jail, he will not be able to pay back the loan"

He said Van der Westhuizen earned a net salary of R2 000 a month and that he would be able to pay back the money from this

Mrs Owen said that after consultation with Mukwatie he had instructed her to accept the offer should the court not send Van der Westhuizen to jail.

Mr Pogrund described the crime as "barbaric" and totally unacceptable

The boy, he said, would carry the scars for the rest of his life and Van der Westhuizen had to be severely punished for committing such a deed.

In passing sentence, Mr van Deventer found Van der Westhuizen guilty of attempted murder.

He fined Van der Westhuizen R5 000 or two years' imprisonment with a further five years conditionally suspended for five years, provided he is not found guilty of any crime involving violence.

He instructed that the money be paid to the boy's attorney's office in three instalments by November 15.

Professor Andrew Skeen, associate professor at the University of the Witwatersrand's Law School, said the purpose of the sentence was twofold

"The magistrate fined Van der Westhuizen on the attempted murder charge. Then he enforced as an order of the court the compensation payment. In other words, he disposed of a civil matter within a criminal case, saving time and enormous expense for those involved."

According to the National Director of Lawyers for Human Rights, Mr Brian Currin, the sentence — which is a form of plea bargaining — benefited both parties.

After the case Mukwatie said he often had nightmares about the incident.

252 Scars

"I feel the heat in my chest just as if the fire has not been put out. My throat closes up and I can still smell my own flesh burning When I realise it is only a dream I sometimes cry with relief.

"I was a happy boy before it happened — now I am ashamed of my scars. I do not want people to see them because they stare at me. After the farmer burnt me, he chased my mother away from the farm where she had worked for 20 years."

Last month Mukwatie was found guilty in a Louis Trichardt court of the theft of a television set from the home of a Tshipise restaurateur in August 1989 He is to be sentenced tomorrow.

He has three previous convictions for similar crimes.

Mukwatie's mother, Johanna, said she was pleased the case was over and that her son had benefited, but she said she did not know if he would live long enough to complete his schooling

"He seems to grow weaker all the time and cannot walk very far. Sometimes he cannot speak for long because he cannot breathe properly.

"I am so worried that if he gets ill he will not have the strength to survive," she said

'Impossible' to allow legal aid in all cases

(252) CT 30/9/91

BLOEMFONTEIN — The Appeal Court here has given judgment in three appeals, in which the main question argued was whether an indigent accused person is entitled to be provided with legal representation at his trial, if necessary at the expense of the state.

No such rule had ever been recognised in South Africa until it was "proclaimed" in a review judgment by Mr Justice Didcott, with the concurrence of Mr Justice Friedman, in the State v Khanyile in Natal in 1988

However, several subsequent judgments disagreed

Counsel for Charles Brian Rudman, of Kensington, Port Elizabeth, Ricardo Johnson, of Hillside, Port Elizabeth, and Paulos Mthwana, of Chesterville, Natal, had submitted in argument that Mr Justice Didcott's judgments were correct and that contrary judgments should be over-ruled

Mr Justice Nicholas (acting judge of appeal), with the concurrence of Mr Justice Van Heerden, Mr Justice E M Grosskopf and Mr Justice Eksteen, said that for more than 130 years a system had operated in South Africa — apparently unique — by which every conviction and sentence by an inferior court that falls within categories determined by legislation from time to time, had been subject to review by a judge of the Supreme Court

"This system has been of vital importance in the administration of justice in a country in which many accused persons are either wholly or partially illiterate and the great majority of them are undefended," said the judgment

Yet it was never suggested before Mr Justice Didcott's judgment that accused persons were entitled to be provided with legal representation, or that a criminal trial conducted without such representation was irregular or illegal

Mr Justice Nicholas said that in practice, any attempt to implement the rule would jeopardise the whole administration of criminal justice in South Africa

The Chief Justice, in a separate judgment, said the ideal for which Mr Justice Didcott strove was unquestionably a most worthy one However, it was an ideal which under present circumstances in South Africa was unattainable

"All the same, the ideal should never be lost sight of," said Mr Justice Corbett

The appeals of Rudman, Johnson and Mthwana were all dismissed — Sapa

PUBLIC SECTOR-GOVT. JUSTICE

1991

OCT.

Seven ANC supporters assassinated, claims HRC

DURBAN — Seven ANC supporters were shot dead in Folweni, near Durban, on Sunday in what appeared to be systematic and targeted attacks, according to the Human Rights Commission

The HRC yesterday condemned the alleged killing of seven people in three related incidents. All the victims were shot in the back of the head, read the HRC statement

The HRC further expressed concern that the attacks had not received much media attention.

In the first attack on Sunday, the Rev Bhekeni Mntambo, his son and an employee were shot dead at their home in Mphusheni, Folweni

The statement added that three others — a Mr Ngwenya, a Mr Mtshali and Siyabonga Mohloni — were killed in similar fashion that evening

Nhlanhla Makhanya (14) was shot dead in front of his mother the same evening, the statement alleged.

"All the people killed were ANC supporters and were shot at close range in the back of their heads People living in the area alleged that the perpetrators were wearing camouflage uniforms at the time of the incidents.

"This leads the HRC to believe that these attacks were well-planned, deliberate executions"

Four other ANC supporters were killed in Mgwaveni, north of Durban, during the same period, the statement added.

The HRC said it was concerned with the escalation of the number of politically motivated attacks reported over the past few weeks. — Sapa.

this year, Avrin discovered that [illegible]

Police tried to bribe me – shooting victim

By Philip Zoio Star 3/10/91 (252)

Two policemen tried to bribe a man they had shot in the leg by offering him R2 000 not to lay charges against them, a Johannesburg magistrate heard yesterday

Leonard Mdledle said in the Johannesburg Magistrate's Court that he was walking along Smal Street, Johannesburg, on August 14 1989 when he noticed a white BMW car come to a halt. He then heard gunshots Looking down, he saw he had bullet wounds above and below the knee

He approached the BMW in which a few young girls were sitting The girls told him to wait for the police.

He told the court that later that evening one of the policemen who took him to hospital, Shawn Mackrell (25), entered his ward and pleaded "Please my friend, don't lay a charge against me, I'll give you money" He then offered Mr Mdledle R2 000 and said he had shot him by mistake

The next day the second policeman, Stuart Singleton (21), offered him money not to make a statement, Mr Mdledle said.

Mr Mackrell of Ridgeway Extension 5 and Mr Singleton of Mondeor have been charged with attempted murder, alternatively unlawfully discharging a firearm and negligently causing injury to Mr Mdledle

They have also been charged with attempting to defeat the ends of justice by trying to bribe two alleged witnesses by offering them R200 each to remain silent-on the shooting

The hearing continues

Royal v
resident
opened

ible ® By Dik Browne

CCV plans further action against new tax

(220)

Various sectors represented on the Co-ordinating Committee on VAT (CCV) have begun plans for a sustained programme of action to mobilise further support against the way in which VAT was implemented this week, the body said yesterday

The statement followed Tuesday's meeting where action plans were discussed

The implementation of VAT did not change the objections raised, said CCV organiser Bernie Fanaroff.

Action planned includes

- Letters to President de Klerk from the small business sector complaining about Government failure to address its problems.
- Doctors are planning a two-day mass closure of surgeries Several groups will also approach the medical aid societies to ask them not to collect or pay VAT.
- Religious and political groups have begun actively mobilising members to support the CCV's aims.
- Trade unions will meet on Tuesday to discuss a programme of action which includes a general strike next month, more marches and demonstrations, and demands that no PAYE/SITE be deducted and that wages be increased

The CCV said the committee was preparing for a major strategic move in the campaign, which would be announced next week

The group said Vatwatch's announcement of huge price increases confirmed its warning that the consumer would suffer.

"This can only serve to fuel the very widespread public anger at the Government and big business's determination to go ahead with the system," the CCV said — Consumer Reporter

Star 10/9/91

No court recognition for right to fair trial (252) ruling

B/Day 3/10/91.

A FULL Bench of the Appeal Court has found that no right to a fair trial has been recognised either by statute or by the courts.

It has also found any system which does not provide free legal representation to all indigent persons accused of serious crimes to be flawed

Delivering the unanimous judgment in State vs Mthwana, Mr Justice Nicholas said last week the courts inquired whether there had been a departure from the formalities, rules and principles of procedure which the law required.

He said it was true that those formalities, rules and principles had been designed to ensure a fair trial, but this did not mean that every flaw in the way a criminal trial was run rendered it unfair

"Nothing which I have said should be regarded as being in any way deprecatory of the vital importance of a fair trial in SA practice," said Mr Justice Nicholas

"Our common law is informed by a broad equitable spirit and in administering the law and in the exercise of its functions, the court pays due re-

TIM COHEN

gard to considerations of equity in the broad sense of the word"

The appeal considered the judgment of Mr Justice Didcott in State vs Khanyile, in which the judge found that for an indigent accused charged with a serious crime to be unrepresented constituted a failure of justice

Mr Justice Didcott said in a later case that State vs Khanyile did not fashion a new brand of right, but "the elaboration and development of one well embedded in our law, the right to a fair trial..".

Illegality

Mr Justice Nicholas said. ".. I disagree The law is clear no such right has ever been recognised either by statute or in the practice of the courts

"The Khanyile rule was a new departure which could not claim legitimacy by reference to the 'right to a fair trial' which, as I have pointed out, is not the test of an irregularity or illegality," he said

The court inquired as to whether it could establish such a rule and decided that it could

But it found that by doing so it would, in effect, be forcing government to spend large amounts of money for the defence of indigent accused charged with serious offences

The SA courts did not have the power indirectly to force Parliament to do so, although the judge strenuously appealed to government to survey the feasibility of enlarging legal aid schemes

In his concurring judgment, Chief Justice Mr Justice Corbett said the provision of free legal representation to all indigent persons was a necessity for a complete system of criminal justice ".. Any system which lacks it is flawed

" However, it is an ideal which under present circumstances in SA is not capable of attainment

"All the same the ideal should never be lost sight of and it should continue to guide and stimulate all who are concerned with the improvement of our criminal justice system," he said

Secret project 'terminated'

Law silent on hunger strike case

Sowetan 3/10/91 252

A SHROUD of secrecy has been drawn over the Transvaal Law Society's investigation into the conduct of Mr Wim Cornelius, attorney and spokesman for rightwing hunger strikers.

This follows an outcry over allegations that Cornelius misinformed the public on the condition of the three hunger-strikers who ended their fast in Pretoria last month

Law Society president Dr Antonie Gildenhuys said yesterday a committee had been appointed to investigate Cornelius' conduct following a complaint and an approach by Cornelius himself.

He would not say who had lodged the complaint

Law Society spokesman Mr Coen Prinsloo confirmed Cornelius had appeared before a committee and said the investigation was proceeding

Cornelius confirmed the investigation but said the Law Society president had ordered that proceedings be kept secret

Dr Gildenhuys said the committee would decide after its investigation whether charges should be laid against Cornelius

The inquiry began last week after the complaint and after Cornelius apparently approached the Law Society voluntarily to clear his name.

Prinsloo said an attorney facing an investigation by the Law Society could be warned, fined up to R5 000 or referred to the Supreme Court for scrapping from the roll of attorneys - *Sowetan Correspondent*.

Focus shifts from political probes

Fraud trials surge as state clamps down

B/Day 4/10/91.

FRAUD cases involving at least R5bn are to be heard in the Rand Supreme Court soon as the state legal system shifts its attention from political trials to commercial investigations.

Fourteen trials are already on the court's roll Witwatersrand Deputy Attorney-General J Henning said yesterday 42 new cases of major fraud were put before the court in the period between July last year and June this year, as opposed to 23 new cases in the preceding year

This is over and above the hundreds of fraud charges in SA's lower courts

"In the days when we were fighting the total onslaught, security cases were given priority The emphasis has now completely changed," Henning said There was an enormous backlog of cases the courts were only now dealing with Increasingly people wishing to initiate fraud charges were going straight to the attorney-general's office rather than the SAP's commercial branch.

From June 1989 to July 1990 the Supreme Court spent 651 hours preparing fraud indictments, in the following year this figure leapt to 8 882 hours In addition, 211 insolvencies have been reported by the Master of the Supreme Court in the past year for possible contraventions of the Companies Act

Henning said cases due to come before the Rand Supreme Court included

☐ Former JSE stockbroker Greg Blank is expected to be charged in the Goodwood Magistrate's Court on Monday before a Supreme Court appearance next year;

☐ Former Interboard chairman Ed Dutton

PATRICK BULGER

is facing a charge resulting from finrand deals worth R160m, a R50m property deal with Standard Bank and R11m in connection with "phantom share" deals,

☐ Former Nampak executive Adrian Barker will appear in court next week in connection with charges involving "several million" rands;

☐ Former NSL PRO Abdul Bhamjee will appear in court in December to face fraud charges involving about R6m,

☐ Walter Peu and another person are expected to appear in court soon in connection with the illegal sale of gold in Switzerland and finrand roundtripping from the proceeds of the sale of gold;

☐ The case resulting from the activities of the Magnum group, which collapsed in 1982, is due to restart, and

☐ The fraud trial of Austrian Rainer Moringer and former Allied Bank GM in charge of the international business division, Ulrich Leitich, involving finrand deals worth at least R5m starts next week

The attorney-general is also considering pressing charges in connection with Protol Foods, a company that had dealings with SA prisons

A number of extradition applications are in the pipeline Hendrikus Welman, who will face charges in connection with the alleged R47m TrustBank fraud, was recently brought back from Portugal and is being held in custody pending a court appearance An attempt is also being made to extradite former SA diamond dealer Alan Taydz from San Diego in the US

Mxenge case abandoned

W|Mail 4|10 - 10|10|91 252

By CASSANDRA MOODLEY Durban

JUSTICE will not be done in the Griffiths Mxenge murder: The Natal attorney general has ruled there will be no prosecutions in connection with the death of the Umlazi lawyer.

Attorney General Mike Imber informed attorney Bheki Shezi and partners late last week of his decision not to prosecute but did not furnish an explanation. Shezi expressed his dismay, adding he was considering instituting a private prosecution The brutal Mxenge murder shocked the nation more than a decade ago when his slain body was found at the Umlazi Cycle Stadium.

His death remained a mystery until two years ago, when a death row prisoner, former Security Branch member Butana Nofemela, exposed the branch's involvement.

Meanwhile, a civil suit case, in which Mxenge's family is claiming damages from the minister of law and order in the Durban Supreme Court, has been adjourned to April 15 1992, while former Security Branch member Dirk Coetzee applies to the government for indemnity from prosecution.

Coetzee will be one of the key witnesses in the suit if the application is granted. He also confessed his involvement in Mxenge's killing before he fled the country.

The Mxenge family has also subpoenaed Nofemela to give evidence in the civil suit.

CORRUPTION BILL

Weapon for harassment?

The Corruption Bill, drafted at government's request by the Law Commission to tighten up existing legislation, does that — and more

Businessmen and civil servants could end up serving life sentences if found guilty under the proposed legislation The problem is that they can't be certain just what corruption is. Except for a reference to "any benefit not legally due," the Bill does not define corruption — in fact, nothing is defined.

Poolman

Leon

The Bill is short on detail (less than two pages), wide in application (jurisdiction is extended outside SA) and lethal in effect. It could be interpreted to cover everything from a business lunch to an overt bribe

Says Afrikaanse Handelsinstituut CE Joe Poolman: "The Bill is wide enough to include normal everyday business practice, previously considered legitimate One doesn't need regulations which interfere with business activity not regarded as corruption in the strict sense If government has good reason to enact fresh legislation, it must specify the types of crimes included and excluded, otherwise the Bill could become a joke"

The Law Commission intentionally cast the net wide In a memorandum to the Bill, it admits that "extensive definitions" were specifically avoided to prevent restricting the categories of persons who may be bribed

Says the Bill's chief researcher, Michael Palumbo "One doesn't want to exclude people who need to be included" He says this is the problem with existing legislation "If a business lunch intends to constitute a bribe, why should it be excluded from the Act? Otherwise, where does one draw the line?"

But, says Sacob legal manager Ken Warren "Business needs an environment of certainty In its present form, accepted business practices could fall foul of the legislation The Bill needs clarity"

He is particularly critical of the wide discretionary powers given the courts to determine sentence — everything except the death penalty is possible "Penal legislation should lay down parameters as a guideline to the courts," he says Palumbo retorts that the proposed penal provisions are identical to those in existing legislation

Other loopholes have also been closed

☐ A person receiving a bribe may be found guilty of corruption even if the person giving the bribe is acquitted,

☐ Situations where "benefits" are offered to persons other than the bribe-taker are covered — for example, his family or persons on whose behalf he acts

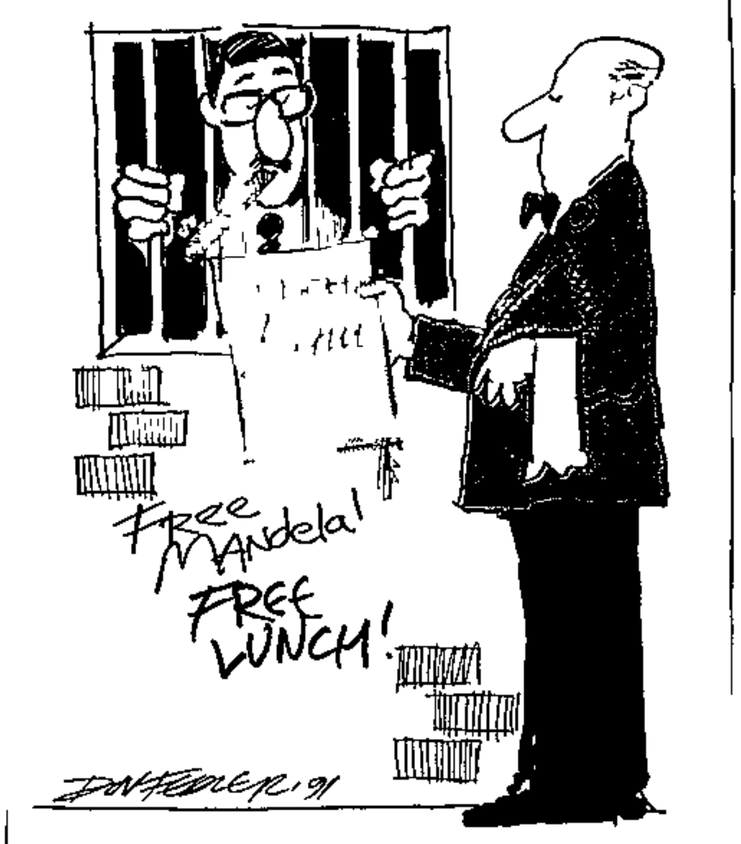
☐ The Bill covers activity outside SA, providing there is a "connection" inside the Republic But it doesn't define "connection" So the position of a SA businessman forced to pay a bribe in a foreign country (Kerzner's case) could be uncertain, though Palumbo denies that the Bill seeks to safeguard the interests of other countries

Critics are concerned that the Bill, if enacted, could give government — present or future — a powerful weapon against business Says the DP s Tony Leon "The proposed legislation could become a bureaucrat's dream for harassment and oppression It's open to abuse and malice"

Warren suggests that common law and existing legislation are adequate "Rather than introduce draconian legislation, the existing legislative system needs to be streamlined to dispose of matters quickly"

The Bill, in whatever form, is unlikely to end corruption, as it seeks only to address symptoms rather than causes Says Warren "One needs to establish whether corruption is motivated solely by greed and avarice, or whether it's an increasing reaction to inflation, high taxation and over-regulation"

Leon describes the Bill as "a mile wide and an inch deep" and says it is doomed to fail without any effective mechanism for enforcement "How can you expect government to police corruption when it can't catch murderers and car thieves?" he asks



He believes the Bill is mainly targeted at the endemic and deep-rooted corruption which usually takes place at high level But he says the solution doesn't lie in new far-reaching legislation Government must introduce proper disclosure by public servants and legislators of personal interests

"We need 'sunshine legislation' of all holdings, directorships, consultancies and interests which may be related to legislative or executive acts," he says "An Ombudsman, with power, would do more than another piece of legislation, which, however well-intentioned, could end up being abused or as ineffectual as a toothless chihuahua" ■

Indien die aansoek toegestaan word, sal die abattoir gebruik word vir die slag van 15 beeste of 45 kalwers of 225 skape/bokke of 75 varke per dag vir die voorsiening van vleis aan die abattoireienaar, ander handelaars sowel as vir die verwerking daarvan tot ander vleisprodukte

Iemand wat vertoe of besware in verband met bogenoemde aansoek wil rig, moet sodanige vertoe of besware aan die Voorsitter, Abattoirkommissie, Privaat Sak X250, Pretoria, 0001, rig binne 'n tydperk van 30 dae vanaf datum van publikasie van hierdie kennisgewing en óp die wyse uiteengesit in die regulasies kragtens genoemde Wet uitgevaardig.

Aandag word gevestig op die bepalings van regulasie 11 (6) van die genoemde regulasies wat vereis dat iemand wat vertoe of besware teen 'n aansoek aan die Minister voorlê, terselfdertyd 'n afskrif van die stuk waarin sy besware uiteengesit is op die betrokke applikant moet bestel.

L W. Die regulasies vereis dat besware onder eed bevestig en in drievoud voorgelê moet word
(4 Oktober 1991)

If the application is granted, the abattoir will be used for the slaughter of 15 head of cattle or 45 calves or 225 sheep/goats or 75 pigs per day for supplying meat to the abattoir owner, other dealers as well as for processing into other meat products

Any person intending to submit representations or objections in regard to the above-mentioned application shall forward such representations or objections to the Chairman, Abattoir Commission, Private Bag X250, Pretoria, 0001, within a period of 30 days from the date of publication of this notice and in the manner set out in the regulations published under the said Act

Attention is invited to the provisions of regulation 11 (6) of the said regulations which require any person who submits objections to an application to the Minister to serve on the applicant concerned a copy of the document in which his objections are set out

Note The regulations require that objections be affirmed under oath and submitted in triplicate
(4 October 1991)

KENNISGEWING 929 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal: Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No. 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone.

NOTICE 929 OF 1991

DEPARTMENT OF JUSTICE

(252)

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

The Director-General: Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Bothelezi	Chaels	1956–04–06
Buthelezi	Brian	1973–10–10
Cele	Mondli	1969–09–27
Dubazana	Barnabas Zamani	1966–10–26
Dube	Peter	1971–06–15
Duma	Sipho	1953–11–28
Dunjane	Nelson Sililo	1963–03–31
Gamede	Sibusiso Sydney	1964–04–06
Gwaqaza	Sanuweni Jappy	1970–06–28
Jacobs	Rosemary Eleanor	1933–11–18
Jilaji	Christian Ndoda	1958–04–16
Khuboni	Seboniso	1969–12–23

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Khumalo	Velı Gift	1972–12–29
Khuzwayo	Ignatıous	1970–09–24
Khuzwayo	Vava Sandıle Dennıs	1972–12–26
Kubeka	Sezakele Abıgale	1973–09–04
Kubelı	Benson Bhekı	1968–07–07
Lushabe	Thembıkosı	1973–11–11
Luthulı	Mage	1971–11–22
Mabena	Moganyelo Peter	1956–10–10
Madondo	Seboneso	1973–04–04
Magıdela	Sımphıwe	1968–03–14
Magubane	Nompumelelo	1962–01–06
Mahlangu	Hamılton Sbusiso J	1969–01–01
Makhula	Vusı	1974–05–14
Manel	Adrıaan	1969–09–06
Masısı	Phılemon Serame J	1958–12–26
Masıya	Abraham Fanızane	1950–04–12
Matshaba	Protus Motladı	1970–12–25
Matutu	Mvıkelı	1957–08–11
Mbane	Wılliam Andıle	1958–07–06
Mbeje	Xolane Danıs	1972–11–24
Mbongwa	Bhekı Themba	1965–05–21
Mjıyako	Brıdgett Sıphıwe	1959–11–21
Mkhıze	Arnold Sıyanda	1972–09–17
Mkhwanazı	Erıc Mbongenı	1971–05–15
Mkwanazı	Valley S'tendıle	1972–03–26
Mlambo	Dumısane	1975–07–16
Mlambo	Thulane Sıdwell	1970–05–28
Mogale	Ivan Serame	1968–06–01
Mogoba	Sedıbane Emmanuel	1942–06–19
Molol	Sam Tshakolo	1970–12–21
Moraka	Danıel Ramolora	1957–12–03
Motsepe	Junıor Joseph Mogosı	1970–08–03
Mpetha	Matthews Shımı	1972–06–26
Mthethwa	Mandla Wellıngton	1964–12–24
Mtshalı	Bonganı Wıseman	1973–03–04
Mtshalı	Elıakım S'bonıselenı	1969–05–26
Ndlovu	Thabane Pat	1969–03–02
Nene	Bongınkosı Welcome	1971–01–21
Nene	Kosı	1972–06–15
Ngcobo	Mondlı Abnıco	1970–09–29
Ngcobo	Sthembıso Chaels	1972–10–07
Ngıdı	Sthembıso	1973–12–29
Ntsıbande	Zephanıa Zakhele	1968–06–05
Oor	Olesıtse Clement	1964–04–01
Pempenı	Madoda	1969–06–12
Radebe	Mzewakhe Peter	1965–12–12
S'khakhana	Robert Nhlanhla	1967–09–18
Sebogodı	Majafa	1948–10–22
Sekgotodı	Jack Puku	1965–10–10
Selepe	Lerato Amos	1972–07–28
Shabalala	Vusı	1963–01–15

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Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Shange	Thembikosi S'thembiso	1972–09–23
Skomolo	Xoliswa Margaret	1944–02–27
Somi	Sthembele Edwin	1962–03–24
Thipe	Nicodemus Kakan	1957–09–13
Vezi	Sizwe Hendry	1971–07–14
Vezi	Thuthukani Bongane	1971–05–04
Ziqubu	Lucky	1961–03–03
Zwane	Nhlanhla Lucky	1972–08–10

(4 Oktober 1991)/(4 October 1991)

KENNISGEWING 930 VAN 1991

ADMINISTRASIE: VOLKSRAAD

DEPARTEMENT VAN LANDBOU-ONTWIKKELING

KENNISGEWING VAN VERGADERING VAN SKULDEISERS KRAGTENS ARTIKEL 22 (1) VAN DIE WET OP LANDBOUKREDIET, 1966

Hierby word 'n vergadering van ondergenoemde applikant en sy skuldeisers op die plek en datum hieronder genoem, belê, met die doel om skuldeisers in staat te stel om hul vorderings teen die applikant te bewys en 'n skikkingsvoorstel van die Landboukredietraad te oorweeg

J. H. SMIT,
Direkteur. Direktoraat Finansiele Bystand,
Departement van Landbou-ontwikkeling

NOTICE 930 OF 1991

ADMINISTRATION: HOUSE OF ASSEMBLY

DEPARTMENT OF AGRICULTURAL DEVELOPMENT

NOTICE OF MEETING OF CREDITORS IN TERMS OF SECTION 22 (1) OF THE AGRICULTURAL CREDIT ACT, 1966

A meeting of the undermentioned applicant and his creditors is hereby convened at the place and date mentioned hereunder for the purpose of enabling creditors to prove their claims against the applicant and of considering a proposal for a compromise by the Agricultural Credit Board

J. H. SMIT,
Director. Directorate Financial Assistance,
Department of Agricultural Development

Aansoek van Application by	Plek van byeenkoms Place of meeting	Datum en tyd Date and time
Gerhardus Christiaan Lodewyk Coetzer (ID 250130 5003 084), van die plaas/of the farm Pieterman, Posbus/P O Box 27, Marken, 0605	Kantoor van die Landdros/ Magistrate's Office, Potgietersrus	18 November 1991 om/at 08 30

(4 Oktober 1991)/(4 October 1991)

KENNISGEWING 931 VAN 1991

DOEANE- EN AKSYNSTARIEFAANSOEKE.
LYS 38/91

Onderstaande aansoeke betreffende die Doeane-en Aksynstarief is deur die Raad van Handel en Nywerheid ontvang. Enige beswaar teen of kommentaar op hierdie vertoe moet binne ses weke na die datum van hierdie kennisgewing aan die Hoof Uitvoerende Beampte, Raad van Handel en Nywerheid, Privaat Sak X753, Pretoria, 0001, gerig word Die aandag word daarop gevestig dat die skale van reg wat in die aansoeke genoem word, dié is wat deur die applikante aangevra is en dat die Raad, afhangende van sy bevindinge, hoer of laer skale van reg mag aanbeveel

Verhoging van die reg op:

Maleinsuuranhidried, indeelbaar by tariefsubpos 2917 14 00, van 15 persent *ad valorem* of 92,5c/kg min 85 persent *ad valorem* tot 15 persent *ad valorem* of 250c/kg min 85 persent *ad valorem*

[RHN-verw T5/2/6/2/1 (910373) (Mnr S Meyer)]

NOTICE 931 OF 1991

CUSTOMS AND EXCISE TARIFF APPLICATIONS:
LIST 38/91

The following applications concerning the Customs and Excise Tariff have been received by the Board of Trade and Industry. Any objections to or comments on these representations must be submitted to the Chief Executive, Board of Trade and Industry, Private Bag X753, Pretoria, 0001, within six weeks of the date of this notice Attention is drawn to the fact that the rates of duty mentioned in the applications are those requested by the applicants and that the Board may, depending on its findings, recommend lower or higher rates of duty

Increase in the duty on:

Maleic anhydride, classifiable under tariff subheading 2917 14 00, from 15 per cent *ad valorem* or 92,5c/kg less 85 per cent *ad valorem* to 15 per cent *ad valorem* or 250c/kg less 85 per cent *ad valorem*

[BTI Ref T5/2/6/2/1 (910373) (Mr S. Meyer)]

DEATH ROW

THERE are now 333 people on death row — 316 for criminally motivated offences and 17 others whom the HRC considers to be political prisoners (252)

Kwanele Msizi and Phakamile Cishe were sentenced to death last week for last year's killing of two policemen and a civilian. This brings the number of death sentences handed down in September to eight, says the HRC.

Meanwhile, Thulani Shelela Dlamini's 1989 death sentence for the murder of Dr Abu Baker Asvat was commuted to a 20-year prison term.

Michael Zondi and Wilton Nzimande are among four other prisoners who had their death sentences changed to jail terms. WMail 4/10-10/10/91

Boy's sentence a case of overkill?

252

Sowetan 4/10/91

By MATHATHA TSEDU

FRANK (16) spent last night in a police cell in preparation for an indeterminate term at a reformatory while the man who scorched him with a welding torch goes about his daily business a free man.

Frank, with three previous convictions for theft, was found guilty of stealing a portable TV set in August 1989 He was still 14 at the time

This crime led farm mechanic Johan van der Westhuisen to arrest him on December 8 last year and weld him to a steel table

In what the court said was a cruel and horrific deed, Van der Westhuisen welded a chain round Frank's feet and doused him with petrol He then set Frank alight, using sparks from the arc-welding machine

Frank suffered second degree burns of the chest, ears, mouth chin and hands He told the court that Van der Westhuisen laughed when he wriggled in pain as the nylon jacket he wore melted When he tried to pull it off, his flesh came off

view Frank

He was then taken to Pietersburg hospital and he spent the night before his admission to hospital in the Pietersburg prison

Van der Westhuisen, on the other hand, was not arrested The police initially cleared him, saying the burning was an accident But, after persistent prodding by Sowetan, the police opened a docket and investigated the case At no stage was he ever behind bars

He was subpoenaed to appear in court, where he was at first charged with assault, a charge later changed to attempted murder After the gruesome details of the case were heard, he was found guilty of attempted murder and sentenced to two years imprisonment or R5 000

A further five years was suspended on condition he paid Frank R40 000 in an out-of-court settlement.

Van der Westhuisen, who was said to be a poor man whose only worldly possession amounted to a second-hand red motorbike, paid the money from a loan advanced by his employer and walked out of court a free man

Frank appeared in the same court, but before a different magistrate, a week later; but his lot was quite different. In a classical tale of two cases, he was found to be a victim of a broken family, where his father had divorced his unemployed mother, who herself was on the verge of being declared an alcoholic

'Frank's experience at the hands of the white farmer cannot be divorced from the case'

Frank spent four-and-a-half months in three hospitals receiving treatment after being prematurely discharged from the Messina hospital because the doctor in charge was angered by reporters who were frequenting the place to interview him.

A Transvaal Provincial Administration social worker and probation officer, Mr Joseph Victor Malebatja told magistrate Mr AGH Bouwer that Frank had left school at Standard 5 in 1988 due to poverty

He said Frank lived with his mother at Tshiluni in dilapidated and dirty conditions He said Frank had been influenced by elders he had associated with who were themselves thieves

Malebatja told Bouwer that the "traumatic experience" of being burned by Van der Westhuisen had affected Frank and he was turning a new leaf He recommended that he be sentenced to a suspended term

Frank's attorney, Mr Leon Klaff, said in mitigation that the magistrate was presiding over the case on behalf of the community who expected justice to prevail

He said however the same community had already passed judgment and sentenced Frank to a fiery experience

"Frank s experience at the hands of the white farmer cannot be divorced from this case

"The black community in Venda, where Frank comes from, will find it difficult that a white farmer who took a youth and welded him and set him alight is walking free on the streets with a suspended sentence while the youth involved is sent to a youth or reformatory centre

"The court can say that these are two different cases whose issues should not be mixed But can we separate them?

"When we sentence Frank we are not just dealing with another delinquent fourth offender We are dealing with Frank, who has suffered a traumatic experience which must be taken into account," Klaff argued

He said the three previous convictions were for petty theft induced by hunger and poverty The settlement of R40 000 meant his situation had improved and society, through the court, should give him a chance to start a new life

Punishment, Klaff said, was pain induced for correctional purposes If the pain surpasses the correction purpose, it loses its meaning.

"What greater pain can the court impose than what has already been done by society in the form of the fiery lynching of the boy?

"In the previous convictions, Frank was sent back to his poverty The situation is now different, ' he said

Bouwer said the availability of the R40 000 did not guarantee that Frank would change He had committed the crime only six months after being convicted The sentence that should be passed should be in his own interest.

Bouwer said a suspended sentence would not assist the process of reforming frank and sentenced him to an indefinite stay at a youth reformatory centre He is to stay in the centre for as long as the centre authorities deem it fit for him to be there

This means that he can be kept until he is 21 or can leave the centre after a few months. For now, until arrangements are made for his transfer to the centre, he will be at the police station, in a cell

And so ends the saga of the welded youth, with the white welder walking the streets free without spending a night in a cell, while his victim and a thief of a R750 TV set, today sits in jail, the length of his stay dependent on the whims of other white officials

It is no wonder that Frank broke down and cried when he was led away It was also difficult to escape the feeling that one had witnessed a process of overkill

'The court can say that these are two diffrent cases whose issues should not be mixed'

'What greater pain can the court impose than what has already been done by society?'

Outrage at jail for tortured lad

Sowetan 4/10/91. (258) (252)

AN outcry has followed the sentencing of a teenager to a juvenile prison after he was tortured, then convicted of stealing a television set.

By MATHATHA TSEDU

Azanian People's Organisation publicity director Mr Khangale Makhado said yesterday: "We are not going to allow the boy to go to prison. We are getting lawyers to appeal and, should the appeal fail, a campaign will be launched to free the boy."

Organisations and individuals yesterday compared the youth's jail sentence with the suspended sentence given to the farm mechanic who welded the lad to a steel bench and set him alight.

The youth, who had three previous convictions, was sentenced to an unspecified period in juvenile prison with a maximum of five years.

Concern for the teenager's health has also been expressed, as he is a chronic asthma sufferer. Also, persistent coughing has followed the second-degree burning of his chest and other parts of the body.

Northern Transvaal Council of Churches secretary the Rev LK Mabusela said the magistrate had failed to consider "the permanent physical and psychological damage caused by the man".

"The truth of the matter is that this youth has been sentenced twice, first by the farmer and then by the magistrate," he said.

The ANC Northern Transvaal branch said it was hard to believe that "a young boy who has undergone a traumatic experience such as his should be subjected to yet another ordeal".

Lawyers for Human Rights said they were appalled by the sentence and appealed to Correctional Services Minister Adriaan Vlok to order the youth's immediate release.

The lawyers said Vlok was legally empowered to order the boy's release "and we urge him to put this to good use".

*See page 11

Boy's sentence slammed

Apren 6/10/91

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By MONWABISI NOMADOLO

THE South African judicial system sparked off another outcry this week following the outcome of a Louis Trichardt case in which a 16-year-old black youth was sentenced to an indefinite term for theft.

The farmer who attempted to kill him for the same crime walked out of court a free man.

The youth, who cannot be named because of his age, is from Tshituni village in Venda and was sentenced to an indefinite term of up to five years in a juvenile prison for stealing a television set worth R700.

Only two weeks ago, farmer John van der Westhuizen of Hayoma, in the Conservative Party-controlled town of Louis Trichardt, walked out of court a free man after having been sentenced to two years' imprisonment, with the option of a R5 000 fine He paid the fine.

Van der Westhuizen faced a charge of attempted murder for having chained the youth and welded the chain to a table. He also assaulted him, sprinkled him with petrol and set him alight by sparking the terminals of a welding machine.

The youth suffered second degree burns.

Van der Westhuizen offered in court to pay the youth R40 000 in damages, which was accepted by magistrate GJ van Deventer.

Lawyers for Human Rights national director Brian Currin said his organisation was "appalled – but not surprised – by the sentence".

ANC spokeswoman Gill Marcus said the sentence was outrageous.

Human Rights Commission spokesman Eric Pelser said the sentence imposed on the youth was "highly inappropriate".

The Department of Justice said the implication that the youth was sent to jail for an indeterminate period was untrue The court had, in fact, ordered that he be sent to a reform school, which order lapsed after two years "He could even be discharged earlier."

"If the youth, his parents or his legal adviser were dissatisfied with the order, an appeal could be lodged.

P 771016 396005

Welded youth: Lawyers to appeal

Sowetan 7/10/91.

252

By MATHATHA TSEDU

LAWYERS, acting for the welded youth who was last week sentenced to an unspecified period in a juvenile court, are to appeal against the sentence

Mr Mike Mashego confirmed that the Azanian Peoples Organisation had instructed him to file appeal papers against the sentence

He said papers were being drafted and would be filed in Louis Trichardt today

The youth is presently being held at the Louis Trichardt police cells, awaiting transfer to a reform centre

The sentence has aroused a lot controversy, with political and professional organisations describing it as severe and racist

Comparison has been made with the sentence passed a week earlier on a white farmer who welded the youth to a table and set him alight for the same theft

The farmer, Mr Johan van der Westhuizesn, was fined R5 000 or two years' jail.

Bophelong Hospital - both in Mafikeng - have resolved to embark on another hunger strike from today

The question of political prisoners in the territory is a thorny issue, with fears that hunger striker Mr Johannes Simelane, on his 50th day, could die

He paid the fine and a R40 000 out-of-court settlement

The Department of Justice, responding to the outcry over the jailing of the youth, said comparison of the two cases "makes no legal sense"

It said the youth would be released when the sentence expired in two years' time

"He could even be discharged earlier," the department said

Policeman who shot youth too intoxicated to testify

Star 8/10/91

(252)

By Jo-Anne Collinge

A police constable who shot and killed a youth in the Potchefstroom township of Ikageng was yesterday certified temporarily unfit to give evidence at the inquest because he was still under the influence of alcohol from the previous night's drinking

Constable Ephraim Fente Rampete told the court he could not testify because he had influenza Magistrate Mr Pieter Myburgh ordered that Constable Rampete be examined by a district surgeon to determine whether his "influenza" made him incapable of appearing in court

After ascertaining that Constable Rampete was intoxicated, the magistrate ordered him to go home and be ready to testify today

In an affidavit before the court, Constable Rampete said he shot Bongi Collin Nyongkong (19) on February 23 1990 The deceased and the policeman were alone in the bedroom of a house where the youth had fled and hidden under a bed

Constable Rampete stated that the shot went off as the deceased struggled with him from under the bed

Captain J du Preez, former head of the unrest investigation unit at Potchefstroom, testified that Constable Rampete had served under his command for two to three years at the time of the shooting He had come to him with a record of another fatal shooting

The captain said that on the day that Mr Nyongkong was killed, he had first caught sight of Constable Rampete running up the street near his house, chasing five or six fleeing youths and firing a shotgun in their direction

The youths got away and Constable Rampete explained to the captain that they had been stoning his house

Asked by counsel for the Nyongkong family, David Unterhalter, whether Constable Rampete had been disobeying orders to use minimum force when making arrests, Captain du Preez answered "I don't agree If my house was being attacked I'd do anything possible to get hold of the people responsible — even shoot"

He clarified that for about a month Constable Rampete and other Ikageng policemen had been posted to their own homes to guard them Mr Unterhalter put it to Captain du Preez that Constable Rampete was still bound to act as a policeman and not in his private capacity

The witness responded "Being a policeman does not make me any better than the man in the street"

Captain du Preez said he did not know what happened in the house where Constable Rampete found Mr Nyongkong But if he were making an arrest in the same circumstances — where the suspect was cornered and unarmed — "I would simply have pulled the deceased out with my hands"

Fraud cases make students of prosecutors

SUPREME Court prosecutors are going back to school to learn the intricacies of banking and accounting

Several prosecutors at the Rand Supreme Court are furthering their studies to help them cope with a flood of commercial fraud cases

Some are taking night courses in accounting, but at least seven are doing masters degrees in banking law and related fields

The surge in commercial cases came after the state legal system shifted its emphasis from the security-related cases

PATRICK BULGER

of the total onslaught era

"When we first started getting these cases we were overwhelmed by the figures and technicalities that characterise a major fraud case," one prosecutor said

The cases now dominating the courts centre on financial rand roundtripping, "kite-flying" to hide shortfalls in bank accounts, forged share certificates and securities, and fictitious overseas front firms

Between June last year and July this year, Johannesburg's prosecutors spent 8 882 hours preparing indictments for fraud — as opposed to 651 hours the previous year Fraud cases involving an estimated R5bn are now before the Rand Supreme Court

For some prosecutors, the newly acquired financial finesse is leading them to look beyond the public service to a career in the business sector "If one works 15 hours a day as an advocate one can earn about R40 000 a month But in business, with my legal background, I could get up to R100 000 a month — and that's for an eight-hour day," one said

NEWS IN BRIEF

Shooting: R2-m claim

Xavier Lukas

A STRAND mother is claiming over R2-million in damages from the Minister of Law and Order for her son, shot by police during the Mass Democratic Movement's defiance campaign in 1989.

Xavier Robertson, 15, when he was shot on August 19 1989, is now unable to stand alone and cannot walk without help. His skull was fractured and pieces of bone were driven into his brain.

His mother, Mrs Wendy Lukas, is bringing the Supreme Court action which begins next Tuesday

Constable: I had finger on trigger

(252)

Star 9/10/91

By Jo-Anne Collinge

A police constable told a Potchefstroom inquest court yesterday that his finger was on the trigger of his shotgun and the safety catch was off when he reached with his free hand to pull a teenager from under a bed.

The young man, Bongi Collin Nyongkong (19), turned over under the bed and grabbed the barrel, causing a shot to go off, said Constable Ephraim "Fente" Rampete (34) of the unrest unit.

Mr Nyongkong died shortly after the shooting in the bedroom of a house to which he had fled after Constable Rampete pursued him in the streets of Ikageng township on February 23 1990.

Constable Rampete said "I had just fired some shots, and this gun cocks itself — it's automatic."

He said he "didn't think" of the likelihood that the gun might go off. He said he had suspected Mr Nyongkong might be armed although he had not seen any weapons on him.

Twice during yesterday's evidence, Constable Rampete's legal representative intervened to prevent his client giving answers which might incriminate him.

The constable admitted it was not consistent with his training to keep the safety catch off when carrying a firearm in a residential area.

On Monday, evidence was given that Constable Rampete already had one fatal shooting on his record when he joined the unrest unit in 1988.

According to Constable Rampete, Mr Nyongkong was one of six people who stoned his house and the only one who failed to run away after he had fired a warning shot. Mr Nyongkong continued to stone his house, said Constable Rampete, and he fired two more shots in his direction.

David Unterhalter, for the Nyongkong family, said it was absolutely absurd to suggest that after a shot was fired Mr Nyongkong would stand his ground to throw stones at a door.

The hearing continues.

Welding victim files appeal

252

So wetsm 11/10/91

By MATHATHA TSEDU

NOTICE Of appeal against sentence imposed on the "welding" victim in Louis Trichardt has been filed with the local clerk of the criminal court.

This was revealed yesterday by a lawyer for the Mukhwathi family, Mr Mike Mashego, who said the filing of the notice paved the way for a bail application which is scheduled for next week.

The youth, who cannot be named because of his age, was sentenced to an indeterminate period in a reform centre by regional magistrate Mr Agh Bouwer for stealing a TV set.

Misdirected

The basis of the appeal is that the magistrate misdirected himself in "over emphasising the prevalence of the offence and underplaying the personal circumstances of the accused".

It added that the magistrate did not take into account the fact that "the accused had already been severely punished" in the form of welding, assault, shocking by electrical device and being set alight

MAANDAG, 4 tot DONDERDAG, 7 NOVEMBER 1991

Gesamentlike Komitee oor Landbou, Waterwese en Werke (Wysigingswetsontwerp op Landbouplae [W 4—92 (AS)], Wysigingswetsontwerp op Veebrandmerke [W 5—92 (AS)], Wetsontwerp op Statebond-oorlogsgrafte [W 9—92 (AS)] en Wysigingswetsontwerp op Deeltitels [W 14—92 (AS)])

Gesamentlike Komitee oor Openbare Ondernemings, Ekonomiese Koordinering en Vervoer (Wysigingswetsontwerp op Stedelike Vervoer [W 11—92 (AS)] en Wysigingswetsontwerp op die Multilaterale Motorvoertuigongelukkefondswet [W 13—92 (AS)])

VRYDAG, 8 NOVEMBER 1991

Gesamentlike Komitee oor Landbou, Waterwese en Werke (Wysigingswetsontwerp op Landbouplae [W 4—92 (AS)], Wysigingswetsontwerp op Veebrandmerke [W 5—92 (AS)], Wetsontwerp op Statebond-oorlogsgrafte [W 9—92 (AS)] en Wysigingswetsontwerp op Deeltitels [W 14—92 (AS)])

(11 Oktober 1991)

MONDAY, 4 to THURSDAY, 7 NOVEMBER 1991

Joint Committee on Agriculture, Water Affairs and Works (Agricultural Pests Amendment Bill [B 4—92 (GA)], Livestock Brands Amendment Bill [B 5—92 (GA)], Commonwealth War Graves Bill [B 9—92 (GA)] and Sectional Titles Amendment Bill [B 14—92 (GA)]).

Joint Committee on Public Enterprises, Economic Co-ordination and Transport (Urban Transport Amendment Bill [B 11—92 (GA)] and Multilateral Motor Vehicle Accidents Fund Amendment Bill [B 13—92 (GA)]).

FRIDAY, 8 NOVEMBER 1991

Joint Committee on Agriculture, Water Affairs and Works (Agricultural Pests Amendment Bill [B 4—92 (GA)], Livestock Brands Amendment Bill [B 5—92 (GA)], Commonwealth War Graves Bill [B 9—92 (GA)] and Sectional Titles Amendment Bill [B 14—92 (GA)])

(11 October 1991)

KENNISGEWING 960 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal· Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone.

NOTICE 960 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No. 3013 OF 18 DECEMBER 1990

The Director-General. Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Anthony	Frank	1940–08–16
Buthelezi	Agri	1974–05–30
Buthelezi	Thulani	1970–09–19
Ciliwe	Gcobani	1943
Dube	Eric Mandla	1960–08–27
Dyani	Wilberforce Fuzile	—
Gumbi	Shadrack Sipho	1964–02–05
Gumede	Obed Fana	1935–09–27
Keke	Zolile Hamilton	1945–10–31
Khulekane	John Ndlela	1965–05–11
Khumalo	Brian S'khumbuzo	1971–12–20
Konopi	Maud Naledi	1958–11–19

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Leevy	Paseka Phillip	1953–04–01
Lekoape	Patric	1932–09–25
Luthuli	Lucky Stanly	1967–09–20
Madiba	Gidion Thabo	1972–07–16
Maja	Orphaniel Oupa	1958–01–23
Mashiya	Vusimuzi	1969–04–04
Masuku	Israel	—
Mazam	Moses Zamani	1927–02–11
Mchunu	Goodenough	1969–05–05
Mhlauli	Barrington Phiwe	1960–08–22
Mofokeng	Paulus Litau	1958–09–08
Moholisa	Edwin Koena	1935–09–22
Mokgoro	Tuelo Reward	1957–07–09
Molate	Goodman Malgape	1961–04–17
Moola	Lucky Ali	1973–05–07
Mopereo	Rose Kedisaleise	1960–01–14
Motsoeneng	Paul Thulani	1971–08–14
Msomi	Mbuzo	1971–03–04
Mxhosana	Peter Nkenke	1952–12–19
Mzimela	Mthokozisi	1967
Ndladla	Thabane Marvin	1972–12–24
Ndlovu	Sifiso	1971–10–10
Nene	Emanuel Thulane	1964–11–07
Ngwenya	Sipho Josia	1960–04–04
Nhlapo	Rocks Joseph Bafana	1958–06–10
Nkenene	Lawrence Themba	1954–06–20
Nkomo	Fortune Vusi	1971–10–23
Ntshangase	Bongani S'busiso Richard	1957–12–22
Ntuli	Sifiso Silas	1961–11–18
Ntuli	Taddy	1965–09–17
Otsekeng	Lebogang	1963–04–08
Pooe	Humphrey Don	1960–11–11
Pule	Ramoabi Abram	1960–02–24
Radebe	Edward Robert Mnyatheli	1957–04–20
Ramokoka	Japhta Shimi	1953–08–05
Sejake	Nimrod Naphtali	1920–08–12
Shabangu	Knowledge Mafotha	1973–04–08
Shisana	Olive	1951–11–27
Sondlo	Mercy Nobayeni	1966–01–09
Tshabalala	David Sope	1938–11–16
Tsotetse	Thulane	1974–07–12
Woco	George	1952–03–10
Zwane	Duncan Bongeni	1970–03–23

(11 Oktober 1991)/(11 October 1991)

KENNISGEWING 961 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal. Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No 501 van 6 Maart 1991 onderskryf het, en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), na gelang van die geval

NOTICE 961 OF 1991

DEPARTMENT OF JUSTICE

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ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress of Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development; and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No. 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No. 74 of 1982), as the case may be

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Bruintjies	Melvin Gavin	1964–02–19
Haricharan	Shaniloutt	1961–01–24
Ishmail	Richard Walter	1963–03–01
Makhanda	Lesawana	1942–07–12
Makhuvha	Patrick	1974–08–15
Maphiri	Zephania Duke	1955–08–12
Maqaqula	Henry Bazamos	1968–01–28
Marnoch	Craig Iain	1965–02–16
Mchunu	Xolani Siphiwe	1970–01–13
Mkhwebane	John Mduduzi	1948–01–01
Nhlanhla	Welcome	1920
Pikoli	Vusumzi Patrick	1958–03–29
Qavi	Nkosinathi Magadu	1967–05–20
Radebe	Georginal Joana	1955–12–25
Radebe	Rufus	1964–06–23
Salie	Moegamat Aneez	1956–08–05
Shihlabane	Samson	1967–03–28
Tembile	Sydeny Kahlu	1955–08–05
Thoabala	Hugh	1958–11–04
Zakwe	Richard Mzwakhe Fanana	1957–07–07

KENNISGEWING 954 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No R 936 VAN 24 APRIL 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No R 936 van 24 April 1991 onderskryf het, en

(b) wat die inligting bedoel in paragraaf (b) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing aan elke sodanige persoon ten opsigte van enige handeling bedoel in paragraaf (c) van genoemde Goewermentskennisgewing 'n Lys van die spesifieke handelinge en opsigte waarvan vrywaring deur elke sodanige persoon verwerf is, is vir inspeksie beskikbaar in die Kantoor van die Direkteur-generaal Justisie

NOTICE 954 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No R 936 OF 24 APRIL 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF THE SAID GOVERNMENT NOTICE

The Director-General. Justice hereby makes known for general information, in the Schedule hereto, the names of the persons—

(a) who are members of the African National Congress, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No R 936 of 24 April 1991 subscribed to the principles of peaceful solutions and development, and

(b) who have furnished the information referred to in paragraph (b) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice to each such person in respect of any act referred to in paragraph (c) of the said Government Notice A list of the specific acts in respect of which indemnity has been acquired by each such person is available for inspection at the Office of the Director-General Justice.

BYLAE • SCHEDULE

Van Surname	Voorname Names	Geboortedatum Date of birth
Dladla	Charles Sphiwae	1971–10–10
Dlomo	Aron	1952–03–22
Gcabashe	Nhlanhla	1970–11–17
Human	Mkiki Sam	1964
Khuzwayo	Thulani	1972–09–07
Maishoane	Simon Sabata	1933–02–17
Marumole	Abel Moabi	1955–12–01
Mdletshe	Christopher	1957–09–28
Mdletshe	Sydney	1958–04–26
Mdluli	Bheki	1974–08–23
Mdluli	Mazwi	1973–02–25
Mdluli	Nkosingiphile	1974–02–02
Mohladise	Zenzele	1973–05–11
Moshoeshoe	Mphathi Martha	1959–03–09
Mthembu	David	—
Mthembu	Mduduzi	1966–29–01
Mthiyane	Ntuthuko	1973–07–20
Ncube	Bhekinkosi	1970–04–28
Ndwandwe	Romanius	1968–06–18
Nxumalo	Antony	1961–04–18
Nyuswa	Hamilton	1956–05–07
Shandu	Eugéne	1964–04–04
Sibna	Skhumbuzo	1962–03–29
Sithole	Nicholas	1968–08–27
Zwane	Bongani	1973–10–03
	Jabulane Ralph	1967–06–30

Mxenge kin to prosecute

c/pred 13/10/91

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By LULAMA LUTI

WHILE the Natal Attorney-General has decided to close his book on the killing in 1981 of Durban civil rights lawyer Griffiths Mxenge, the case is far from over.

Following this week's ruling by A-G IC Imber not to prosecute anybody in connection with the killing, the family of the slain United Democratic Front patron has instructed its lawyer, Bheka Shezi, to institute proceedings for a private prosecution.

Shezi said, "I have written to the A-G for a certificate stating formally that he has declined to prosecute and as soon as I have received it we'll continue with the case."

A former ANC member and Robben Island prisoner, Mxenge was found with 45 stab wounds and a slit throat near Umlazi stadium on November 19, 1981.

GRIFFITHS MXENGE ... case far from over.

Four years later, in August 1985, his wife Victoria, also a civil rights lawyer, was shot and axed to death by unknown men in the driveway of her Umlazi home.

No arrests have been made in connection with the killings.

Shezi told City Press: "Following his refusal on February 1988 to hold a formal inquest into the death of Victoria, magistrate FM Vorster referred the case to him (Imber) for his decision and until now there has not been any response."

However, Shezi believes the Mxenge family has a strong case and still has a chance of seeing justice done, especially in the light of admissions by Death Row prisoner Almond Nofomela and former CCB leader Dirk Coetzee.

"In a civil court action brought by the Mxenge children for loss of support, against the Minister of Law and Order, we had subpoenaed Dirk Coetzee to testify.

"And in an affidavit he made in London, Coetzee said he was prepared to come to South Africa and testify in the case provided he was granted indemnity against prosecution," he said.

The case has been postponed to April 15 next year and Coetzee's application for indemnity is being considered by the Minister of Justice.

In a statement of support for the Mxenges, the National Association of Democratic Lawyers condemned Imber's decision and said it effectively allowed those who gave the instructions for the killing of Mxenge to escape investigation and prosecution.

UWC human rights post for Asmal

By KURT SWART

A FORMER political exile and founder member of the Irish Anti-Apartheid Movement, Professor Kader Asmal, has been appointed professor of human rights law at the University of the Western Cape.

This is the first post of its kind at UWC.

Prof Asmal, regarded as an expert on international and labour law, joined UWC earlier this year as visiting professor in Public and Adjective Law after spending 30 years in exile.

He attained his MA degree at the University of Dublin in 1966 and has practised as a barrister in London and Dublin.

His academic appointments at Dublin's Trinity College included senior lecturer in law in 1975 and dean of the Faculty of arts (humanities) from 1980 to 1986.

A former chairman of the Irish Anti-Apartheid Movement, he also served as vice-president of the International Defence and Aid Fund for Southern Africa.

Expert

He is at present a member of the national executive committee of the African National Congress and is one of the organisation's constitutional experts.

His publications include a book, Shoot to Kill, based on an inquiry by international lawyers into the use of firearms by British security forces in Northern Ireland and an article for the United Nations entitled "The Agony of South Africa", which documents Irish opposition to apartheid.

Prof Asmal has researched international human rights, including international and labour law, and constitutional aspects of the protection of minorities.

He is a former winner of the United Nations Educational, Scientific and Cultural Organisation (Unesco) prize for the teaching of human rights.

His duties at UWC will consist mainly of research and he will also teach a course on the protection of human rights.

"I will be looking at how human rights can be integrated into teaching, and my work will also involve researching different aspects of a new, democratic constitution for South Africa," he said.

Taking law to the streets

By KURT SWART

THE Street Law Office (SLO) at the University of the Western Cape is to press ahead with its campaign to "sell human rights to the consumer" despite the Cape Town City Council's rejection of an application for financial aid this week.

The SLO applied for funds to cover the cost of six bus advertisements with the message "Human Rights for All".

The SLO is the process of developing and implementing a regional educational programme designed to equip "laypeople" with some knowledge of civil and human rights.

"The objectives of this programme include the promotion of tolerance and respect for human rights and the fostering of a culture of respect for a transformed justice system and the law," said co-ordinator Mr Peter Volmink.

The SLO staff campaign is aimed at creating a better understanding of human rights through "cultural awareness". Planned projects include artistic competitions, film festivals, street theatre, musical presentations and concerts, and research and publications.

The SLO is housed in the Law Faculty at UWC and is a branch of the Community Law department of Advocate Dullah Omar.

For further information on Street Law contact Peter Volmink on ☎ 959 2298.

Harare summit focuses on African human rights

MICHAEL HARTNACK

HARARE — African human rights lawyers and churchmen yesterday set what they hope will be a new direction for the Commonwealth, launching an offensive "to safeguard fundamental human freedoms"

It coincides with the current high-profile British royal tour of Zimbabwe and next week's 50-nation Commonwealth summit here

"Human rights issues are pivotal to the future of the Commonwealth," former Zimbabwean Chief Justice Enoch Dumbutshena told representatives of 15 African states who gathered for a four-day meeting aimed at presenting a manifesto to the statesmen

"Commonwealth countries have a sad record in human rights abuses," said Dumbutshena, 71. He was forced to retire last year following two damaging confrontations between Zimbabwe's judges and President Robert Mugabe's government.

Third World leaders gathered in Harare are likely to be angered by Dumbutshena's joining the call to developed nations "not to grant aid to rulers who use money for their own benefit while their people are denied their rights"

Addressing a pre-summit media conference on Wednesday, Mugabe denounced what British Overseas Aid Minister Lynda Chalker recently described as a "carrot and stick policy" on aid and progress to democracy

Mugabe said it was "completely unacceptable" for donor states to "whip us to go the way they want".

But Dumbutshena said he was personally delighted that "many developed countries with economic muscle are today insisting on recipient countries adhering to and maintaing good human rights records".

□ There is speculation that SA might be invited to observe the Commonwealth heads of government meeting. A spokesman for Foreign Minister Pik Botha said SA had not received an invitation, and therefore would not comment on whether anyone would attend

● Comment: Page 8

'Welded' youth gets R200 bail

THERE was jubilation in the Louis Trichardt Regional Court yesterday when the "welding victim" youth was given R200 bail pending his appeal

The youth, who was sentenced to an indeterminate period in a juvenile centre for allegedly stealing a TV set, cannot be named because of his age

By MATHATHA TSEDU

Regional magistrate Mr W Fourie presided over the hearing, which was preceded by drama after the attorney who had represented the youth in the criminal case, Mr Leon Klaff, appeared in court to ask for the bail without filing appeal papers

The appeal papers were filed by Mr Mike Mashego of Pietersburg, who was instructed by the boy's mother and Azapo

The hearing was stopped for a while yesterday and Mashego was contacted He gave Klaff authority to move the bail application

The youth suffered extensive burns after being set alight by a white farmer, who also welded him to a steel table and doused him with petrol

The sentence on the youth triggered a wave of protests after the farmer was given a suspended sentence for attempted murder

Commonwealth focus shifts to human rights

B/Day 15/10/91 (252)

HARARE — Deprived of apartheid as their focus, leaders of the 50-nation Commonwealth meet this week with attention turned on a once-taboo subject. their own often chequered human rights records

After years of biennial summits dominated by punishing SA, the largely Third World organisation that includes some of apartheid's foremost critics will instead consider recommendations to phase out sanctions

Underlining the turnaround, 10 presidents and prime ministers meet today on the eve of the week-long summit to fashion a new role for the club of largely African, Asian and Caribbean nations that once comprised the British empire

"It is time the Commonwealth made a fresh start," said British Foreign Secretary Douglas Hurd "It has spent too long sticking pins in SA"

"We want the Commonwealth to concentrate on encouraging and helping some of its members towards good government — to hold free elections, to run an independent judiciary, to tolerate a free Press, to stamp out corruption"

Despite the sensitive list of human rights topics and a lingering threat of disagreement over the pace of dismantling SA sanctions, officials were optimistic

Chief Emeka Anyaoku, the Nigerian secretary-general of the Commonwealth, said the organisation was ready "to chart a future course".

ANC president Nelson Mandela had been invited to be present "in the corridors" of the Harare meeting, Commonwealth officials said

Mandela has accepted the invitation The summit does not admit observers to the deliberations, but diplomacy is done on the fringes of the meeting

A committee of foreign ministers from Australia, Canada, Guyana, India, Malaysia, Nigeria, Tanzania, Zambia and Zimbabwe recommended last month that the Harare summit lift immediately travel restrictions on South Africans, and bans on cultural and scientific contacts and air links

The foreign ministers wanted the easing of financial sanctions, including bans on loans and investment to be pegged to constitutional talks leading to a new government

But Britain, isolated at previous Commonwealth summits over its refusal to impose tough embargoes, and other West European countries, have already lifted most sanctions

Officials said a confidential report drawn up by senior officials after the 1989 Commonwealth summit in Malaysian capital Kuala Lumpur envisages the Commonwealth focusing on areas such as monitoring elections and increased technical cooperation

□ Australian Prime Minister Bob Hawke has predicted that the conference will agree to the easing of sanctions against SA

Speaking shortly before leaving Canberra for Harare, the Australian leader forecast the meeting would lift bans on direct air links and sporting contacts and begin moves to ease economic sanctions

Hawke said "My position has been that as Australia was at the forefront of the move to impose sanctions, I think we should be taking a leading role in seeing their dismantlement" — Sapa-AP

ANC wrong on war 'wealth tax'

B/Day 17/10/91

DARIUS SANAI

THE controversial "wealth tax" suggested by an ANC member bears little resemblance to measures used to rebuild the economy in post-war Germany despite assertions to the contrary by leading ANC officials.

The wealth levy in Germany consisted of a levy of 0,2% of property value, paid over 20 years by owners of property not damaged during the Second World War

The SA proposal, raised by an ANC member at an affirmative action workshop sponsored partly by the organisation, is for a levy equal to one third of an individual's assets to be paid over a period of 10 years

Dismissed

ANC president Nelson Mandela has subsequently said the wealth tax was not official ANC policy

ANC constitutional committee spokesman Dullah Omar claimed at the weekend that such a measure had been used "highly successfully" in West Germany after the end of the Second World War

The German levy came in the context of a wave of reform and rebuilding, and has been dismissed by most historians as incidental to the rebuilding process in post-war West Germany

The Marshall Plan, involving massive US assistance to Western Europe, free market reforms initiated by political leaders Ludwig Erhard and Konrad Adenauer; the German industrial base, and the global economic boom, enhanced by the Korean War, are the commonly cited reasons behind the West German "economic miracle" of the '50s

Golo Mann's The History of Germany since 1789, widely considered to be one of the most authoritative commentaries on German history, does not even mention the levy in its four chapters on the country in the post-war period

University of Stellenbosch economics professor Sampie Terreblanche said yesterday the ANC's plan appeared to be a misinterpretation of a plan put forward by a visiting US professor earlier this year

He said Wesleyan University economics professor Basil Moore said during his visit that all South Africans with net assets of over R500 000 should pay one-third of the excess to government in a one-off payment

But, under Moore's plan, the payee would receive exactly the same amount back from a loan granted to SA by a "world financial body", to be paid off over 20 years

The effect would be the instant raising of a large sum, with the effect being cushioned for the taxpayers over a period of years

This was different to what had happened in Germany, Terreblanche said

NEWS IN BRIEF

B/Day 17/10/91

Bail court at prison

GOVERNMENT has approved the institution of a so-called bail court at Pretoria Prison, Deputy Justice Minister Danie Schutte said yesterday (252)

He said the court was to be instituted as a pilot project

"The objective of the institution of such a court is to simplify the application for, and payment of bail and to promote the accessibility of the court of law"

B/Day 17/10/91

Political inmate dies

BOPHUTHATSWANA political prisoner Rabusang "Black Mamba" Monnane, 37, of Leeuwfontein died at the homeland's Rooigrond Prison on Tuesday, the homeland's Commissioner of Prisons Brig S S Thooe said yesterday

He said Monnane was admitted to the sickbay on October 3 with "high blood pressure" (1/89)

No gun restriction

THE proposed amendment to the Arms and Ammunition Act was definitely not intended to restrict firearm ownership to only one firearm per person, Law and Order Ministry spokesman Capt Craig Kotze said yesterday

"All the proposed amendment does is that it recognises the needs of the collector It does not negate any other provisions It is as simple as that We are not disarming people," he said

REPORTS Business Day Reporter Sapa

Policemen admit to attack

MARITZBURG — Four former SAP special policemen, facing 19 charges of murder and attempted murder committed at Trust Feed near New Hanover in 1988, admitted in the Supreme Court yesterday that they took part in an attack on a house in the area but said they were acting on the orders of their superior and co-accused — former station commander at New Hanover Capt Brian Mitchell

The policemen — Kehla Ngubane, 21, Thabo Sikhosana, 29, Dumisani Ndwalane, 27, and David Khambule, 26, — as well as Mitchell, 34, Capt Jacobus van den Heever, 36, and Sgt Neville Rose, 35, pleaded not guilty before Mr Justice Wilson and two assessors to the charges

Ndwalane and Khambule alleged that in the early hours of December 3, 1988, Mitchell pointed out the house which was to be attacked and stated it was occupied by "terrorists"

In his statement, Khambule said Mitchell instructed him and the other special policemen to surround the house

"Shortly thereafter shots were fired at the house," he said After the attack they

Own Correspondent

were ordered to return to their posts

In his statement Mitchell denied having been present at the scene of the attack and that he planned or directed it

Van den Heever, who at the time was in charge of a squad of special policemen at Hammarsdale, denied that he was aware at any stage that the four special policemen were to be sent to Trust Feed to carry out any unlawful attack or that he had made arrangements to obtain or send special policemen to the area to carry out an unlawful attack

Van den Heever said as officer in charge of special policemen at Hammarsdale he fell under the command of the late Maj Deon Terblanche who was head of the Riot Unit in Maritzburg

Van den Heever said he took part in a police operation in the Trust Feed area during December 2, 1988

The following day Terblanche informed him that a group of Inkatha members had been killed in a house at Trust Feed and he had accompanied his superior to the scene

The hearing continues today

From Page 1

7 policemen deny charges of massacre

SEVEN policemen charged with the murder of 11 people in the 1988 massacre at Trust Feed, New Hanover, yesterday pleaded not guilty to all charges against them

Captain Brian Mitchell (34), Captain Jacobus van den Heever (36), Sergeant Neville Rose (35) and former special policemen Kehla Ngubane (21), Thabo Sikhosana (29), Dumisani Ndwalane (27) and David Khambule (26) all pleaded not guilty to 11 murder charges and eight of attempted murder

They are appearing before Mr Justice Andrew Wilson and two assessors in the Maritzburg Supreme Court in a trial which has drawn worldwide attention

The policemen are alleged to have shot dead Mselani Ntuli, Dudu Shangase, Zethu Shangase, Nkonyeni Shangase, Muzi Shangase, Fida Ntuli, Fikile Zondi, Maritz Xaba, Sara Nyoka, Alfred Zitha and Sisedewu Sithole - *Sowetan Correspondent.*

A-G told to pay costs in Weekblad defamation suit

Witwatersrand Attorney-General Klaus Peter Constantin Otto von Lieres und Wilkau was yesterday ordered to pay between R150 000 and R200 000 to cover all the legal costs in a defamation suit that earned him an award of only R5 000 against Vrye Weekblad

Vrye Weekblad editor Max du Preez said the case "should serve as a warning to all public figures and politicians not to run to the Supreme Court with defamation cases when they are criticised by the media"

The matter arose from a Vrye Weekblad publication claiming Mr von Lieres was running a vendetta against the newspaper In the ensuing legal wrangle in the Rand Supreme Court, Vrye Weekblad offered to settle out of court for R15 000 and R5 000 for two defamation claims

The Attorney-General accepted the R15 000 but rejected the R5 000 offer and challenged the newspaper in court for more, but was granted the same amount — R5 000

Mr von Lieres then went to court again, asking Mr Justice A P van Coller to order Vrye Weekblad to pay for the legal costs

However, the judge declined in yesterday's ruling, ordering Mr von Lieres to pay not only his own legal costs, but also those incurred by Vrye Weekblad in the hiring of two advocates from the day the newspaper offered to settle out of court

Mr du Preez suggested that officials who felt they had been criticised too severely in the media should seek redress with the Media Council, and not in the Supreme Court — Sapa

AWB chief for trial over assault

Sowetan 18/10/91

By SONTI MASEKO

EUGENE Terre'Blanche, leader of the Afrikaner Weerstandbeweging, is to stand trial on December 12 for allegedly assaulting a 70-year old pensioner earlier this year

The decision to prosecute Terre'Blanche came after a lengthy legal process between Krugersdorp attorney, Mr Aubrey Khanyile, representing the 70-year-old complainant, Mr William Mashiya, and the Ventersdorp police

Mashiya, a traditional healer from Klipplaatdrift, alleged that he was assaulted at his home by the AWB leader on March 9 this year He said Terre'Blanche accused him of having stolen a goat

Mashiya claimed he was assaulted after he refused to sell his ram to Terre'Blanche, a farmer in Ventersdorp

At the time, Khanyile said, he had had to write a directive to the police station commander in Ventersdorp to have the charge investigated after his client was turned away when he went to lay the charge following the assault

Instead, a day after he made a statement, Mashiya was detained for three days and released without being charged

Mashiya was charged with stock theft, a charge which never materialised, his lawyer said

In May, Mashiya was also raided by five white policemen and on May 3 he appeared in court on charges of possessing dagga The case was withdrawn on September 10

Wounded youth claims R2-m from cops

A TEENAGER who was paralysed, during a beach apartheid protest in the Strand, Cape, in 1989, allegedly by a rubber bullet, is claiming R2 million damages from the police

Mrs Wendy Lucas of the Strand claimed in the Supreme Court yesterday that police shot her son, Xavier Robertson (15) while he was on an errand for his grandmother.

Xavier, who is partially paralysed and has brain damage, attended court yesterday in his wheelchair.

Police deny any blame for the boys' injuries and are contesting the action

Firing

Mr JR Whitehead, for the boy, said the court would have to decide whether the bullet was fired by a policeman, whether the police were justified in firing the shot and whether they had indemnity in terms of the State of Emergency.

Whitehead said the judge would have to decide on the merit of police claims that they acted out of self-defence and necessity.

He said the boy's damages included medical expenses, future medical costs, physiotherapy, drugs, the costs of wheelchairs and parts and a special vehicle - *Sowetan Correspondent*

Bloody attack 'an accident'

MARITZBURG — The killing of 11 people at a funeral vigil at Trust Feeds near Wartburg in Natal in 1988 could have been a dreadful mistake, it emerged in the Maritzburg Supreme Court yesterday

Trust Feed Inkatha chairman Jerome Gabela, speaking through an interpreter, said after the bloody attack on the wake he asked New Hanover police station commander Capt Brian Mitchell why his people were being killed

"Mitchell responded by saying an accident or a misfortune occurred there so you should never talk about what happened there otherwise I'll kill you," Gabela said

Seven Natal policemen, including Mitchell, have pleaded not guilty to 11 counts of murder and eight counts of attempted murder

On trial are Mitchell, 34, Capt Jacobus van den Heever, 36, Sgt Neville Rose, 35, and former special constables Kehla Ngubane, 21, Thabo Sikhosana, 29, Dumisani Ndwalane, 27, and David Khambule, 26.

Gabela said he believed six special policemen, arranged by Mitchell, were to have attacked a local shopowner's premises Instead a funeral vigil was attacked.

Earlier, Gabela identified Van den Heever as the man who planned the attack

He said he met with Mitchell, the late Capt Deon Terblanche, who was head of the Maritzburg Riot Unit, and Van den Heever at the entrance to Trust Feed the day before the attack

Mitchell had told him at the time that Van den Heever was planning the attack on the local shopowner's premises

Controversy arose yesterday over where Gabela was staying during the trial

Mitchell's legal counsel, Etienne du Toit, expressed dissatisfaction that Gabela was staying with the team investigating the killings.

Natal Attorney-General Mike Imber said Gabela was staying at a police unrest investigation camp, which included the Trust Feed investigation team.

Du Toit suggested Gabela could be influenced by staying with the investigation officers and urged that alternative accommodation be sought

However, Mr Justice Wilson said "In the light of the accused in the case it might be difficult to send him to another establishment run by the South African Police"

The judge corrected Press reports that he had granted Gabela indemnity from prosecution Indemnity would only be considered once he had finished giving evidence.

The trial continues today — Sapa

(252) ARG 19/10/91

Rough justice from one of the kangaroo courts

EDWARD MOLOINYANE
Weekend Argus Reporter

A KHAYELITSHA youth is in hospital with serious injuries after he and three others were brutally assaulted by a kangaroo court.

Baba Tshumi, 17, Litha Sixholo, 17, Motlatsi Mokapilo, 16, and another youth were accused at a court convened in the core house area of Town Two, Village Three, Khayelitsha, of stealing a car battery.

Litha, a standard 5 pupil at Masithandane Primary in Khayelitsha, was referred to Conradie Hospital by a doctor and admitted on Wednesday — three weeks after the assault — for severe sjambok injuries to the buttocks and knees

A hospital spokesman said Litha, who could hardly walk when Weekend Argus visited him at home this week, was in a satisfactory condition.

Motlatsi, whose still-bleeding wounds stretch from his buttocks to his kneees, has taken refuge at his grandparents' home in Guguletu.

He has been having daily treatment at the Guguletu Day Hospital but he can hardly walk and his grandfather said he was contemplating sending him to hospital. His weals are still dripping blood.

Baba, who has many weals on his abdoman, buttocks and thighs, said he was still in great pain.

The unidentified youth, said to be from a shack settlement next to Green Point, could not be traced

None of the youths or their parents have laid charges with police for fear of reprisals.

Kangaroo courts were unheard of in the core houses until after the unbanning of political organisations las year But they were used extensively by warlords to entrench their power in the shack settlements of Khayelitsha before February 2 1990

Now "People's Courts" run by "progressives" have been established in many parts of Khayelitsha.

The youths' ordeal began on the morning of October 2 when about seven men armed with sjamboks fetched them at their homes.

Said Litha's father Mr Mbulelwa Sixholo "We were asleep when I heard footsteps followed by a hard knock on the door When the knockers mentioned their names I opened because I recognised them as those men who often call residents to meetings

☐ **INJURIES:** Vicious weals and scars cover the body of this youth after the "sentence"

"They told me they had come to fetch Litha because they wanted to ask him something They were rather unfriendly and I was scared because you never know what's going to happen to you these days There were three other boys in a bakkie parked outside and one man seemed to be guarding them to prevent an escape."

Mr Sixholo said the men did not have the courtesy to inform him of his son's wrongdoing Nor did they invite him to the "trial"

Litha said he recognised the other boys in the bakkie. They were driven to a house known in the area as the "information centre"

There were men and some women whom the boys recognised as "top people" in the civic association

"The men ordered us into the house and it was only when we got off the bakkie that I noticed that the other three walked with difficulty and the back of their clothes were soaked in blood.

"Inside the house there was lots of fresh blood on the walls and floor"

Litha said the group accused him and the others of stealing a car battery a week before and he was ordered to "produce" it.

"When I denied any knowledge of the battery a big man, wielding a sjambok, entered and without asking questions ordered that I be given 15 'shots' (lashes)

"I was ordered to strip naked and lie on the floor and the big man ordered his men to hold me firmly to the ground. He applied the sjambok with so much force that I thought I was going to die I can't say how many times he hit me and I cannot explain the pain," Litha said

The same treatment was meted out to the other three who were bleeding profusely from the previous lashing The beating stopped after the one from the squatter camp "confessed" that he had stolen and sold the battery

"They then ordered us to wash off the blood and clean the house before letting us go at 4am"

Mr John Rabie, chairman of Rabie Developers, which owns the house used as the "information centre", said the property had been used as a showhouse The company had "lent" it to the civic association last year as a "contribution to the community"

"We thought it was a good idea because they requested the use of the house for their meetings during the rent boycott. The house still belongs to us and the arrangement was that we would get it back as soon as the boycott was over"

Saying he was "absolutely horrified" at the allegations about the property's new function, Mr Rabie added. "From the look of things in that area it seems we are not going to get that house back.

"We have got six other houses in the area and people just moved into them 18 months ago without our knowledge.

"We have tried through the police, the ANC and the messenger of the court to move those people out but there has always been resistance in the form of toyi-toyi by a large number of people. We have written those houses off our books," Mr Rabie said.

Western Cape ANC publicity secretary Ms Mziwonke Jacobs said she was not aware that the civic association, which is aligned to the organisation, was involved in running kangaroo courts Provided with details, she said she would "certainly investigate"

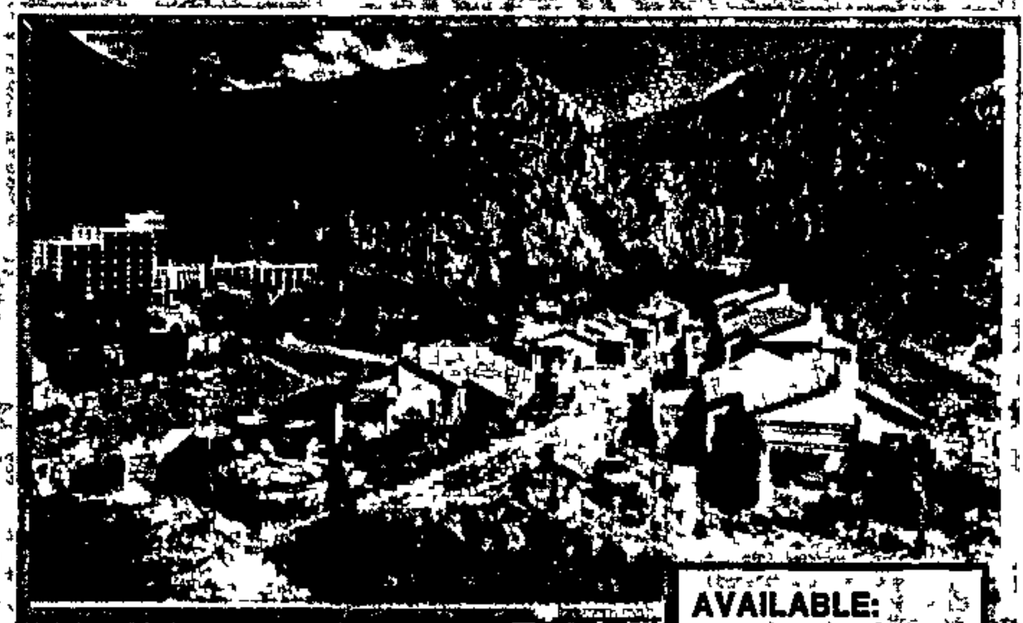
☐ **GREAT PAIN:** Baba Tshumi, 17, on the left

☐☐☐

☐ **STILL BLEEDING:** 16-year-old Motlatsi Mokapilo, right

Pictures WILLIE de KLERK Weekend Argus

MONTAGU SPRINGS



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'Inside the house there was lots of fresh blood on the walls and floor'

Flaw in our legal system

ST Times 20/10/9?

JOEL MERVIS discusses fair trials at home and abroad

THE important Appeal Court judgment earlier this month on the question of "fair trial" in South Africa not only throws fresh light on the subject but invites a comparison of fair trials as they exist in the South African and American legal systems

The matter heard in Bloemfontein — the State vs Mthwana — arose out of the fact than an indigent accused, charged with a serious crime and convicted, had not been legally defended in court. It was contended, on that ground, that he did not have a fair trial

This argument was taken further with the submission that the accused had the right to a fair trial If he did have that right, then the trial on that ground could be held to be unfair and he was entitled to an acquittal

The authority for the view that the individual has a right of fair trial is contained in a judgment by Mr Justice Didcott in the State vs Khanyile The judge found that for an indigent accused charged with a serious crime to be unrepresented constituted a failure of justice

In a later case, Judge Didcott referred to the State vs Khanyile and intimated that Khanyile's case did not create a new brand of right, but that it was "the elaboration and development of a right well embedded in our law, the right to a fair trial"

I would assume that many other people, as I did, would accept Judge Didcott's finding as a true interpretation of our law If so, we would have been wrong.

Referring to Judge Didcott's remarks, Mr Justice Nicholas, delivering the main judgment of the Appeal Court, ventured to disagree "The law is clear," he said "No such right has ever been recognised either by statute or in the practice of the courts"

At this point we need to tread warily, to avoid giving the wrong impression that may possibly have emerged from some reports — namely, that an accused is not entitled to a fair trial The conflict of opinion between Judge Nicholas and Judge Didcott hinged on this question Is the right to a fair trial part of and well embedded in our law?

The Appeal Court having said "no", that is the final word But Judge Nicholas was careful to point out that, in our legal system, the formalities, rules and procedures are designed to ensure a fair trial, adding, "nothing which I have said should be regarded in any way deprecatory of the vital importance of a fair trial in SA practice"

In short, SA trials are fairly conducted and if there is a flaw in the system, that does not necessarily mean the way the trial was run rendered it unfair At the same time, the court recognised, as Chief Justice Corbett pointed out, that the absence of a law giving an indigent person the right to legal representation was a flaw in the legal system,

The court then considered whether it had the power to establish a rule which, in effect, would give an indigent accused the right to a fair trial That would mean, in effect, the right to legal representation

The court decided it did have the power to do so, but declined to exercise that power on what might be described as "pragmatic" grounds The court did not believe the state, for a number of reasons, was capable of supplying the legal aid on the vast scale that would be required

So much for fair trial in SA What of fair trial in the United States?

In one respect, the contrast between the two legal systems is staggering In SA, the "contempt of court" law is one of the key factors safeguarding the sanctity of a fair trial In the US, by contrast, people exercise their "right" to commit contempt of court practically every day

Contempt of court, as we understand it, is a law which makes it an offence to prejudge a court trial In the US, as far as prejudging court trials is concerned, they hardly seem to do anything else

The cause of this, oddly enough, may be said to lie in (where else?) the US Constitution, which grants not only the right of a fair trial but also the right of free speech the "clash" between these two rights seems to be the cause of the trouble (252)

How can an alleged bank robber, for example, expect a fair trial when he has been convicted in advance through statements made by the district attorney

There is a tenuous parallel with South Africa As was pointed out earlier, our Appeal Court recognised the flaw in our legal system, but declined to make the "right" to a fair trial a part of the law It took what might be called a "pragmatic" step, bearing in mind the limitations of the state's capacity to provide adequate legal defence.

The United States has also resorted to "pragmatism" as a means of solving its problem. Its pragmatism is linked to the "American way of life" and hinges on the experience of ordinary citizens, an experience which probably starts when they are in their teens They will then be old enough to read and hear of bank robbers, of their previous convictions, and their confessions, and also of prejudgments in many other alleged crimes

In due course they will discover, from time to time, that so-called "confessed criminals" are acquitted when they come to court They learn that guilt depends on evidence given in court and not on claims made by the DA or the media They acquire a kind of "judicial objectivity"

If this were not so, one would have to declare that there can be no such thing as a fair trial in the US, and therefore no justice Such a claim would be absurd.

Affirmative plan must be free of colour, says judge

ST Times 20/10/91

By BILL KRIGE

AN APPEAL Court judge believes affirmative action is essential in South Africa, but must not be based on race.

Mr Justice Richard Goldstone was speaking at a National Institute for Crime Prevention and Rehabilitation of Offenders conference in Port Elizabeth this week on the challenge of transforming the criminal and social justice system.

The judge said any affirmative action plan must be enforced by law.

"People must be forced into it. The law must be used to redress racial discrimination," he said.

But the Nicro president said the most important point was not to "make the mistake of having racial criteria for affirmative action".

MOST all the coun-es in the Common-alth, including Brit-n, Australia and nada, have been en to task in a re-rt that describes e human rights re-rd of many member ites as "deplorable d often appalling".

'Large numbers of mmonwealth citizens e in fear of their lives ither governments nor sident forces respect ilian rights Some live such abject poverty and privation that even the scourse on human rights unds obscene," says the port

The report, Put Our orld to Rights, was com-led by five non-govern-ental bodies — the Com-onwealth Associations of urnalists, Lawyers, edical, Legal Education d Trade Unions — that mprise the Common-ealth Human Rights In-ative

The report concluded at the Commonwealth ust make the promotion nd protection of human ghts the central purpose f its existence

Of the 50 Common-ealth members, the re-ort noted, 29 had not

GETTING IT TOGETHER . Zimbabwe's Robert Mugabe holds court with Singapore's Goh Chok Tong, Canada's Brian Mulroney and Australia's Robert Hawke

Reports: DAWN BARKHUIZEN in Harare

Pictures: DAVID SANDISON

signed the International Convenant of Civil and Political Rights and more than 50 percent had not ratified the International Covenant on Economic, Social and Cultural Rights

Freedom of expression tended to be most seriously restricted in countries which were

- Essentially single-party systems (Kenya, Malawi, Seychelles, Sierra Leone and Singapore),
- Or absolute monarchies (Swaziland),
- Or have been governed for long periods under military rule (Ghana, Nigeria and Lesotho)
- Or emergency legislation (Bangladash, Brunei, India — Jammu and Kashmir, Punjab, Assam and other states — Malaysia, Pakistan, Sri Lanka, the United Kingdom — Northern Ireland — and Zambia)

Several Commonwealth countries had suspended guarantees of human rights for long periods of time, generally by proclaiming emergencies at times when there was no threat to national security, the report found

There was ample evidence that many countries grossly abused powers of detention — which the courts had been unable or unwilling to prevent Detainees were frequently tortured

Thousands had been detained under emergency legislation in Punjab

Detention without trial was permitted in the UK under the Prevention of Terrorism Act and countries, including Malaysia, Singapore, Kenya, Malawi, Sri Lanka, Swaziland, Zimbabwe and Zambia, applied administrative detention

Some countries had excessive restrictions on the Press and in most the government controlled all or most radio and TV stations

In Malaysia, journalists faced one-year mandatory prison sentences for publishing information found to be "secret"

During election periods many governments stopped the media from criticising them and denied broadcasting time for opponents These included Brunei, Ghana, Kenya, Lesotho, Malaysia, Malawi, Seychelles, Singapore, Sri Lanka, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe,

In India, Pakistan, Sri Lanka, Malawi and Nigeria human rights defenders, outspoken critics of militant groups and newspaper staff had become particular targets for extra-judicial killings and violent attacks by armed opposition groups and government-backed death squads

A new menace was censorship of communities and the media by terrorist groups In Punjab, 50 employees from a single newspaper had been killed by terrorists in the last decade

On the subject of child abuse and child labour, the report referred to

- Kenya, where children comprise 25 percent of the farm labour force
- England and Wales, where child abuse had increased by 70 percent between 1979 and 1984
- Sri Lanka and Ghana, where children were recruited into the army

In Indian carpet factories, children were forced to work long hours squatting on planks, often resulting in bone deformities

In India, Kenya and Malaysia six-year-olds worked in tea and coffee plantations and in Sri Lanka small boys were found labouring in the sun for long hours salting fish

There were clubs in the United Kingdom, the report noted, that advertised sex tours to countries such as the Phillipines and Sri Lanka Would-be clients were provided with information regarding the availability of young boys, the risks involved, how not to get arrested and how much to pay

The report called for the heads of government of member states to formulate a Commonwealth human rights policy A commission should study the causes of ethnic conflict, and the Commonwealth should act as a mediator in conflict situations

New gun law could misfire, says expert

(252)

DON HOLLIDAY
Crime Reporter ARG 21/10/91

THERE are "sinister aspects" to the proposed amendment to the Arms and Ammunition Act, which raises more questions than it answers, says gun law expert and Cape chairman of the SA Gun-owners' Association Mr Ian Lehr

The draft amendment Bill, published in Pretoria last week for comment, had alarmed thousands of firearm owners and enthusiasts who were uncertain what the effects of the legislation would be, said Mr Lehr

He disputed media reports that the Bill provided for the limiting of gun ownership to one firearm a person

Police policy appeared to be to try to limit gun ownership to one each of several categories, such as one handgun for self-protection, one rifle for hunting and one shotgun for clay pigeon or birdshooting

What was new about the Bill was that it provided for the empowerment of the commissioner of police to declare, at his discretion, a gun-owner a gun collector — whether he or she owned one or more firearms

"A sinister aspect is that while the Bill makes provision for opposing and appealing against being declared a collector, it does not contemplate the possibility of any gun owner wanting to have himself declared a collector.

The Bill mentions no benefits to a declared collector, only additional unknown restrictions and obligations to be imposed at some future stage

These would most likely be provisions for extra safekeeping measures It was not at all clear that it would be an advantage to be categorised as a collector

"Why should the State or any other authority concern themselves with how many guns an individual has, provided they are properly safeguarded

"The serious enthusiast or collector has a lot of money invested in his guns and they do not leave firearms lying around

"I would rather see a competent person in possession of a large number of firearms than see a single idiot owning even one."

Mr Lehr said he believed legislators had "once again jumped in where angels fear to tread"

Earlier amendments to the Arms and Ammunition Act of 1969 had soon become bogged down by numerous complicating factors

Justice scores victory in an

252
Star 21/10/91

Whatever you do, don't call it "the legal people's court". The astonishing judicial development taking place in Alexandra is a new animal altogether. DENIS BECKETT reports.

Patience Mogane is grandmotherly and tiny She spends her days testing two-way radios at a Wynberg factory There was a time she spent her evenings as a people's court judge in Alexandra

The judicial process, says Patience, was simple but not altogether satisfactory

Party A would lay a complaint against Party B The court would assume Party B was guilty — why else would the complaint have been made? — and would summons Party B to confess the error of his ways

Sometimes Party B would demur, or answer back, or otherwise fail to oblige And then?

Patience shrugs her shoulders and says "Sometimes it was not right" Her colleague Priscilla Motsepe, a youthful and sparky credit controller for a piano company, is more graphic She flashes her arm and clicks her fingers to mimic a sjambok in action

Reborn

Patience and Priscilla now talk of their past practices with the confessional air of reborn sinners They're into a new ball-game as panel members of the Alexandra Justice Centre, the extraordinary entity that has been called "the first legal people's court"

The justice centre hates that term — it's full of all the wrong baggage What has actually been born in Alex is a different animal altogether Its business is mediation, its weapon is persuasion, and it's running as far as it can from any whiff of coercion or strong-arm tactics

After a year of preparation, the justice centre opened for business this month Tim Ndlovu was in the chair for the first case, and describes it in detail

A contract to build a house Total price R270 (not a misprint) Client supplies materials R100 deposit In midstream the contractor has a death in the family and goes AWOL, leaving the door frame on site, where it gets stolen A second contractor steps in Contractor 1 returns and wants part of the R170 Client wants amends made for the frame Contractor 2 wants part of the R100

Tim Ndlovu sits the parties down in one of the justice centre's barren hearing rooms, decorated by blotches where "struggle" posters have been peeled off for neutrality, and goes strong on the new principles he has learnt over the year mediate rather than adjudicate, hear all sides, look for an outcome that all accept

Custom comes into it youth must respect age, a week's funeral leave is fair Commonsense features too deserting the door frame was careless

The end result is a compromise on the money, and the client accepts that the missing door frame is an act of God Everybody shakes hands, no one fears a vengeful knife in his ribs, the agreement is sealed and recorded Tim Ndlovu has just made a small slice of history

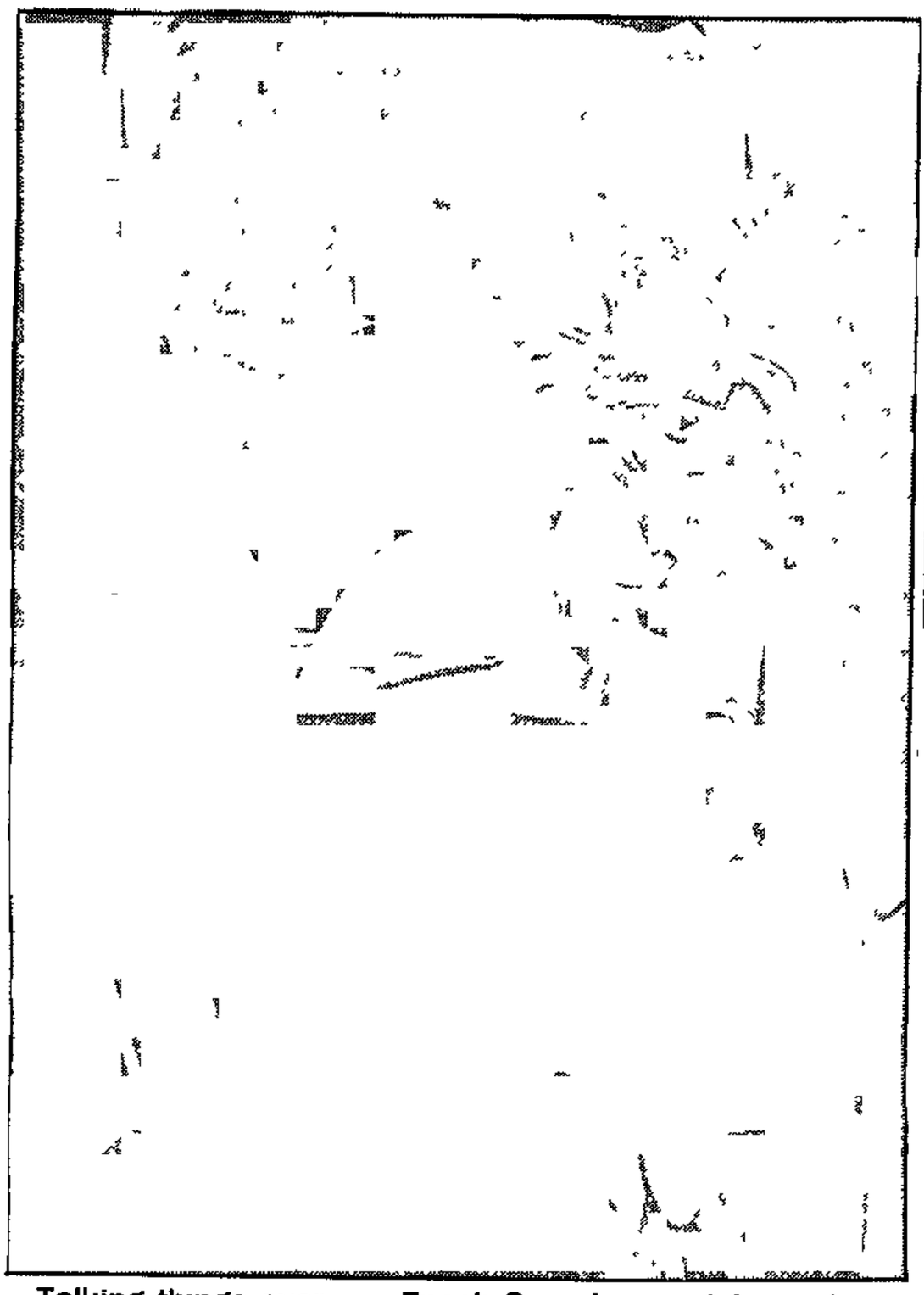
Patience Mogane heard the second case Complainant finds his neighbour sprinkling water on his roof and thinks he is being bewitched Defendant says "No, this is protective water driving away evil spirits from the neighbourhood" Two satisfied customers depart bearing a homemade judgment that has the force of law

Legally speaking, this is not that big a deal Anyone can help anyone else reach a voluntary agreement that the law protects as a contract Symbolically, it's gigantic Here for the first time is an unofficial judicial initiative veritably beamed upon from the Union Buildings, blessed by the Minister himself

It's a nice start Where does it go now? A catapulting of township elders into a corps of effective peacekeepers? A fresh and powerful thread stitching calm into South Africa's frayed social fabric? Do we end up with nationwide justice centres administering order in conjunction with police and magistracy?

All this is eminently possible But risks are in sight as well, and not least is the spectre of political hijack or what some of the centre's founders call "bias in a certain direction" — code for ANC thought-control The centre's roots fall under the ANC umbrella and it was with ears peeled for the sounds of Stalinism that this journalist attended a mediators' training session

I came away more heartened than I had expected and sensing the seeds of more than a new forum — perhaps a new culture Rhetoric was nil, from trainee mediators as much as from the trainer, lawyer Stephen Goldblatt Concern to make things work was conspicuous Of the many restoration ventures on the go in South Africa now, there can be few with nobler potential than this

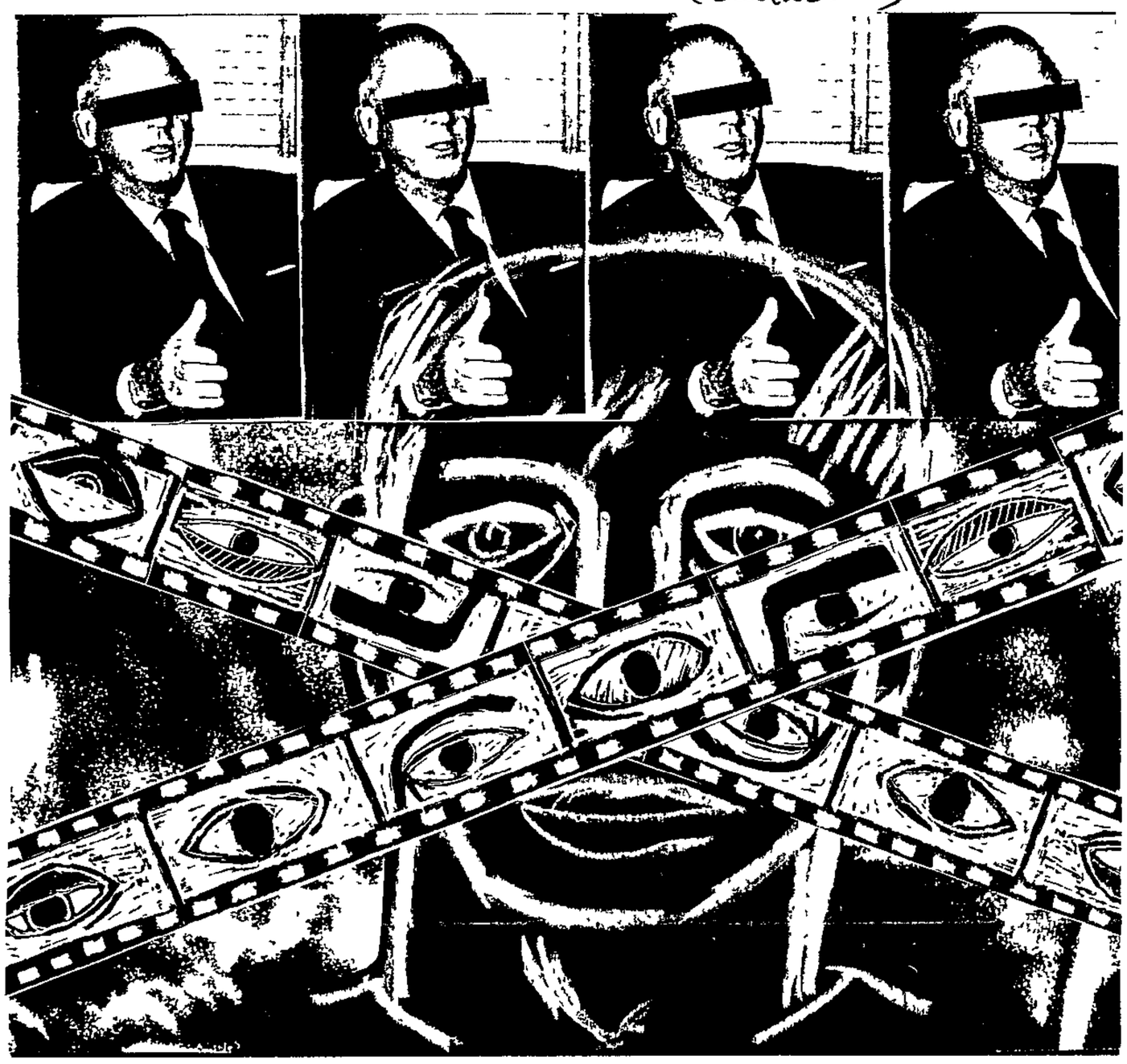


Talking things over Hamilton at Gold Reef City. Enoch Somohas and Jamie-Lee Picture Ken Oosterbroek

Being a witness against crimes: what is expected?

252 South (Southside) 24/10 - 30/10/91

When members of the public are called as witnesses in a criminal trial, it is important they know what is expected of them and what their rights are. LEE ANNE DE LA HUNT gives advice:



EARLIER THIS YEAR Mr Jacobs was at his local cafe when he witnessed a hold-up The police were called and he gave them a statement saying what he had seen, which he signed A month ago the two men who had robbed the café were arrested and Mr Jacobs was asked to identify them, which he did The two men were charged with armed robbery and appeared in the Wynberg Magistrate's Court

The state, to prove its case against the men, called witnesses to testify, including Mr Jacobs What is expected of him and what are his rights?

Getting witnesses to come to court

Usually the policeman investigating the case will come to Mr Jacobs's home or place of work with a written notice or subpoena. This document will bear the stamp of the clerk of the court and the time and day on which Mr Jacobs must be in court It will usually state a specific court, for example, court A, at 8 30am

The court starts hearing cases at 9am The prosecutor, who is the State's lawyer, will be in his/her office or in court from about 8am As soon as Mr Jacobs gets to court he must let the prosecutor or the court orderly, a policeman or -woman, know he is present The court orderly usually reads out the names of people who have to be in court on that day

Failure to appear in court

If Mr Jacobs does not attend court he can be summonsed to come to court to explain why he was not there The magistrate, after listening to his reasons, if any, can fine him an amount of up to R300 for failing to appear in court If Mr Jacobs refuses to answer questions in court, he could face a sentence of up to two years

The trial

On the day of the trial the investigating officer will usually be at court as it is his duty to ensure all witnesses come to court. He may have to arrange transport for the witnesses Mr Jacobs should ask to read his statement again to refresh his memory.

The prosecutor may want to go through a few points with him

Mr Jacobs must wait at the court for the case in which he is a witness to be called He may sit inside the court and listen to other cases, but as soon as his case is called he must go outside. He cannot listen to the evidence of other state witness. When it is his turn to give evidence the orderly will call his name and direct him to the witness box.

The oath and evidence

The magistrate will ask him to give his full names and ask whether he has any objection to taking the oath.

He will swear the evidence he is about to give is the truth, raise his right hand and say "so help me God". The prosecutor, who has read Mr Jacobs's statement, will ask him questions about the robbery and he will have a chance to tell the court exactly what he saw. Then the men accused of committing the crime, or their lawyers, may ask Mr Jacobs questions This is known as cross-examination. They will try and show, for example, that Mr Jacobs can't really remember what happened, or that he is lying or that he can't be sure they were present at the crime. The prosecutor may ask more questions to clear up any points raised in cross-examination and the magistrate may ask questions Mr Jacobs should remember to speak clearly

If he doesn't understand a question or doesn't hear correctly he must ask the questioner to ask the question again or in a different way

Interpreters

If he cannot understand English or Afrikaans the court will provide an interpreter who speaks his language, or, if he is deaf and dumb, a person who will interpret through sign language.

Witness's friend

When Mr Jacobs has given evidence the magistrate will excuse him He is entitled to assistance in getting back to work or home

The office that will help him with his fare is known as the Witnesses' Friend This office will also give him a letter stating he was in court on that particular day, should he need proof for his employer

Mr Jacobs may stay in court until the end of the case to hear the outcome If he has to leave he can telephone the investigating officer at a later stage to find out whether the accused were convicted.

Compensation

When the court decides on a sentence to be imposed it must consider the interests of the community in general as well as the interests of the accused The courts also look at how the victim of the crime has been affected when deciding on a sentence The magistrate often imposes a suspended sentence on condition the person found guilty compensates the victim

If, for instance, your car has been stolen or your vibracrete wall destroyed, the person held responsible by the court may be ordered to pay you money to buy another car or to fix your wall If your money has been stolen the thief may be ordered to pay you back If a breadwinner of a family is killed, the person who killed him or her may have to take out a policy to provide for the dependants You may, of course, sue for your damages in a civil court, but that may take longer and involve legal costs

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Human rights, not SA, top topic

Star 24/10/91

The debate on SA is no longer in pole position, reports ROBIN DREW of The Star Africa Service.

NOW THAT South Africa as the burning issue is slipping from the top of the Commonwealth agenda, its place is being taken by human rights, at least as far as the news organisations are concerned

Questions on what the Commonwealth was prepared to do about violations of human rights in its member countries flowed thick and fast at briefing sessions of the recent meeting in Harare of Commonwealth heads of government.

Many made the point that it was governments which were responsible for violations, but in the declaration setting out the role of the Commonwealth in the '90s and beyond, it was stated that it was intended to strengthen the capacity of the Commonwealth "to respond to requests from members for assistance in entrenching the practices of democracy, accountable administration and the rule of law"

Human rights organisations had been pressing for the Commonwealth to adopt the toughest possible commitment to human rights and had been calling for action to penalise members guilty of violations Sanctions or suspension of membership were suggested and there were calls for the appointment of a standing commission to monitor the situation.

During debates in the closed executive sessions, a number of developed countries came out strongly in favour of tying economic assistance to countries which practised democracy, but overall, most countries appeared opposed to this.

In the final communique the Commonwealth leaders contented themselves with reaffirming their collective commitment to the principles of justice and human rights

They recognised that human rights was a priority issue and requested the secretariat to give greater impetus to its current activities to promote human rights in all aspects

But even before the ink was dry, a coalition of human rights agencies expressed disappointment about the weakness of the communique

The communique, they said, avoided altogether the issue of measures such as sanctions and expulsion which could be taken against states that continuously perpetrated gross violations of human rights

Secretariat officials told journalists it was unrealistic to expect the summit to agree to a detailed programme of action.

Leaders agreed in the communique to support the report and recommendations of the Commonwealth Governmental Working Group of Experts on Human Rights and also recognised the role non-governmental organisations could play

A good deal of the working sessions was devoted to economic matters. In the declaration of principles it was noted that commitment to market principles and openness to international trade were gaining increasing recognition as the way to economic progress

The Commonwealth leaders deplored the drift towards greater protectionism in some industrial countries.

John Major scored well with his announcement that Britain was prepared to write off millions owed by poor countries and Canada gained praise for endorsing this decision □

True democracy takes a back seat

Sowetan 24/10/91. (252)

HARARE - Now that South Africa as the burning issue is slipping from the top of the Commonwealth agenda, its place is being taken by human rights, at least as far as the news organisations are concerned.

FOCUS

By ROBIN DREW
Sowetan Africa news Service

Questions on what the Commonwealth was prepared to do about violations of human rights in its member countries flowed thick and fast at briefing sessions of the recent meeting in Harare of Commonwealth heads of government.

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Human rights organisations had been pressing for the Commonwealth to adopt the toughest possible commitment to human rights and had been calling for action to penalise members guilty of major violations

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During debates in the closed executive sessions, a number of developed countries came out strongly in favour of tying economic assistance to countries which practised democracy, but overall most countries appeared opposed to this

Aid was meant to help the people who should not be penalised was one point

There was no democracy under colonial rule, said other speakers, and it would take time for developing countries to develop their own brand of democracy

Malaysia warned of the danger of anarchy if governments in developing countries were not able to get on with the task of development What price democracy if countries were not able to feed themselves, said Dr Mahathir Mohamad

Human rights organisations had been pressing for the Commonwealth to adopt the toughest possible commitment to human rights

Similar views were expressed by President Daniel arap Moi of Kenya, who has been the target of criticism in the media for his government's repressive policies

In the final communique the Commonwealth leaders contented themselves with reaffirming their strong collective commitment to the principles of justice and human rights

They recognised that human rights was a priority issue and requested the secretariat to give greater impetus to its current activities to promote human rights in all aspects

But even before the ink was dry, a Commonwealth-wide coalition of human rights agencies expressed disappointment at the weak nature of the communique

The communique, they said, avoided altogether the issue of measures such as sanctions and expulsion which could be taken against states which continuously perpetrated gross violations of human rights There were no detailed programmes, no timetable for action Too much was left to pious hopes

Secretariat officials told journalists it was unrealistic to expect the summit to agree to a detailed programme of action

The leaders agreed in the communique to support the report and recommendations of the Commonwealth Governmental Working Group of Experts on Human Rights and also recognised the role that non-governmental organisations could play

In its report the working group said the objective of human rights' promotion must be to increase knowledge of international human rights standards and obligations, and to encourage high professional standards of judiciaries and law enforcement agencies

While attention was focused on this issue, a good deal of the working sessions was devoted to economic matters In the declaration of principles it was noted that commitment to market principles and openness to international trade and investment were gaining increasing recognition as the way to economic progress and improvement in living standards

The Commonwealth leaders deplored the drift towards greater protectionism in some industrial countries, particularly when a large number of developing countries and those in Eastern Europe were embarking on trade liberalisation programmes

They called for multilateral liberalisation of world trade and better access to world markets for developing countries

Britain's Prime Minister, Mr John Major, scored well with his announcement that Britain was prepared to write off millions owed by poor countries and Canada gained praise for endorsing this decision

Commentators here noted with satisfaction the absence of any sharp divisions among the 47 countries which attended the Harare meeting

If there were any serious doubts about the continuation of the Commonwealth as an important world grouping, the success of the Harare meeting should have dispelled them

The next summit in 1993 will take place in Cyprus.

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"The violence could be turned off at times when it would damage the government, when F W de Klerk left for Europe in October 1990, the violence diminished dramatically. The same happened when Parliament opened in January 1991."

Our Durban Correspondent reports the SAP and Inkatha both rejected the report.

Help for alienated youth

B 10 aug 25/10/91

WILSON ZWANE

THE church-sponsored Joint Enrichment Project is to launch a programme aimed at addressing problems of the "alienated or marginalised" black youth

Project director Sheila Sisulu said yesterday there was no doubt about the urgency, complexity and magnitude of the problems faced by "marginalised" youth

"Marginalised youth form the focus of the major structural problems caused by apartheid and underdevelopment . . . permanent unemployment, a collapsing education system, deteriorating family life, violence and political uncertainty," Sisulu said.

She said Joint Enrichment Project was working on a project to reintegrate "marginalised" youth into mainstream social life The programme would be launched early next year after consultations with "relevant bodies and regions to facilitate a youth forum in which existing youth structures can work together towards addressing the . problems of marginalised youth".

"It will include national research into youth issues, a skills training project and programmes towards education and social reconstruction," Sisulu said

The project is a venture of the SA Council of Chruches and the SA Catholic Bishops' Conference

Ex-policeman's story challenged

B 10 aug 25/10/91.

MARITZBURG — Testimony by a former policeman was challenged in the Maritzburg Supreme Court yesterday during evidence in the inquest into the killing of Chief Mhlabunzima Maphumulo (252)

Details about witness Lucky Mntambo's career in the police force as well as his version of attacks on Maphumulo's house and car were disputed when he was cross-examined by the lawyer acting for the SA Police.

Mntambo, 22, denied he was ever a KwaZulu Police member.

He said he was trained in the Cape for three months and then returned to Maritzburg where he joined the Security Branch as a special constable.

He said he was eventually told by a Lt Pieterse that he was a permanent member of the SAP.

In his earlier evidence, Mntambo claimed he was part of a police hit squad which attacked what they thought was Maphumulo's car in the Table Mountain area between April and July 1990. He also said he shot one of the occupants three times.

Yesterday counsel for the police, Kobus Booyens, said there was in fact an attack on Maphumulo's car on June 10 last year in which two people died.

Booyens said information in an affidavit from the driver, Dede Cyprian Hlope, who survived the attack, differed from details given by Mntambo.

Asked to comment on this, Mntambo said this was a different attack and not the one in which he had participated. — Sapa.

By Charles Schulz

Defender system taken further

CT 25/10/91

PRETORIA — Two advocates were appointed this week as senior Public Defenders

The appointments of advocates Ms Carol Bruyns and Ms Vivian Fortunat follow the establishment of a Public Defenders office in Johannesburg recently

This is part of an investigation into the feasibility of a Public Defender system for this country, the Legal Aid Board said in Pretoria

The services of Public Defenders will be available only to people qualifying for legal assistance

The system seemed to be more cost-effective than the present legal-aid system, the board said — Sapa

New public defenders to help poor

Staff Reporter

The public defender system is about to go on trial in Johannesburg, where an estimated 80 percent of people charged in the district and regional courts cannot afford lawyers

The date for the opening of the Johannesburg Public Defender Office (PDO) will be announced next month, but in the meantime two advocates have been appointed senior public defenders.

Carol Bruyns and Vivian Fortunat will head two teams of five public defenders each

The Johannesburg office will be the litmus test in deciding whether to introduce the public defender system countrywide It will employ full-time salaried lawyers, which is seen as a cost-effective alternative to the legal aid system

Under the legal aid system, people who cannot afford lawyers are referred to attorneys by the Legal Aid Board The board pays the lawyers.

Public defender services will only be available to people who qualify by a means test and cannot afford lawyers

PDO director H Pretorius, said the appointment of senior public defenders has opened a new category of lawyers in South Africa

"It is hoped the public defender project will make a positive contribution to the administration of justice and that it will foster public trust in the South African legal system," he said

nemende Registrateur van Maatskappye, die maatskappy, Telemetrix PLC, ingelyf in die Verenigde Koninkryk onder Registrasienommer 1378777, hierby vry van die bepalings van genoemde subartikel (2) van artikel 143 en magtig ek dat aandele van genoemde Telemetrix PLC ooreenkomstig die bepalings van die Maatskappywet, 1973, aan die publiek aangebied mag word

P. B. ROODT,
Waarnemende Registrateur van Maatskappye.

DEPARTEMENT VAN JUSTISIE

No. 2499 **25 Oktober 1991**

WET OP LANDDROSHOWE, 1944

INSTELLING VAN 'N PERIODIEKE HOF TE HAMMARSDALE IN DIE DISTRIK CAMPERDOWN

Ek, Daniel Pieter Antonie Schutte, Adjunkminister van Justisie, handelende kragtens artikel 2 (1) van die Wet op Landdroshowe, 1944 (Wet No 32 van 1944)—

(a) bepaal hierby Hammarsdale in die distrik Camperdown as 'n plek vir die hou van periodieke hofsittings,

(b) bepaal hierby die plaaslike grense van die distrik Camperdown as die plaaslike grense waarbinne die bedoelde hof jurisdiksie het, en

(c) trek hierby Goewermentskennisgewing No 705 van 17 Mei 1963 in.

D. P. A. SCHUTTE,
Adjunkminister van Justisie.

No. 2563 **25 Oktober 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No. 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No. 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan Mzimkulu Gwentshe, gebore 3 Maart 1949, ten opsigte van sy versuim gedurende 1976 om aan kennisgewings wat ingevolge artikels 9 (1), 10 (1) (a) en 10*quat* (1) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No 44 van 1950), aan hom oorhandig is, te voldoen

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig.

F. W. DE KLERK,
Staatspresident.

Op las van die Staatspresident-in-Kabinet:

H. J. KRIEL,
Minister van die Kabinet

of Companies, hereby exempt the company, Telemetrix PLC, incorporated in the United Kingdom under Registration Number 1378777, from the provisions of the said subsection (2) of section 143, and authorise that shares of the said Telemetrix PLC may, in accordance with the provisions of the Companies Act, 1973, be offered to the public

P. B. ROODT,
Acting Registrar of Companies.

DEPARTMENT OF JUSTICE

No. 2499 **25 October 1991**

MAGISTRATE'S COURTS ACT, 1944

ESTABLISHMENT OF PERIODICAL COURT AT HAMMARSDALE IN THE DISTRICT OF CAMPERDOWN

I, Daniel Pieter Antonie Schutte, Deputy Minister of Justice, acting under section 2 (1) of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), hereby—

(a) appoint Hammarsdale in the district of Camperdown as a place for the holding of periodical courts,

(b) prescribe the local limits of the district of Camperdown as the local limits within which the said court shall have jurisdiction, and

(c) withdraw Government Notice No 705 of 17 May 1963

D. P. A. SCHUTTE,
Deputy Minister of Justice.

No. 2563 **25 October 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No. 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to Mzimkulu Gwentshe, born on 3 March 1949, in respect of his failure during 1976 to comply with notices delivered to him in terms of sections 9 (1), 10 (1) (a) and 10*quat* (1) of the Suppression of Communism Act, 1950 (Act No 44 of 1950)

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one.

F. W. DE KLERK,
State President.

By Order of the State President-in-Cabinet

H. J. KRIEL,
Minister of the Cabinet.

No. 2564 **25 Oktober 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No. 35 van 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan—

Motsumi Andrew Moraladi, gebore op 24 April 1974, en

Moreothata Daniel Seleke, gebore op 2 Junie 1973,

ten opsigte van die gebeure wat op 12 Julie 1990 te Christiana plaasgevind het en waarop 'n aanklag van roof in Saak No. 35/91 in die Streekhof te Wolmaranstad gebaseer is.

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig.

F. W. DE KLERK,
Staatspresident.

Op las van die Staatspresident-in-Kabinet·

H. J. KRIEL,
Minister van die Kabinet

No. 2565 **25 Oktober 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan Paulos Shezi, gebore 23 Desember 1976, ten opsigte van die besit van 'n petrolbom op 17 Augustus 1990, in stryd met die bepalings van artikel 28 (1) van die Wet op Ontplofbare Stowwe, 1956 (Wet No 26 van 1956)

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident.

Op las van die Staatspresident-in-Kabinet

H. J. KRIEL,
Minister van die Kabinet

No. 2564 **25 October 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA (252)

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No. 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to—

Motsumi Andrew Moraladi, born 24 April 1974, and Moreothata Daniel Seleke, born 2 June 1973,

in respect of the events which occured on 12 July 1990 at Christiana and upon which a charge of robbery in Case No 35/91 in the Regional Court at Wolmaranstad is based

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet·

H. J. KRIEL,
Minister of the Cabinet

No. 2565 **25 October 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA (252)

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990.)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to Paulos Shezi, born 23 December 1976, in respect of the possession of a petrol bomb on 17 August 1990, in contravention of section 28 (1) of the Explosives Act, 1956 (Act No 26 of 1956)

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet

H. J. KRIEL,
Minister of the Cabinet

Applikant:

Eli Lilly (SA) (Pty) Ltd, Posbus 98, Isando, 1600

3 Outomatiese radiotransmissie-apparate met hermeties verseelde omhulsels, vir bedryf in 'n nie-verstelbare frekwensiebestek van 148 tot 150 megahertz, elk met 'n massa van hoogstens 500 g elk, indeelbaar by tariefsubpos 8525 10 20, van 15 persent *ad valorem* tot vry van reg.

[RHN-verw. T5/2/16/3/2 (910278) (Mnr R. J van den Berg)]

Applikant:

Nasionale Parkeraad, Posbus 787, Pretoria, 0001.

Korting van die reg op:

(i) Kleefmiddels gebaseer op rubber of plastiek (met inbegrip van kunsharse), indeelbaar by tariefsubpos 3506 91, van 20 persent *ad valorem* tot vry;

(ii) ander opgemaakte artikels van veselvliesstowwe, indeelbaar by tariefsubpos 6307 90 10, van 25 persent *ad valorem* tot vry,

(iii) glasveselweefstowwe van multifilamentvoorgaring geweef, indeelbaar by tariefsubpos 7019 20 10, van 20 persent *ad valorem* tot vry;

(iv) ander glasveselweefstowwe, indeelbaar by tariefsubpos 7019 20 90, van 5 persent *ad valorem* tot vry,

(v) ander glasveselvelle, -webbe, -matte, -matrasse, -bord en dergelike veselvliesprodukte, indeelbaar by tariefsubpos 7019 39, van 20 persent *ad valorem* tot vry;

(vi) ander artikels van aluminium, indeelbaar by tariefsubpos 7616 90.90, van 20 persent *ad valorem* tot vry,

vir gebruik in die vervaardiging van heuningkoekpanele gebruik in die lugvaartindustrie vir vliegtuigvloere en -afwerking, en in die nie-lugvaartindustrie vir gewigvermindering van padvervoer, spoorvervoervoertuie

[RHN-verw T5/2/7/2/1 (910389) (Mnr S Meyer)]

Applikant:

Ciba-Geigy (Edms) Bpk , Posbus 92, Isando, 1600.

Lys 40/91 is by Algemene Kennisgewing 981 van 18 Oktober 1991 gepubliseer

(25 Oktober 1991)

Applicant:

Eli Lilly (SA) (Pty) Ltd, P O Box 98, Isando, 1600

3 Automatic radio transmitters with hermetically sealed covers, for operation in a non-adjustable frequency range of 148 to 150 megahertz, each with a mass not exceeding 500 g, classifiable under tariff subheading 8525 10 20, from 15 per cent *ad valorem* to free of duty

[BTI Ref T5/2/16/3/2 (910278) (Mr R J van den Berg)]

Applicant:

National Parks Board, P O Box 787, Pretoria, 0001

Rebate of he duty on:

(i) Adhesives based on rubber or plastics (including artificial resins), classifiable under tariff subheading 3506 91, from 20 per cent *ad valorem* to free,

(ii) other made up articles of non-wovens, classifiable under tariff subheading 6307 90 10, from 25 per cent *ad valorem* to free,

(iii) glass fibre fabrics woven from multifilament rovings, classifiable under tariff subheading 7019 20 10, from 20 per cent *ad valorem* to free;

(iv) Other glass fibre woven fabrics, classifiable under tariff subheading 7019 20 90, from 5 per cent *ad valorem* to free,

(v) other glass fibre thin sheets (voiles), webs, mats, mattresses, boards and similar non-woven products, classifiable under tariff subheading 7019 39, from 29 per cent *ad valorem* to free;

(vi) other articles of aluminium, classifiable under tariff subheading 7616 90 90, from 20 per cent *ad valorem* to free,

for use in the manufacture of honeycomb panels, used in the aerospace industry for aircraft flooring and finishing, and in the non-aerospace industry for weight reduction in road transport and rail transport vehicles

[BTI Ref T5/2/7/2/1 (910389) (Mr S Meyer)]

Applicant:

Ciba-Geigy (Pty) Ltd, P.O Box 92, Isando, 1600

List 40/91 was published under General Notice 981 of 18 October 1991.

(25 October 1991)

KENNISGEWING 1004 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal. Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone

NOTICE 1004 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

The Director-General Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union of Republic without a valid passport or a permit or without authority at a place other than port, as referred to in paragraph (a) thereof, by such persons

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Ceve	Cecil	1967-05-26
Desai	Ebrahim	1932-10-02
Gqabaza	Sipho	1958-04-28
Guma	Aaron	1942-01-10
Hlongwane	Koprau	1956-06-06
Hlophe	Sam	1959-12-12
Jantjie	Veronica Vivian	1932-05-28
Khoza	Selina	1949-06-25
Khuzwayo	Vava Sandile Dennis	1972-12-26
Mabotja	Samuel Tolokı	1967-01-28
Magogotya	Ncedisi Charles	1962-06-18
Malindisa	Abednego Fana	1942-02-24
Matipwili	Dennis Punch	1930-11-01
Mawelela	David Elphis	1962-11-28
Mbonambi	Blessing	1969-06-16
Mchunu	Lawrence	1971
Mncwabe	Sizwe Mbusi	1969-03-01
Modise	Phillip Itumeleng	1956-07-11
Mohanoe	Johannes	1965-06-22
Moiloa	Simon Tsimane	1961-02-07
Motaung	Aaron N. Edwin	1958-10-06
Mothupi	Ezekiel BoyBoy	1932-03-30
Motshabi	David John	1953-10-20
Motsiri	Abel	1963-03-15
Mpondo	Kani	1969-11-01
Msimango	Sesi Gladys	1955-04-04
Mthembu	Theophilus	1976-10-19
Mzizi	Naphtal	1954-07-16
Nkabinde	Nelson Muzikalifani	1955-11-26
Nxano	Bennet Monwabisi	1971-12-21
Qavi	Nkosinathi Magadu	1967-05-20
Radebe	Thamsanqa	1964-07-07
Ramfolo	Donald Anthony Mayise	1960-12-06
Salie	Moegamat Aneez	1956-08-05
Sifuba	Gilbert	1941-12-12
Tsanku	Leabile Andrew	1940-02-29

(25 Oktober 1991)/(25 October 1991)

KENNISGEWING 1005 VAN 1991

KENNISGEWING VAN AANSOEK OM GOEDKEURING VIR DIE OPRIGTING VAN 'N NUWE ABATTOIR KRAGTENS ARTIKEL 12 (1) VAN DIE WET OP DIE ABATTOIRBEDRYF, 1976 (WET 54 VAN 1976)

Kennis geskied hiermee kragtens artikel 12 (1) van die Wet op die Abattoirbedryf, 1976 (Wet 54 van 1976), dat mnr C. J Joubert, Elandsfontein, Venterstad, 5990, kragtens artikel 11 van genoemde Wet by die Minister van Landbou aansoek gedoen het om goedkeuring vir die oprigting van 'n nuwe abattoir in die Nywerheidsgebied van Botshabela

NOTICE 1005 OF 1991

NOTICE OF APPLICATION FOR APPROVAL FOR THE ERECTION OF A NEW ABATTOIR IN TERMS OF SECTION 12 (1) OF THE ABATTOIR INDUSTRY ACT, 1976 (ACT 54 OF 1976)

It is hereby made known in terms of section 12 (1) of the Abattoir Industry Act, 1976 (Act 54 of 1976), that Mr C J Joubert, Elandsfontein, Venterstad, 5990, has in terms of section 11 of the said Act applied to the Minister of Agriculture for approval for the erection of a new abattoir in the industrial area of Botshabela.

Court action after strike

By MONK NKOMO

A WOMAN supervisor at the Pretoria branch of Pick 'n Pay is claiming R50 000 in damages from a shop steward for alleged defamation after she refused to go on strike.

Mrs Louisa Malatji, a supervisor at the company's Faerie Glen branch, alleges that Mr Samuel Mashamba, a Commercial, Catering and Allied Workers Union shop steward, threatened to burn her house and family and also defamed her on or about May 4 this year.

Malatji alleges that Mashamba, in the presence of other employees, uttered a defamatory statement.

Her attorney, Mr Cyril Morolo, yesterday confirmed that they had issued summons against Mashamba.

Malatji withdrew an application in the Pretoria Supreme Court in August this year, in which she sought an order directing Mashamba to stop intimidating and assaulting her in order to force her to join the trade union.

Mashamba alleged in answering affidavits that Malatji assaulted him at a union meeting on May 15.

He also submitted that she had made derogatory remarks against him in front of colleagues.

Mr Sakkie Maboa, an attorney whose firm represented Mashamba in August, yesterday said he was aware of the R50 000 lawsuit, but said they had not yet received instructions from Mashamba to defend the action.

'Just' people's courts have a role — Civic Association

252

ANTHONY DOMAN
Weekend Argus Reporter ARG 26/10/91

THE Western Cape Civic Association has condemned a Khayelitsha kangaroo court that sentenced youths to be sjambokked, with the alleged collusion of community leaders — but has come out in favour of "people's courts".

Four youths, one hospitalised with serious injuries, were left bloodied and scarred after the beatings One could hardly walk three weeks after the assault.

The father of one of the victims told Weekend Argus last week that among those at the "people's court" that had convicted his son were "top people" in civic association circles

The media officer of the Western Cape Civic Association, Mr Wilson Sidina, deplored the beatings He said the association had tried unsuccessfully to track down those responsible

"People are quick to point fingers at us. When we make allegations against police, we are asked to produce proof"

The victims should have reported the matter to the association's top officials, he said. "Even if they don't know us I am sure they know who their local people are".

He emphasised that the association had nothing to hide "We don't want bad elements We must have people who accept the principles of the organisation"

He undertook to investigate complaints thoroughly

However, he said people's courts had a role to play

"We are not saying they should be done away with We want to set up such courts, but not to whip people

"We need to educate people and tell them what human respect means"

Checks on abuse of power existed.

"We are not there on our own. There are others above us political organisations They can advise us"

What would the people's courts do?

"These gangsters roaming the townships : instead of beating them up, we are simply looking for them and bringing them in Some have been sent back to school by their parents."

People's courts could also deal with matters such as disputes over child maintenance and "street complaints" perhaps involving squabbles between neighbours, or thefts.

As an example of the kind of punishment meted out, he said that he knew of a youth who had been sentenced to carry chairs to a community hall every weekend for six weeks

But what power do these courts have to enforce their sentences? What if they are ignored?

"Once that happens we go to the parents If that fails we have to take the guilty party away from the area If he is undermining the parents themselves he has to go to jail We will have to go to the police"

He deplored the use of violence in people's court sentencing "We are not party to such actions If the victim was my son, for instance, how do you think I would feel?"

Asked what would happen if the perpetrators were found, he said "We cannot allow beatings like that We will have to deal with them"

Now we have our own Rosie O'Neills

(252) ~~NEWS~~

Star 26/10/91

CARRIE CURZON

READY TO DO BATTLE: South Africa's first public defenders, Carol Bruyns (left) and Vivian Fortunat. They will eventually be joined by eight other lawyers. ● Picture: JOHN HOGG

THE appointment of the country's first two public defenders will be good news for fans of the TV series "The Trials of Rosie O'Neill" — they will now be able to watch similar legal battles on their own doorstep.

Advocates Carol Bruyns and Vivian Fortunat say their new role is very similar to that of the heroine in this popular TV series. They just hope they won't suffer the same personal problems that sees Rosie making regular visits to her psychiatrist

Appointed by the steering committee of the Legal Aid Board, the two women were selected from about 30 applicants on the basis of their qualifications and expererience in criminal law. As senior public defenders they are now responsible for setting up a new department and appointing eight colleagues.

"The department will be totally independent and partly funded by private organisations," says Ms Bruyns. "We don't want to be seen as a Government department"

The new public defender system is based on the American system whereby accused persons who cannot afford their own counsel are provided with free legal counsel.

Next year the two advocates will be visiting the US to see how they can best apply the system to local needs

For the moment the public defenders will be concentrating their work on the Johannesburg Magistrate's Court During this time an investigation will be made into the feasibility of such a system for the whole of South Africa If it works, branches will be set up in other major centres

Clients will be selected on the basis of a flexible means test, and all the public defenders will be highly qualified attorneys and advocates

"We believe this is very important We don't want junior people handling our cases We will be employing experienced people who can provide a quality service. They will be required to work long hours and work fulltime for a salary," says Ms Bruyns

The setting up of the new department is the result of an outcry over legal representation At present 80 percent of all accused have no legal counsel and a staggering 100 000 people go to jail each year undefended

Up until now the only recourse for indigent persons was to go to the Legal Aid Board The board would select those who qualified for counsel and send them to an appropriate attorney or advocate who would be paid for by the board

The new system, by using permanently employed public defenders, is intended to be more cost-efficient

A large proportion of clients are expected to be blacks, the poverty stricken and the criminal element. Both women have had several years' experience in criminal law

Ms Bruyns (56) joined the Johannesburg Bar in practice as an advocate in 1971. For two years she had a mixed practice, then specialised in criminal law. For the last three years she has been concentrating on criminal appeals She sees her new appointment as a very worthwhile project that deserves to succeed

"The only possible reason for failure would be a shortage of funds"

Ms Fortunat (37) has had 10 years' experience in criminal law After working as a prosecutor in the Johannesburg Magistrate's and Regional Courts, she was promoted to the Attorney-General's staff as an advocate. She then spent time as an assessor for criminal trials

During the two-year pilot project launched this month, the women will be feeling their way as to how best to run the department "This is a very new system for us and therefore an exciting challenge."

UN's proposed 'white helmets' could play peacekeeping role

Star 26/10/91

(252)

NEW YORK — In a fundamental rethinking of the UN's role in world affairs, more and more nations want the United Nations to intervene to stop widespread violations of human rights Most of the clamour comes from Europe A force of "white helmets", has been proposed.

UN "blue helmets" have for years been sent to keep peace in internal disputes, when both parties agree.

"White helmets", the thinking goes, could be experts and police who look into violations and safeguard rights at the request of a world commission.

The principles of sovereignty and non-interference in internal affairs historically have precluded UN intervention to protect human rights, despite massacres and flagrant rights violations.

The UN Charter enshrines human rights, but says nothing about a UN presence to safeguard them. It prescribes UN peacekeeping only when international conflicts endanger regional or international peace and stability.

But in recent General Assembly speeches an increasing number of nations have asked for a new look at the UN role and said the sovereignty principle must be suspended at times.

They say sovereignty is not more important than protecting human rights.

The UN's first venture into intervening to protect human rights came in May, when it sent a civilian police force to shield Kurds from slaughter in northern Iraq at the hands of Saddam Hussein's forces

Secretary-General Javier Perez de Cuellar dispatched the UN force with the grudging acceptance of the Iraqi government

The UN also took unprecedented action in sending observers to the Haitian elections in December 1990 because of fear of bloodshed and human rights violations The Security Council later issued a rare public statement urging restoration of democracy in Haiti following the September 30 coup.

That would have been unthinkable in years past, because even criticizing a sovereign government was off limits

Still, no movement has surfaced to amend the UN Charter to broaden the UN role and authorise intervention to safeguard human rights The process of charter amendment would open a Pandora's Box of controversial issues, like changing the composition of the Security Council

Dr Perez de Cuellar said in his annual report "Protection of human rights has now become one of the keystones in the search of peace"

He said such protection now requires more international warnings, appeals and "in the last resort a more appropriate UN presence than what was regarded as permissible under traditional international law"

The principle of non-interference is not "a protective barrier behind which human rights could be massively or systematically violated with impunity," he said

In the General Assembly, several European nations have called for intervention in blatant cases of rights violations A few Latin American nations, such as Chile, Argentina and Venezuela, cautiously joined in

Foreign Minister Alois Mock of Austria said the UN proposed that the UN Commission on Human Rights adopt an emergency procedure and draw upon a register of experts — "white helmets" — placed at the disposal of the commission.

But Mexico and China argued the case for non-intervention and African nations said almost nothing, seeking to avoid any statement that could invite interference in their internal affairs

China's foreign minister, Qian Qichen, said human rights "have been used for pursuing power politics and interfering in affairs which are basically the jurisdiction of states"

The Chinese government, which brutally crushed its own pro-democracy demonstrators in Tiananmen Square in June 1989, said double standards have been used in the human rights field — Sapa-AP.

● See Editorial Page 12

Outrage as killer freed

LAWYERS for Human Rights yesterday slammed as racist the early release from prison of a white youth who brutally clubbed an elderly vagrant to death

Richard Bester, 18, served three months of a two year sentence for his part in the murder of 70-year-old vagrant Tom Ruiters at King William's Town's Dale College Cape Times 27/10/91

He was released secretly two months ago

A Correctional Services spokesman said Bester qualified for its special deal for first offenders and for its April 1 general amnesty – CP Correspondent

Warder off assault charge

252 253 Pres. 27/10/91

By DAN DHLAMINI

THERE were murmurs of discontent from spectators in the Kleksdorp Magistrate's Court this week when the chief of Klerksdorp Prison was acquitted on charges of assaulting a prisoner, Frans Dlamini

Magistrate JD de Beer said he was giving Major Jacobus Hickley, 41, the benefit of the doubt because there were contradictions by State witnesses

Dlamini and State witness Samuel Mofiti had told the court that inmates were dissatisfied because there was no sugar in their tea on November 23

Monti said Hickley pushed Dlamini into cell 13 and started kicking him in the private parts.

Dlamini said he started bleeding from the penis, a statement supported by Monti who told the court he had seen blood on Dlamini's trousers and on the floor

Klerksdorp District Surgeon Dr HS Wentzel was asked by prosecutor JH de la Rey if Dlamini's injuries were consistent with allegations that he had been kicked repeatedly in his private parts

Wentzel said they were not, because Dlamini's scrotum was not swollen when he examined him

He added that it was possible the injury could have been self inflicted

Warders Ockert Pretorius and James Barendse told the court they had been present during the incident but had not seen Hickley assaulting Dlamini

Pretorius said he saw an angry Hickley reprimanding Dlamini and prodding him in the chest

Hickley denied having assaulted Dlamini, but said he had talked strongly to him. He said Dlamini had incited other convicts to refuse food after they complained about the sugar

De Beer said much as he could not reject evidence given by Dlamini and Monti as lies, Wentzel's evidence did no good to the State's case

'Inkatha was our protection'

CP Correspondent

LANDOWNERS in the Trustfeed area joined Inkatha for protection against forced removals by the South African Government, the Maritzburg Supreme Court heard this week.

Trustfeed area Inkatha leader Jerome Gabela told Judge Wilson that in the 1970's landowners in the area feared losing their land after the area was classified a white Group Area

He was giving evidence at the trial of seven policemen charged with the massacre of 11 people at a night vigil in Trustfeed, Natal, in 1988.

The seven policemen have pleaded not guilty to 11 counts of murder and eight of attempted murder

Gabela told the court the Trustfeed Landowners Organisation existed, but was not formally constituted

He was responding to defence counsel's suggestion that there was evidence the Trustfeed Crisis Committee was the only organisation which had negotiated with the Development Services Board (DSB) on behalf of the landowners

The hearing continues

'I was coerced into killing'

By MARTIN NTSOELENGOE (252) (280)

A STARTLED Rand Supreme Court was told how a man begged a policeman to turn him into a State witness, because he claimed to have been cajoled into joining an illegal strike and to help kill scabs Times

Warrant Officer Jan Kock was giving evidence in the case of five former Haggie Rand workers and an alleged hired hitman.

Kock told the court one of the accused, Samuel Kgosiekgolo Malepo, 39 pleaded with him to turn him into a State witness

He said this was after Malepo had made a confession about how they went about shooting and intimidating scabs

Kock denied that Malepo was ever forced to make a statement

Appearing before Judge Du Plessis and two assessors are Malepo, Richard Khazamula Ngobeni, 38, Jeffrey Sipho Mtshali, 34, Malvert Ngubane, 40, and Malan Khumalo, 42 27/10/91

Joseph Mdumiseni Bhengu was allegedly hired by the five to intimidate and kill scabs

All six have pleaded not guilty to five counts of murder, nine of attempted murder and two of arson

'Defence for all' on the cards

THE Legal Aid Board will be involved in a study of the feasibility of providing legal representation for every accused says national director N Pretorius (252)

Pretorius says the work will tie in with research the board is doing on establishing a public defender system in South Africa (Pres)

Chief Justice Corbett said last month that the ideal of providing free legal representation to all indigent persons accused of serious crimes was "unquestionably a most worthy one" 21/10/91

Any system of justice which did not have this was "flawed"

"The ideal should never be lost sight of and it should continue to guide and stimulate all who are concerned with the improvement of our criminal justice system." Ecnl

Political comment and newsbills by K Sibiya, headlines and subediting by S James, both of 2 Herb Street, Johannesburg.

Sunday Profile

Justice of the peace

S/Times 27/10/91 (252)

MR JUSTICE Richard Goldstone is a careful man. Careful in his statements, in his judgments and in his responses.

It is because of this, no doubt, that he declined to make any comment this week on his appointment as chairman of the Standing Commission of Inquiry into Violence and Intimidation.

His task is daunting To investigate causes of violence in South Africa and recommend measures to contain it. Justice of the Peace takes on a new meaning

A study of his judgments and the comments of his colleagues and associates gives a hint as to why he was chosen for the impossible task.

His credentials with both the government and the resistance groups are impeccable — or as near as is possible in the divided and passionate country he is now called upon to serve in such a challenging role.

Comments from fellow-judges reflect the path he has cut in South African jurisprudence. "A very able lawyer", "a careful man", "has good judgment", "is probably liberal, but you could never say for sure", "is in the main progressive, but has avoided getting involved in controversy", and "definitely not wishy-washy, but won't stick his neck out too far"

All agreed his appointment was a good one. Commented one liberal judge. "He will make a bloody good chairman. We don't need someone who will go overboard."

Attorney Danielle Myburgh, who formerly worked as Judge Goldstone's clerk, says of him. "He is a real 'mensch' He has an immense sense of justice.

"What remains indelibly with me is that he was absolutely indefatigible. He obviously adored what he was doing and there was never any complaint that there was too much work. He approached each case as though it was his first brief."

Those who have watched Judge Goldstone in action in court comment that he is never short-tempered, listens carefully to arguments from both sides and couches his judgments in language accessible to ordinary people.

Tax advisory commission chairman Michael Katz, a close friend of Judge Goldstone, says he is a man "of absolute personal and intellectual integrity"

"When he appears on a matter he is completely objective and never looks at what is in it for him. He is completely unbiased and unprejudiced, and has never sought to do a thing to placate a constituency He has always done what he thought to be correct, whether it was popular or unpopular"

Judge Goldstone is well known for his frequent visits to prisoners and detainees — something which all judges are entitled to do but which is not mandatory or exercised by all his colleagues

His visits during the 80s, when record numbers were detained, were seen by many as an important check on any abuse by the authorities.

His visits were not confined to the Transvaal alone, and Mr Katz recalls that the judge once interrupted a holiday in the Cape to visit detainees and prisoners at Pollsmoor

At a recent law conference in Pretoria, Lord Chief Justice Corbett commended Judge Goldstone for being one of the few judges consistently to exercise this right.

Mr Katz said Judge Goldstone was also deeply passionate about his work for Nicro, the National Institute for the Prevention of Crime and the Rehabilitation of Offenders, of which he is president.

"Even during tennis breaks (they play every Saturday) he pursues ideas to try to raise funds for Nicro"

Judge Goldstone was born in Boksburg and matriculated at King Edward VII school in Johannesburg He graduated from the University of the Witwatersrand in 1962, and was admitted to the Johannesburg Bar the following year He took silk in 1976.

From 1978 to 1980 he held an acting appointment as judge of the Transvaal Provincial Division of the Supreme Court. In 1980 he was appointed judge. After a short period as acting justice of appeal, he was appointed justice of appeal in 1990

Since his appointment as a judge in 1980 Judge Goldstone has delivered several landmark judgments

One of his most celebrated was the Gladys Govender ruling, which effectively put an end to Group Areas prosecutions.

In this 1981 case he ruled that a person convicted of contravening the Group Areas Act could not be evicted unless there was somewhere else for the person to go

In 1984 in the State vs Khumalo, he passed the first community-service sentence An off-duty policeman who fired a shot in a shebeen which ricocheted off a wall and killed a person was found guilty of culpable homicide and was sentenced to work under Nicro supervision.

In 1986, in the State vs Radebe, he ruled that possession of a poster of Winnie Mandela, 37 music cassettes and one cassette of a recording at a funeral was not enough reason to detain a sound engineer under the emergency regulations.

The next year in SA Breweries vs the Food and Allied Workers' Union, he ruled that refusing to work overtime did not amount to a strike.

In 1988 in the State vs Mbonani, he ruled that it was the right of the individual to have representation.

Mr Justice Didcott subsequently took this ruling further in the State vs Khanyile, and ruled that for an indigent accused charged with a serious crime to be unrepresented constituted a failure of justice. This was recently overturned by the Appellate Division.

Last year Judge Goldstone chaired the commission of inquiry into the Sebokeng shootings, in which 18 people were killed.

He found both the organisers of the march and the police to be at fault.

The National Peace Accord states that in order for the commission, which Judge Goldstone now chairs, to be effective, it needs to enjoy the confidence of a broad spectrum of the South African community

In effect this meant that whoever was appointed chairman had to enjoy the confidence of the National Party, the African National Congress and Inkatha

Judge Goldstone is the man they chose

Mike Robertson

JUDGE GOLDSTONE . credentials are impeccable, but his task daunting

(252) ARG 28/10/91

Jury not answer for SA law — SC

A jury, to many who perceive South African courts to be instruments of State oppression, could provide a viable judicial alternative in a new South Africa. However, at a closer look, it might prove dangerously injudicious, according to a senior counsel of the Durban Bar. The Argus Corresondent HELEN GRANGE reports . . .

DURBAN. — How effective would a jury be in South Africa's courts — and would it solve the problems of legitimacy of our legal system?

According to Mr M J D Wallis SC, of the Durban Bar, it would not go any way to achieving a more objective justice — and would likely prove to be an expensive, time-consuming and, ultimately, ineffectual panacea for the perceived wrongs of the past

In the new edition of Consultus, the journal of the General Council of the Bar, he maps out why

The aim of a judicial system, said Mr Wallis, was to consistently produce just results by way of a just process However, it was questionable whether a jury system could produce this in South Africa

"The legitimacy of the existing system is constantly called into question Given the polarities of our society, will a 'comrade' regard the system as legitimate because it substitutes a jury containing Inkatha members for a judge and assessors?

"What about the reverse situation? The examples can be multiplied, but none give rise to optimism that the answer in in the affirmative," he said

A further problem with juries in the South African context was the diversity of our society as far as language and educational skills were concerned

"Trials are already bedevilled by the need for translation between two or three languages The problems increase when a jury is introduced into the system, with its members adding possibly another two or three languages to the equation," he said

Apart from the complexities of the South African scenario in relation to the jury, the jury itself as an organ of justice needed to be re-examined

He said there were two dangers with juries The one was that they were susceptible to sentimental appeals and the wiles of oratory which could result in verdicts ranging from the merely wrong to the perverse

The second, and more important, was that the impenetrability of the reasoning of the jury made it well-nigh impossible to remedy its errors

Acquittals could never be remedied and when juries erred on the side of conviction, appeals were notoriously difficult

The question also arose as to whether it was the proper function of a jury to substitute its sense of what was fair or common sense for the law as determined by parliament in a democratic society

"The essence of democracy is surely that bad laws and executive abuse are primarily dealt with through the political process and not by the views of a random selection of 12 citizens," suggested Mr Wallis

As an alternative to a jury system, Mr Wallis suggested that the independence of those charged with taking the decision to prosecute must be ensured

Secondly, in making a new constitution in South Africa, we should try and entrench not only the independence of our courts, but the independence of the entire system of justice from political interference

The courts should also re-examine the power to set aside criminal proceedings in circumstances constituting an abuse of judicial process, he said

"These seem to be a greater and more reliable source of protection against injustice than the hope that a jury can be swayed in this fashion

"As for trials of intricate cases of fraud, of which there seem to be a sharply increased number, how can one expect people who are barely numerate properly to judge them?"

Could 12 citizens better SA law?

252

Star 28/10/91

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HOW EFFECTIVE would a jury be in South Africa's courts — and would it solve the problems of legitimacy of our legal system?

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"Aside from the complexities of the South African scenario in relation to the jury, the jury itself as an organ of justice needed to be re-examined.

Mr Wallis refers to a case in Britain involving two men who had assisted a convicted spy, George Blake, to escape prison Both men, prosecuted only 25 years later and pleading guilty, were acquitted by a jury

"This merely highlights two dangers with juries The one is that they are susceptible to sentimental appeals and the wiles of oratory which can result in verdicts ranging from the merely wrong to the perverse," says Mr Wallis

The second and more important was that the impenetrability of the reasoning of the jury made it well nigh impossible to remedy its errors Acquittals could never be remedied and when juries erred on the side of conviction, appeals were notoriously difficult

The question also arose as to whether it was the proper function of a jury to substitute its sense of what was fair or commonsense for the law as determined by Parliament in a democratic society

"Juries undoubtedly had their origins in the belief that a trial by one's peers was more likely to yield a just result than one before the king or chief or the lord of the manor

"In those times, however, societies were not democratic and few channels existed for getting rid of unjust laws That is no longer the case in places like England and one trusts it will soon no longer be the case in this country

"The essence of democracy is surely that bad laws and executive abuse are primarily dealt with through the political process and not by the views of a random selection of 12 citizens," Mr Wallis ventures

In addition, the vast mass of statutory crimes being judged today were a great deal more complex than the "common law" crimes being adjudicated when juries were first introduced, Mr Wallis says

As an alternative to a jury system, Mr Wallis suggests that the independence of those charged with taking the decision to prosecute must be ensured

Secondly, in making a new constitution in South Africa, we should try to entrench not only the independence of our courts, but also the independence of the entire system of justice, from political interference

The courts should also re-examine the power to set aside criminal proceedings in circumstances constituting an abuse of judicial process, he says

"These seem to be a greater and more reliable source of protection against injustice than the hope that a jury can be swayed in this fashion"

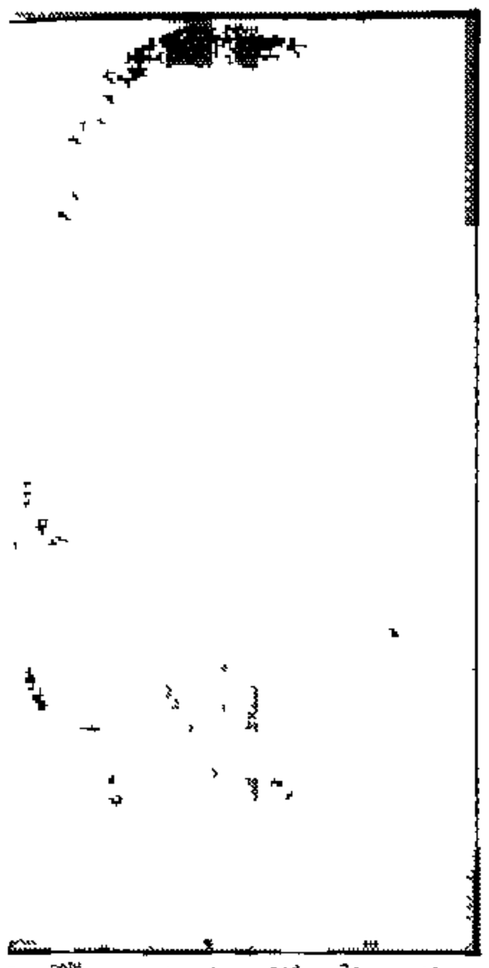
Mr Wallis concludes by referring to one commentator in the British case mentioned, who said "The jury system is based on the presumed ability of ordinary people to tell right from wrong, and to sift an argument This presumption is false ..."

"Uneducated jurors are often at the intellectual mercy of only one of two articulate members Not infrequently, jurors come to their verdicts not on the grounds of complex evidence but because they don't trust the police in general, or because the accused has a guilty look in his eye" □

Blunt sword in Stat

Star 28/10/91 252

Gavin Relly challenges the view that a Bill of Rights should be an instrument of State power rather than a device for limiting that power GERALD L'ANGE of The Star's Africa News Service reports



Answers to be found in the principles of liberal democracy . . Gavin Relly.

THE concept being promoted by some groups in South Africa of the proposed Bill of Rights as "a sword in the hand of the State for winning social and material equality" has been challenged by former Anglo American Corporation chairman Gavin Relly

He sees the Bill of Rights rather in its traditional form as "a shield in the hands of citizens to defend individual freedom"

His views have been expressed in a guest column published in the London newsletter Africa Analysis

He notes that there are fundamental differences about what kind of democracy we want in South Africa and about how political power should be exercised and on whose behalf

"The answers, as anyone who has lived under the sham democracies of Eastern Europe and Africa will tell you, are to be found in the principles of liberal democracy"

In such a system, he notes, the State is the servant of the people rather than the master, and creates opportunities for individual development rather than collective dependency

"Liberals recognise that democracy is not some ideal end-state but simply a process for dissolving differences, often a rather inchoate, contradictory process at that And the constitution is just a mechanism to guide and promote that process"

Mr Relly says some in South Africa view the State as the architect and builder of a new "democratic" social reality patterned on a vision of social and material equality In such a situation, the constitution becomes a tool for those who would bring about their vision of a perfect society

However, such grand designs inevitably result in disasters

"A State can try to ensure the equality of opportunity, but to delude the multitude that it can ensure the equality of outcome or result is dishonest"

Mr Relly cites the Bill of Rights to illustrate this conflict of ideas, and notes that traditionally it is a simple charter guaranteeing fundamental liberties to the individual and setting firm limits on how far the State may encroach on the lives of its citizens He compares such a Bill to a shield

"In contrast, there is a newer vision which regards a Bill of Rights as a sword in the hand of the State for achieving social and material equality

"In this view, the Bill of Rights becomes the instrument for righting all forms of social inequality and material disadvantage and promoting the rights of those who believe they have a special claim against society

"Thus every kind of right is included — the right to shelter, the right to health, the right to clean air, gay rights and the rights of the disabled The traditional liberal values of compassion, tolerance and fair play are no longer regarded as sufficient underpinning for policies to address these needs Instead, they are elevated to constitutional imperatives and entrenched in a Bill of Rights

"What purpose this would achieve is unclear as no government can guarantee such outcomes. If, as some would argue, the need to distance ourselves from our apartheid past and to give people a sense of what democracy could mean in material terms is so imperative, this is better done separately in a social charter for the new South Africa endorsed by all parties as an addendum to the constitution listing the objectives of State policy But it should have no part in the Bill of Rights"

It would be the institutions of society and the people who serve in them that would largely determine the success of our experiment in democracy, Mr Relly says

"The quality of democracy a country enjoys is a reflection of the political culture its citizens create and sustain through myriad private and public institutions which will bring the fruits of democracy into the everyday lives of ordinary people"

Mr Relly says he remains hopeful of the outcome of the experiment in democracy on which South Africa is launched

"For all the political, ideological, cultural and other factors which divide us, South Africans have one overriding common interest Destiny has brought us together to a point where, as Sartre noted, we must live together or surely die apart" □

hand

The Star Monday October 28 1991

Conduct of warders queried by judge

29/10/91

DURBAN — The judge presiding over the inquest into the shooting to death of Chief Mhlabunzima Maphumulo, Mr Justice Page, said yesterday he was not satisfied with explanations given by Westville prison officials for allowing police access to inquest witness Const Lucky Mntambo while he was being held in protective custody.

The judge said he had referred the matter to the attorney-general for his decision and also instructed the docket be sent to the director-general of correctional services to take whatever departmental disciplinary steps he might deem fit.

Mr Justice Page said after considering written statements he was not satisfied that the conduct of the prison officials concerned in admitting police to Mntambo while he was in protective custody was merely the result of "negligence or stupidity" It was arguable that they at least foresaw the possibility that their conduct could amount to contempt of court, he said

The judge ordered an investigation after being told on October 23 by Mntambo's advocate that his client was approached in prison by members of the SAP who attempted to obtain a statement from him and that a scuffle had broken out

B1 pay

Own Correspondent

Mntambo was granted protective custody on September 27 after claiming he feared for his life because he had implicated police in alleged "hit squad" activities He has recently been released from protective custody at his own request.

Under cross-examination by Kobus Booyens SC for the police yesterday, Mntambo insisted his arm was broken in September when he dived into a ditch in Hesketh Drive while fleeing from SAP members who allegedly fired shots at him.

Booyens said according to medical records at Edendale Hospital Mntambo did not sustain any fracture

Mntambo also disputed allegations yesterday that he had never been attached to the SAP security branch but had joined the SAP on two occasions

It was suggested he was discharged once as a result of frequent absences from work, and was again discharged in December last year as a result of allegations that he was involved in a "variety of crimes"

Booyens also quoted passages from affidavits of various security policemen implicated by Mntambo, denying involvement in attacks detailed by him.

The hearing continues today.

Bid for dismissal in Allied trial

B10 pay 29/10/91

SUSAN RUSSELL

ALLIED Bank, one of its senior managers and an Austrian businessman yesterday applied for a dismissal of charges relating to an allegedly fraudulent R5,5m finrand transaction

The bank as a corporate entity, a senior manager, Ulrich Leitich, 49, and businessman Rainer Moringer, 48, have pleaded not guilty in the Rand Supreme Court to one count of fraud and an alternative charge of contravening exchange control regulations.

They have applied for a discharge on both counts on the grounds that the state, which has closed its case, had not proved the charges against them

It is alleged that Moringer obtained Reserve Bank permission for a R5,5m finrand investment in his companies, Ciskei Air Transport Investment Corporation and Ciskei Aircraft Industries, by misrepresenting that the investment was to be made by an Austrian company, Agroprojekt.

The state alleges there was in fact no foreign investor and that Allied provided the $1,67m for the purchase of finrands in contravention of exchange control regulations.

Applying for an acquittal, counsel for Leitich submitted that the state had failed to prove there was no foreign investor or that Allied itself was the de facto investor

Allied never intended to be the investor, the court was told It was also argued that the state had not proved any fraudulent misconduct or non-disclosure on Leitich's part and that he too should be acquitted on both counts.

The state will continue argument today in opposition to the application

Mr Justice Zulman said because Moringer conducted his own defence, he would allow the businessman an opportunity to make submissions on points with particular reference to himself raised by the state.

'Captain pointed out house'

MARITZBURG — A former SAP special constable who was among six sent to trial of Mitchell, Capt Jacobus van den Heever, Sgt Neville Rose, and ex-SAP special policemen Kehla Ngubane, Thabo Sikhosana, Dumisani Ndwalane and David Khambule They have pleaded not guilty to murdering 11 people and attempting to murder eight others at a funeral vigil

Own Correspondent

Trust Feed for "guard duties" in December 1988, has alleged that four colleagues now on trial for murder told him they had fired shots into a house pointed out by New Hanover station commander Capt Brian Mitchell, who said it was occupied by terrorists

Selby Bhekisisa Mkhize was testifying at the Maritzburg Supreme Court

Mkhize said after the deaths Van den Heever and Rose had taken him and the others to their homes

Martin, Maritz lose bail

PRETORIA — Former right-wing hunger strikers Henry Martin and Adriaan Maritz yesterday provisionally estreated their bail in the Pretoria Supreme Court after failing to meet their bail conditions.

Warrants for their arrest were issued on Friday when they failed to report to police in terms of their bail conditions.

Mr Acting Justice W J Human granted an application by the State that their bail of R5 000 each be provisionally estreated, but refused an application to estreat Lood van Schalkwyk's bail as the third former hunger striker was unfit to appear in court.

The trial of the three men on charges of murder, attempted murder and malicious damage to property was postponed to January 27. — Sapa.

Murder suspects in court

252

Sowetan 29-5-1991

TWO tavern massacre suspects linked to the Mapetla, Soweto, tavern killings that left 10 dead appeared in court again yesterday

Mr Given Chiloane (19) and Mr Ephraim Tsotetsi (19) were found guilty on charges of possessing ammunition and an unlicensed firearm

Magistrate Mr SP Janse van Rensburg postponed passing sentence to Friday

He denied the men bail

"You will have to be kept in custody while police are investigating further charges against you," Van Rensburg said - *Sowetan Reporter*

re-empt what I may be told."

Mandela, in Johannesburg on May 22

during a protest in May this year.

Policeman says he was told to hide

B Day 30/10/91

Own Correspondent

MARITZBURG — Former SAP special constable Selby Mkhize, posted at Trust Feed, New Hanover, at the time of the December 1988 killing of 11 people, told the Supreme Court yesterday he had received an anonymous phone call in connection with the incident earlier this year, warning him to hide.

Mkhize, now a member of the KwaZulu police, reported the matter.

Mkhize said he had believed he and five colleagues were being posted to Trust Feed to perform guard duties.

One morning four colleagues — Kehla Ngubane, Thabo Sikhosana, Dumisani Ndwalane, and David Khambule — told him and Const B Makhathini New Hanover station commander Capt Brian Mitchell had pointed out a house "occupied by terrorists". They surrounded and shot at the building.

The trial continues today

Schools face huge increase in pupils

B Day 30/10/91

GERALD REILLY

PRETORIA — The mounting problem of funding education to cater for an explosion in pupil numbers between now and the year 2000 was stressed by Education and Culture Minister Piet Marais yesterday.

He told the Cape Education Council in Cape Town that pupil numbers were rising at the unprecedented rate of 300 000 a year and that by the century's end there would be an additional 4-million pupils

This would impose impossible additional demands on education financing The situation was further aggravated by SA's current low economic growth rate and extremely weak productivity.

Marais said it had to be realised a new education system could not be established overnight, given this background Government would be unable to spend much more than the present 20% of budget already allocated to education.

"The fact is that the more than 10-million pupils and students cannot be funded on the same basis as they are funded by my department," he said.

Marais said a National Education Department survey on the realities of education found per capita state expenditure for school and college education in the Department of Education and Culture was R3 572 in 1989. However it was only R927 in the black Department of Education and Training.

It was also found the teacher-pupil ratio in white schools was 1:17,6. The ratio in the Department of Education and Training, however, was 1:36,3

"It is unthinkable that such inequalities should continue indefinitely," he said.

Financial realities would force government to consider raising parent and community contributions and the channeling of more pupils to technical and career education. Also the curtailment of compulsory education to the projected level of Std 5 and the real increase in pupil density would have to be closely looked at.

On open schools Marais said by the year's end about 700 schools would have voted for one of the additional models and would have the right to determine their own admission policy. While about 80% of the country's total population indicated they were followers of one or other religion, and this formed a communal basis for a new system, provision would have to be made for the great diversity of people and cultures in SA There was no place for discrimination on grounds of race or colour.

IDT see

Most SouthAfricans and families of mis- The situation was very tens

Call for heavier jail terms for rape

252

Staff Reporter

PROSECUTORS should ask for heavier sentences for rape, the Attorney-General's office said this week, echoing a call by a Paarl magistrate for rapists to be jailed for longer terms.

In sentencing two rapists on Monday to prison terms of between five and seven years for the rape of a teenage girl in the Du Toit's Kloof Pass, Mr A J Burger said in Paarl Regional Court that rape had become the most tried case in the courts. CT 31/10/91

It was also time drastically to adjust sentences for this type of crime as a way of safeguarding women against rape, said Mr Burger.

Yesterday the Deputy Attorney-General, Mr Hendrik Klem, said prosecutors should stress the aggravating factors in rape cases and ask for heavy sentences.

Mr Klem said sentencing in a common-law crime like rape was left to the discretion of the magistrate after he had weighed all the facts.

However, if a magistrate imposed a heavy sentence it could be subject to appeal in the Supreme Court, said Mr Klem.

● South Africa has the highest incidence of rape in the world, double that of the US.

Legal reforms 'hampered'

JOHANNESBURG — A lawyer has criticised the bureaucratic attitudes and long delays experienced by the attorney profession in obtaining answers from the authorities to their suggestions on legal reform

(252) CT 31/10/91

Mr B J A W Hardy, the outgoing president of the Law Society of the Cape of Good Hope, was speaking at the society's recent annual general meeting

Mr Hardy said it should be the function of the authorities to remove obstacles to reform and to ensure that law became more understandable, accessible and streamlined

Mr Carl Pohl, a member of the Association of Law Societies' Standing Committee on Street Law, was elected president for the coming year — Sapa

The high price of justice

Mr Justice Didcott

SOUTH AFRICAN law assumes that all are equal before it, but it is estimated that 80 percent of people who appear in court accused of crimes — many serious — are unrepresented by attorneys or advocates

According to one legal academic "only the very rich or the very poor can afford legal counsel", and the fees charged by legal practitioners are "absolutely outrageous"

A senior advocate can earn up to R3 000 for a day in court, while a consultation fee of R400 is not unusual Young advocates starting out can earn between R200 and R300 a day Attorneys earn about half that

Just having particulars of a simple claim drawn up by an advocate costs about R80

Recently the Supreme Court dismissed two court applications by a former journalist on the grounds that his papers did not conform with the rules of court governing applications and motions and were "materially and procedurely defective".

Mr Brian Grobbler, retired motoring editor of the Cape Times and a former Supreme Court reporter, told the court he could not afford a lawyer and drew his own papers in a dispute with two former business partners.

But the judge threw the case out, advising Mr Grobbler to obtain the services of an attorney and counsel "to present your case properly"

Mr Grobbler said he did not even have the

A Cape Town man embroiled in a business dispute took his own case to Supreme Court, only to find it almost impossible to proceed without legal representation. But how accessible — or affordable — is the legal system to the man-in-the-street? Staff reporter LIBBY PEACOCK investigates . . .

R10 000 deposit he had been asked to pay before lawyers would take on the case.

Professor Dennis Davis, the director of the Centre for Applied Legal Studies at the University of Witwatersrand, said "One has to ask oneself the extent to which one can say one has a fair legal system without a right to counsel and the answer must be 'no' "

It was likely there would be argument for the right to counsel as a basic human right to be incorporated in a bill of rights, he said

"I doubt very much, in the context of our resources, whether that will extend to civil matters "

The answer regarding civil cases could be to simplify and restructure legal procedures

"Only the very rich or the very poor can afford legal counsel The fees charged by private practitioners are absolutely outrageous," he said

Mr Johan van den Berg, an advocate connected to the legal aid clinic in Stellenbosch, said "For the average person the law is a very expensive process "

"Some procedures, where a matter is decided only on papers, such as urgent interdicts, are affordable, but where expert witnesses are called, it's more expensive "

The answer was either to simplify the system which, he said, would lead to a lesser degree of fairness and effectiveness, or to lower lawyers' fees.

"In ideal circumstances everybody would have access to a legal representative, but one has to face up to economic realities."

A city advocate said "Many of the people in the legal profession are not there because of their love for the profession, but for the money and the status.

"It is not a legal system for the people, but one for the elite. Only companies can afford to litigate, not middle of the road people "

A pro Deo system run by the Department of Justice provides free legal representation for people accused of capital crimes

The advocate said pro Deo counsel were usually young and inexperienced, often not standing a chance against experienced State counsel, to the disadvantage of the their clients

According to a recent Appeal Court judgment, accused people need not have legal representation for a trial to be fair

The court, however, did indicate sympathy for the issue and recommended that a feasibility study be done on guaranteeing legal representation for every accused.

This follows the 1988 landmark judgment of Natal judge Mr Justice J Didcott who ruled that all accused

Professor Davis

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'Only very rich

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ALG

31/10/91

... or very poor can afford to pay for legal counsel'

should be entitled to legal representation as the denial of this right would result in unfair trials

However, he took the shortage of manpower into account, which meant the ruling did not become legal precedent.

Mrs Ingrid Hoffmann, director of Law Society of the Cape of Good Hope, said attorneys charged various tariffs, most of which were prescribed by statute

A certain range of work was covered by statutory tariff, but the society provided guidelines.

It is estimated that about 80 percent of the more than two million people appearing in the lower courts annually are unrepresented Of these more than 100 000 are sent to jail

The Legal Aid Act has established a board which provides legal assistance for indigent people

In terms of a means test, single people qualify for aid if they have a "calculated" income up to R500 a month, while married people with a "calculated" income up R1 000 a month qualify In both cases R150 a month a dependent child is added

The assistant director of the Legal Aid Board, Mr Hans Klingenberg, said the board had "a whole new approach to calculating income" and had succeeded "in quite a big way" in reaching the ordinary citizen

"In our calculations we deduct full bonds and make deductions for tax and annuity policies We also take rented accommodation into account"

In addition, the Legal Aid Board director could make exceptions on merit and type of case

"We have problems coping with the large numbers of people who apply to the board"

He said approved legal aid applications increased 72 percent in the first nine months of this year Approvals for criminal cases alone increased 127 percent

The board also recently launched a public defender system, and two legally qualified "public defenders" were employed to defend indigent accused free

The director of Lawyers for Human Rights in the Western Cape, Mr Stefan Raubenheimer, said one could not deny that the legal system was inaccessible to the majority of South Africans

"There is no doubt that a sophisticated legal system is required for serious issues such as murder trials or large civil disputes where much is at stake Most people however confront the law with smaller problems but are still required to finance an expensive legal process when a less sophisticated one would suffice

"The legal system is as accessible as its image presents it to be To many black people the legal process is an alien system which they cannot trust, let alone afford

"Accessibility to the legal system should be one of the major concerns in the forthcoming negotiations," Mr Raubenheimer said.

Law priced out of the citizen's reach

Sowetan 31/10/91

FOCUS

Sowetan Correspondent

SOUTH AFRICAN law assumes that all are equal before it but it is estimated that 80 percent of people who appear in court accused of crimes - many serious - are unrepresented by attorneys or advocates.

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"There is no doubt that a sophisticated legal system is required for serious issues such as murder trials or large civil disputes where much is at stake Most people however confront the law with smaller problems but are still required to finance an expensive legal process when a less sophisticated one would suffice."

There were moves afoot to remedy this situation, such as public defenders Lawyers for Human Rights' pro bono system, the small claims courts and alternative dispute resolution, which needed to be supported on a large scale by the State, he said

"The legal system is as accessible as its image presents it to be To many black people the legal process is an alien system which they cannot trust, let alone afford "

LHR seeks release of spy Gerhardt

Star 31/10/91 (252)

An application was filed in the Pretoria Supreme Court this week for the release of convicted KGB spy and ANC member Dieter Gerhardt, according to a statement issued by Lawyers for Human Rights on yesterday.

The LHR filed the application in terms of rule 53, ordering the Minister of Correctional Service to release the former SA naval officer, and calling upon the State President to show cause why he did not grant Gerhardt political indemnity.

The application asked for the court's authorisation to release the former spy It also noted that Gerhardt was and still is an ANC member who committed his acts from political motives

During December 1983 Gerhardt was convicted of high treason and sentenced to life imprisonment

Opposition

The LHR noted that the acts which had given rise to the charge against him and for which he was convicted were among others, that during 1962, 63 his opposition to the (political) policies of the Government had led him to supply the USSR certain information "in order to bring about a new social dispensation in the Republic"

"The fact that he was charged with treason, found guilty of treason and was always imprisoned with political offenders would indicate that the State always regarded his offence as being one which was committed with a political motive.

"It is common cause that one of the consequences of the present Government's political reform initiatives is that people who were guilty of committing acts which constituted 'political offences' should be granted indemnity and those who were being detained in consequence of committing such acts should be released"

Extended

Gerhardt applied for political indemnity on November 27 1990 but this was denied. The LHR statement noted that the State President had extended categories of political offences on April 24 this year and unconditionally granted indemnity to any person who was a member of the ANC and who before noon on October 8 1990 had committed, with political motive, any act which constituted or might constitute high treason.

Gerhardt noted in his supporting affidavit before the court that, since he was and is a member of the ANC, and since he was convicted of high treason, which offence he committed with political motives, he should have been released on or shortly after April 24 1991 and that his continued incarceration was unlawful

He also alleged that the State President could have decided that he should not be released only by "applying considerations which were irrelevant, grossly unreasonable or not permitted by law" — Sapa

Amnesty led to a crime wave - cops

Sowetan 1/11/91

252

THE general amnesty for first-time offenders declared by the State President earlier this year was responsible for the rising tide of crime, bitter police officers have warned.

Senior police officers have complained to the Commissioner of the South African Police because criminals they put behind bars are released on amnesty or early parole

One captain said the general amnesty created a euphoria among criminals, who felt it gave them carte blanche to do as they pleased

Having a field day

"Once a criminal, always a criminal," he said

He was furious at the number of people he had put behind bars who were back on the streets "having a field day with a gun in their hands"

Another senior officer said he knew of several officers who had complained to the commissioner about the amnesty.

"I would complain too, if I felt it would do any good," he said

Under the President's amnesty granted in August, a third of the sentence for first-time offenders was commuted

Police say the amnesty is not being applied properly as many of the criminals released had previously been convicted for the same offences

"How many criminals who go to jail and serve their sentence come out and go straight back into crime?" asked one officer

"There are thousands of them So, the guys who didn't even have to serve their sentence think this is great And next time they will get out on parole," a disgruntled colonel charged

"It is well-known that crime has gone haywire over the last 18 months There may be several factors, but we know one of them is all the people wandering around who should have stayed locked up," he said

Several magistrates feel that the whole amnesty and parole system has possibly made the criminals bolder

Sentences do not act as a deterrent any more as criminals in many cases feel they will be granted amnesty or parole sooner, magistrates say

Some feel that it makes a mockery of the judicial system as stiff sentences are meted out and are often promptly reduced

Violent crimes

The office of the Commissioner of the South African Police could not be reached for comment

A colonel with several years experience said

"A large percentage of prisoners who claim to have been jailed for political reasons were indeed convicted of violent crimes such as murder, rape and theft

"These people are hardened criminals and experience has shown that once they have committed a violent crime there is a 90 percent chance of them doing it again once they leave prison" - *Sowetan Correspondent*

De Klerk receives human rights report

B'Day 1/11/91 252

PRETORIA — Chairman of the Law Commission Mr Justice H J O van Heerden handed over the interim reports on group and human rights to President F W de Klerk in Pretoria yesterday

The completed final report on constitutional models was also presented to De Klerk

Mr Justice van Heerden said the reports resulted from research and consultations and did not serve the interests of any party or group

"We have endeavoured to represent as objectively as possible divergent views and to set out options and solutions which we thought would be reasonable and workable"

The judge hoped the reports would be of assistance to the public and those involved in future negotiation for the drawing up of a new constitution

De Klerk said they dealt with key subjects and would have far-reaching consequences regarding a new dispensation

The reports would be studied carefully by the government and all political parties and movements, he said

"We stand on the verge of a multiparty conference In that sense the fact that the reports were completed now is timeous and appropriate"

He hoped the reports would have a calming influence and encourage realistic thinking and result in a new dispensation which would take into consideration the complexity of SA society

De Klerk said he would react to the reports "in due course"

He nostalgically recalled that the subject of his maiden speech in parliament had been the SA Law Commission

De Klerk said he had expressed his strong conviction and belief in SA's legal system but had said it still required reform

The handing over ceremony was also attended by Justice Minister Kobie Coetsee, Constitutional Development Minister Gerrit Viljoen, Mr Justice P J Olivier and other senior members of the SA Law Commission — Sapa

City workers angry at seniors' pay rise

B'Day 1/11/91

CAPE TOWN — Dozens of shop stewards converged on Cape Town's civic centre yesterday in support of of union demands that the city council scrap an extra 8,3% pay raise for senior staff

Cape Town mayor Frank van der Velde, accompanied by senior officials, and 60 representatives of the SA Municipal Workers Union met for about one and a half hours, city council spokesman Ted Doman said

Samwu Cape Town secretary Roger Ronnie said workers demanded the council rescind a decision to pay senior staff an 8,3% increase over and above a 12,5% rise awarded to all staff earlier this year

Samwu also demanded the city council restore services pending talks with the union and affected communities, he said

Doman declined to disclose the topic of the talks between shop stewards and officials — Sapa

Picture HANNES THIART, Weekend Argus.

□ **NEW APPOINTMENTS:** Gerald Hattingh and Hester Fouche outside the Supreme Court soon after taking up their new duties.

Court appoints two 'family advocates'

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ARG 2/4/91

CLIVE SAWYER
Weekend Argus Reporter

THE first two "family advocates" have been appointed to the Cape Supreme Court.

A South African concept being implemented countrywide by Mr Justice Deon van Zyl, the family advocate acts as a special investigator in cases involving children

Appointed in terms of the Mediation in Certain Divorce Cases Act, there are four family advocates in Pretoria and three in Johannesburg.

The first two in the Cape, Mr Gerald Hattingh and Mrs Hester Fouche, took up their appointments yesterday.

Based in the Supreme Court building, the two experienced advocates will draw on a wide range of government resources before they appear in the growing number of cases where childrens' futures are in the balance

Paid by the State, family advocates may appear when appointed by the court or at the request of the parties

Mr Justice Van Zyl said the idea had been welcomed by judges and lawyers in the Transvaal after some initial reservations

Normally, court disputes can carry on for a long time while two sets of psychiatrists, psychologists, and social workers give evidence

"The appointment of family advocates does not, of course, remove anyone's right to call their own chosen social worker or psychiatrist to give evidence," Mr Van Zyl said.

However, family advocates had built up a reputation for being objective and giving in-depth reports about family situations

More would be appointed countrywide to meet anticipated demand for their services, he said.

Family advocates supplemented the traditional role of the judge by protecting the interests of the child

Family advocates appointed

(252) CT 2/11/91

By WILLEM STEENKAMP

THE Supreme Court yesterday gained its first two family advocates — posts created to protect the interests of the little people in court battles

As part of a legal process which is unique in judicial systems worldwide, advocates Ms Hester Fouché and Mr Gerald Hattingh will examine all evidence before the court in divorce cases, interim orders, custody battles and maintenance cases, in a bid to protect the interests of minor children

They will research cases, deal with health, welfare and education authorities, as well as psychiatrists, and prepare evidence for cases

Supreme Court judge Mr Justice D H van Zyl, the chairman of the implementation committee for the new system, said yesterday it had proved highly successful in courts in Pretoria and Johannesburg He said that earlier doubts of courts and counsel on the new system had been dispelled and now there was "99% acceptance" of family advocates, whose evidence could be seen as "objective"

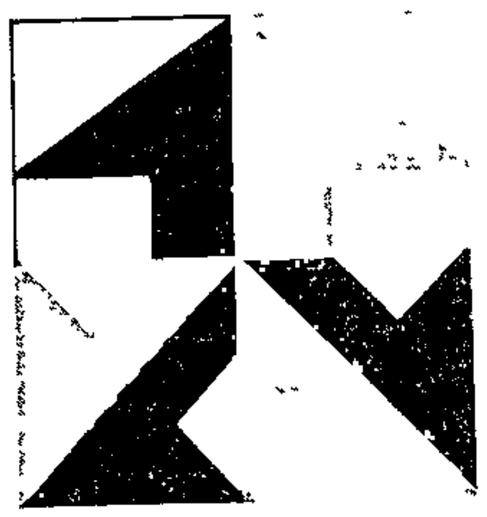
In the past, Mr Justice Van Zyl said, parties had each put psychiatric evidence before the court, but now that responsibility would lie with the family advocate

The right to life, love and liberty

S/Times 3/11/91

252

LAW COMMISSION REJECTS DEATH PENALTY



THE Law Commission has removed all mention of the death sentence for serious crimes from its interim bill of rights. S/Times 3/11/91

Its original proposals made provision for the death sentence in certain cases. But it has decided this is no longer necessary and the new version simply states that everyone has the right to life.

The commission argued that if the state wanted to impose the death penalty for certain crimes it could make use of a limitation clause in the bill of rights on the grounds that the right to life should be limited in some cases in order to prevent serious crime

Any group or person objecting to this can challenge the state and the matter would go to the Constitutional Court for a final decision.

The same procedure could be followed in the question of abortion.

THE Law Commission has rejected calls to entrench the concept of a reasonable tax in a bill of rights.

The commisssion said it had taken note of the debate on whether there was a fundamental right to be taxed in a reasonable manner.

It suggested the legislature should be given the power to choose between equal proportional taxation and progressive taxation In both cases there should be a set limit. 252

The matter belonged in a chapter in the constitution dealing with fiscal policy and not in a bill of rights

THE Commission came down on the side of the SA police in the debate on whether the right to own and carry firearms should be protected.

The SA Gunowners' Associatibn submitted a plea for such a right after the publicatıon of the commission's first report The SAP opposed the plea

The commission said it understood why there was an instinctive resistance in South Africa to the enactment of a fundamental human right to own and carry firearms

It acknowledged that if firearm ownership was decided by legislation there was a danger of discrimination or administrative arbitrariness.

However, it was not persuaded that ownership of firearms should be enacted as a fundamental right.

BRIAN POTTINGER and MIKE ROBERTSON report

HE South African Law ommission yesterday eleased its draft proposals r a bill of rights in a future outh Africa This is a sumiary of the document.

The first 26 articles of the ill of rights protect classical olitical and civil rights hese are called first generaon, or "blue", rights.

Article One is a preamble hich establishes that all the ights in the bill are fundaental and available to all eople in South Africa

Article Two ensures that verybody has the right to rotection of his or her life

Equality of treatment beore the law protected in **rticle Three** forbids disrimination against any peron on the basis of race, olour, sex, religion, ethnic rigin, social class, birth, olitical or other views, or isabilities

Parliament may make noney available to ensure hat through education and raining people have equal levelopment opportunities

Punishment

Article Four extends to veryone the right to be proected from mental or physcal torture, assault or inhufrom inhumane treatment or degrading punishment They have a right to be visited by lawyers and family and to be informed what charges they are facing Their trial must be public and fair

All proceedings must be in a language an accused person can understand. Prisoners must also be given the opportunity to rehabilitate

The bill of rights then proceeds to protect a range of other individual rights A person's good name and reputa- state if neces ary and be promay not give them any public money

Article 18 grants to every person the right to practise his or her religion, culture and language and he or she may not be prejudiced in any way for doing so. **Article 19** protects a person's right to family life and to marry whom he wants

Children enjoy special protection **Article 20** gives them the right to live with their parents, be cared for by the

tected by the bill

The right to property is entrenched in **Article 22**, the right to engage in economic enterprise in **Article 23**, the right to belong to political parties, express political convictions and be elected to office in **Article 24** and the right to assemble, demonstrate and petition in **Article 25** The right to vote on the basis of equality is entrenched in **Article 26.**

The bill of rights then proposes a series of what is

strikes and not be subject to unfair labour practices

Employers' rights are spelled out in **Article 29** These include the right to hire and fire workers in terms of the law, demand reasonable productivity, lock out workers, apply the principle of "no work, no pay", use alternative labour and be protected from unfair labour practices.

Article 30 is what is called a "green" right. It says that everybody has the right not to be exposed to an environment which is dangerous to human health or well-being

next three articles

grant everybody the right to settle civil disputes in court (**Article 31**), the right to have the rules of natural justice applied in administrative proceedings (**Article 32**) and the right to have South African law applied in a court of law (**Article 33**)

Emergency

Article 34 explains the limitations to the exercise of rights under the bill of rights

It permits "circumscription" of some of the rights, mainly the second generation ones, by various statutory laws but only where it is essential and in the interests of good government and the public good This means that in some cases the intent of the bill of rights may be limited by other laws, or practical considerations

It also spells out the conditions under which the bill can be suspended by a state of emergency

The state of emergency cannot be declared for longer than six months at a time Three weeks after its proclamation it has to be approved by two-thirds of Parliament

Articles 35, 36 and 37 detail the setting up of a special Constitutional Chamber of the Appellate Division to hear appeals against judgments involving issues arising from the bill of rights, and the setting up of a Human Rights Commission to educate people on the bill, to investigate amendments and to appoint an ombudsman to act on behalf of individuals and organisations who feel their constitutional rights have been violated by state agencies

Important

The ombudsman will also act as a mediator He will try to achieve settlement between an aggrieved party and the body who has allegedly been in breach of the bill of rights He will have to report once a year to the government

The next three articles deal with the promotion of human rights (**Article 38**), the operation of third parties (**Article 39**) and the application of the bill in South African legislation (**Article 40**)

The last article is probably the most important It ensures that the bill of rights cannot be amended except by a two-thirds majority of Parliament and a majority in a national referendum

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5/Times

3/11/91

man and degrading treatment Not even war or a state of emergency can justify such acts

Article Five ensures personal liberty except where a person has been arrested and is awaiting trial, is imprisoned after conviction, is held under a lawful court order, is in quarantine, has been committed for mental illness according to law or is held as an illegal immigrant in terms of law

Procedural aspects of the bill of rights are dealt with in **Articles Six, Seven** and **Eight.** They ensure the rights of people who have been arrested, are on trial or in prison

In brief, they are protected

tion is protected by **Article 9,** privacy by **Article 10,** protection against forced labour by **Article 11,** freedom of speech by **Article 12** and the right to engage freely in science and art by **Article 13** The right to act as a juristic (ie legal) person is ensured by **Article 14** and freedom of movement is dealt with in **Article 15** The right to a passport and to emigrate is contained in **Article 16.**

Article 17 grants people the right to associate with whom they want and to disassociate if they wish Where individuals wish to disassociate from others on the grounds of race or colour, however, the government

tected from child labour and other exploitation

Property

"In all legislative, executive and administrative proceedings, the interest of the child shall be in all circumstances paramount," says the bill of rights

Article 21 guarantees the right of free primary education to everybody It also allows for a choice of schools and mother-tongue education A sub-section enables the state to provide money to private schools that do not discriminate on the basis of race or ethnicity

A series of other important classical rights are also pro-

called second generation or social and economic rights

Article 27 grants everybody the right to form trade unions or employer groups, to seek employment, to provide for illness, and to provide for the maintenance of a reasonable living standard and education

This section also grants the right to claim state assistance to provide for living and health needs

Article 28 spells out in more detail the rights of employees They have the right to work under safe conditions, enjoy reasonable working hours, be given leave, receive equal pay for equal work, take part in

Law Commission charts individual rights in new SA

BLUEPRINT FOR LIBERTY

S/Times 3/11/91. (252) (~~277~~)

By BRIAN POTTINGER and MIKE ROBERTSON

THE SA Law Commission yesterday released a draft bill of rights which aims to make paramount the rights of the individual in a future South Africa.

While the main emphasis falls on individual liberty, the draft also genuflects in the direction of the social, economic and environmental rights demanded by the ANC and Cosatu

The commission also recommended that a limited bill protecting basic rights, agreed to by all parties, should be introduced while negotiations are still underway This would create confidence in the negotiation process

Because political parties already agree on a wide range of classical rights, such a bill could be introduced as early as next year

The draft bill released yesterday would grant South Africans the right to free primary education and to claim state medical care if they were poor

The government would also be barred from supporting schools or private organisations which discriminated on the grounds of race — something which would have an important effect on present National Party policy

integrity, personal liberty and security, a fair trial, humane treatment, privacy, reputation and freedom of speech

Other fundamental "first generation" rights include the right to movement and association, own property, form and join a political party, an equal vote, assemble, demonstrate peacefully and the right to freely engage in economic enterprise

The state may not take a person's property without compensation and, in the event of a dispute, the courts will decide

The commission, an influential body with the task of advising the government on law reform, went beyond strengthening classical individual rights It also dealt with the sort of social and economic rights which feature prominently in ANC and Cosatu documents

Labour

It dismissed as "Utopian" and "unenforceable" some second and third generation rights demanded by these organisations The inclusion of rights to shelter, freedom from hunger and health in a bill of rights would be "juridically futile" and could undermine the credibility of the bill of rights as a whole, said the report

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create confidence in the negotiation process.

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The draft bill released yesterday would grant South Africans the right to free primary education and to claim state medical care if they were poor.

The government would also be barred from supporting schools or private organisations which discriminated on the grounds of race — something which would have an important effect on present National Party policy.

A constitutional court would be able to declare invalid any legislation or action which violated the bill of rights. A human rights commission would serve as an advisory and investigative body on human rights issues while an ombudsman would help citizens understand and exercise their rights.

The bill, released yesterday in Pretoria by the Law Commission's project leader, Mr Justice Pierre Olivier, has several important advances on the original Law Commission recommendations published in October 1989.

Among the changes

- A children's charter, spelling out their rights;
- The extension of limited social, economic and environmental rights — the so-called second and third generation rights,
- Public referendums to approve any decision by Parliament to amend the bill of rights

Judge Olivier said he expected the government, which is now studying the report, or any of its negotiating partners, could ask for a redrafting of aspects of the bill. For this reason it was an interim report.

He said the bill of rights regulated relationships between citizens and the state, but did not deal directly with relations between citizens.

"It is not intended to deal with citizens' rights against each other. That will come. In the course of time we will have civil rights laws as they now have in America," he said.

Education

The commission again emphasised its belief that group rights could be protected only through individual rights. It rejected the idea of partition as a way of protecting groups.

The bill did, however, protect group rights by allowing freedom of language, religion and culture The introduction of the notion of class action enabled a person to go to court on behalf of a whole group to ensure the group's rights. It also recognised mother-tongue education as a fundamental right.

Individual rights protected by the bill include a right to life, equality before the law, mental and physical

THE RIGHT TO LIFE LOVE AND LIBERTY

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See also Page 2

government on law reform, went beyond strengthening classical individual rights. It also dealt with the sort of social and economic rights which feature prominently in ANC and Cosatu documents.

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The commission instead identified certain rights of employees, employers and general rights, which it said could be protected in the same way as classical human rights. Many of these rights are, in fact, already contained in labour legislation.

The bill binds the state to actively promote the rights contained in the document.

The commission said its proposals in regard to second generation rights went further than other bills of rights, for example, in India which recognised socio-economic rights only as "directive principles".

"The commission protects all rights, first in the "negative" sense that the state shall not infringe on them and, second, in the "positive" manner in that all rights shall be used as guidelines in the legislative and executive programmes of the state"

The principle of affirmative action was supported, but the commission rejected redistribution of wealth, retribution or reverse discrimination.

Referendum

The commission has also, for the first time, dealt with so-called "green rights" It extends to everybody the right not to be exposed to an environment which is dangerous to human health

The bill does have a clause which says some of the second generation and green rights may be limited by other laws, but only if this is in the interests of good government, state security and the public good

Another provision permits the bill of rights to be suspended in exceptional circumstances. States of emergency, however, can only be proclaimed for six months and must be ratified within three weeks by a two-thirds majority in Parliament.

Amendments to the bill of rights must also enjoy a two-thirds majority in Parliament and in a referendum

A special constitutional court is proposed which will be a chamber of the Appellate Division. Lower courts can adjudicate on issues arising from the bill, but appeals must be heard by the special court.

Court backs 'little' folk

By EVELYN HOLTZHAUSEN

THE Supreme Court's temporary halting of a controversial township development in a former Cape coastal nature area was yesterday hailed as "a victory for the little people over official arrogance"

"We are enormously relieved by the decision," said Mr Michael Schuurman-Stekoven, chairman of the Meeuklip Association which represents a group of Myburgh Park, Langebaan, landowners

He said it had been crucial to halt the development before too much damage to the nature area was done

Developer Mr Corneels Nortje, who has apparently already sold some sites in the area, refused to comment

In the Supreme Court in Cape Town on Friday Mr Justice Johan Conradie granted an order which effectively prevented developers from continuing to develop phase two of Myburgh Park

The judge criticised the "secretive" way in which permission had been granted for the development to take place

Mr Justice Conradie said he believed the township's opponents had every prospect of establishing that the permit issued to develop the area had been ultra vires (bad in law) and that they could, therefore, have it set aside

The matter was brought to court after the aggrieved landowners learned of Mr Nortje's plans to build his township in the former nature area

They said that Mr Nortje had promised them when they bought their plots that the nature area bordering their properties would remain intact

They later discovered that while the promise was being made, Mr Nortje was negotiating to build homes in the nature area for phase two of his development

The former Minister of Constitutional Affairs and Planning, Mr Chris Heunis, who was retained as a legal adviser by Mr Nortje, declared the area a "nature area" when he was still in office

Home owners alleged that Mr Heunis was instrumental in helping Mr Nortje secure the rights to develop in the nature area

Mr Heunis, who confirmed that Mr Nortje was a client, refused to comment

ANC's bill of rights Utopian, says Law Commission

ST Times 3/11/91 252

By MIKE ROBERTSON
Political Correspondent

THE SA Law Commission has dismissed as unenforceable ANC demands that a bill of rights should compel the state to provide minimum standards of health, education nd shelter

The Law Commission's draft bill of rights, released last night, also differed markedly from that of the NC on the key issue of affirmative ction

While the ANC's proposed bill of ights envisages a redistribution of vealth, the Law Commission wants ffirmative action limited to a vigorous programme of upliftment nd guarantees of equal oportunity".

The ANC had argued that certain ocio-economic needs were so basic s to constitute the foundation of uman rights claims

These were rights to nutrition, health, shelter, employment and a minimum income. The ANC proposed that a bill of rights required the state to devote maximum available resources to these areas It also proposed a minimum floor of enforceable statutory rights for each area

Thus, the state would be compelled to ensure each child had a minimum diet, all homes were provided with power and clean water and all children had access to compulsory and free primary education

The Law Commission accepted that the state should be compelled to provide free and compulsory primary education, but rejected the rest of the ANC's proposals as Utopian and unenforceable.

Attempts to enforce socio-economic rights in a positive way, the report said, would prove to be juridically futile and could plunge the country into a serious constitutional crisis.

Furthermore, the state's inability to fulfill socio-economic rights included in a bill of rights would undermine the credibility of the bill as a whole.

The commission instead proposed that certain socio-economic or "second generation" rights be protected in such a manner that they could not be infringed by the state.

The report listed these rights under the categories of general rights, employee rights and employer rights But, in effect, what it proposed was the elevation of existing labour legislation into fundamental human rights.

An example of a general right was that all people could join a union and would be able to take legal action against the state if it attempted to prevent them from doing so

Employee rights included the right to work in safe conditions, the right to reasonable work hours, and the right to strike.

Employer rights included the right to expect adequate production of an acceptable quality from workers, the right to apply the principle of "no work, no pay", the right to employ "scab" labour and the right to protection from unfair labour practices.

The Law Commission also proposed that all rights defined by the bill of rights be used as guidelines or directive principles by the state in the planning and execution of legislative, executive and administrative programmes

The ANC's clause on affirmative action stated that "Nothing in the constitution shall prevent the enactment of legislation, or the adoption by any public or private body, of special measures of a positive kind designed to procure the advancement and the opening up of opportunities, including access to education, skills, employment and land, and the general advancement in social, economic and cultural spheres of men and women who in the past have been disadvantaged by discrimination"

In its report, the Law Commission said the ANC proposals would make reverse discrimination possible and appeared to be aimed at paving the way for a redistribution of wealth.

The commission said it was unacceptable to take things away from one person and give them to another It was also unacceptable that some people could be favoured at the expense of others.

The lesson to be learned from affirmative action under other constitutional systems was that it could only be justified if it was aimed at the realisation of the principle of equal opportunities for all.

It added "A serious warning must be sounded against the misuse of the concept of affirmative action in an attempt to justify the nationalisation of land, or any redistribution of minerals, land and other assets.

"Any attempt to lend juridical respectability to nationalisation and redistribution under the banner of affirmative action will simply not succeed."

Such an attempt, it said, would effectively make the whole institution of affirmative action suspect and elicit resistance to it.

Rather, it said, the aim of an affirmative action clause in a bill of rights should be to authorise legislative programmes aiming to guarantee that all people were afforded equal opportunities in realising their potential

The commission's view of affirmative action was not one of reverse discrimination or retribution, but a vigorous programme of upliftment and guarantees of equal opportunity.

De Klerk welcomes interim human rights report

Star 4/11/91

By Peter Fabricius
Political Correspondent

President de Klerk has welcomed the South African Law Commission's Interim Report on Group and Human rights — especially its rejection of the ANC approach to "affirmative action".

The report published this weekend proposes a deeply-entrenched bill of individual rights enforced by a Constitutional Court at appelate division level.

These include the right to vote and a prohibition on discrimination by the State.

The Bill may only be amended by a two-thirds vote of all directly-elected representatives and a two-thirds vote of the voting population in a referendum

The report accepts the need for affirmative action in the sense of more State funding in areas such as black housing and education to give blacks an equal chance

But it says affirmative action as envisaged by the ANC in its draft Bill of Rights is too wide and could sanction reverse discrimination or retribution, which the commission rejects

FW de Klerk ... socialism would not be entrenched.

Mr Justice Olivier ... chief author of the report.

It warns against the "misuse" of affirmative action to justify nationalising land or redistributing land, minerals or other assets.

In a statement last night, Mr de Klerk associated himself with these views and said that affirmative action should consist of "a real programme of upliftment and the institution of equal opportunities", which he said had begun. The commission said that to include "second generation" rights, such as the right to a job and education, in a Bill of Rights — as proposed by the ANC — could cause a constitutional crisis if the State could not afford to honour these rights

Mr de Klerk said socialism should not be entrenched in the constitution

Other proposals in the report are

- The right to life should be protected.
- Property rights should be protected and the state may only expropriate property if it provides compensation as determined by the courts.

Mr Justice Pierre Olivier, chief author of the report, said the commission rejected the view in the ANC draft Bill of Rights that property could be expropriated without compensation. This was nationalisation.

- No educational or other institution may receive state funding if it discriminates on racial grounds. But on the principle of freedom of association, these institutions, if privately funded, cannot be prevented from discriminating racially
- Group rights cannot be

● To Page 2

FW welcomes interim human rights report

Star 4/11/91

● From Page 1

protected as such in a Bill of Rights but only through protecting collective values such as religion, culture and language

- But individuals should have the right to go to court on behalf of a class of persons to defend collective values.
- The right to choose mother-tongue education
- Detention without trial should be limited to 48 hours, or the following court day, after which the arrested person should be brought to court and charged or informed in writing of the reason for detention — or released
- A state of emergency may be declared only under strict conditions, for a maximum of six months and must be ratified within three weeks by a two-thirds majority in the highest legislative body

Mr de Klerk said the Government would proceed with its reform of security legislation to bring it into line with "norms generally reflected in bills of rights"

- The right to a safe environment — a so-called "third generation" right — should be is protected.

Mr de Klerk said the commission's proposal to introduce an interim Bill of Rights before a new constitution was written would be approached "with an open mind"

Women back calls for heavier rape sentences

(252) AEG 4/11/91

JOHN YELD
Staff Reporter

MANY women support the call for heavier sentences for rapists and there are moves to get women's rights enshrined in a South African constitution

However, women warn also that harsher punishment alone will not solve the rape problem, which has to be viewed in the context of violence in society

This emerged following comments by a Paarl regional court magistrate last week when sentencing two rapists to jail

One in six South African women are the victims of domestic violence and the country has the highest incidence of rape in the world

Groote Schuur MP Ms Dene Smuts said violence against women was "appalling" and she welcomed the call for heavier sentences "to take rapists off the streets to safeguard women"

"But, we need to go further Violence against women should be seen as part of the syndrome of violence gripping the country," she added

"This underscores the point women have long been making that rape is not 'intercourse minus the consent of one party', but a form of violence which needs legal redefinition"

South African society had progressed since the mid-'70s when people tended to snigger at the mention of the word rape, said Ms Smuts

"The fact that males are being raped perhaps will help people see the crime in the broader perspective"

She believed women should have a constitutional right to protection on the grounds of physical vulnerability

"They should be able to sue the State for failure to provide a safe environment This would force the State, and society generally, to recognise the crime (of rape) for what it is"

Ms Smuts is involved in moves to establish a commission on women's status which will push for principles safeguarding women's rights to be written into the new constitution

This could be followed by specific legislation in the new system, said Ms Smuts

"There's an incredible opportunity to get a lot of the principles right"

Ms Benedicta McNaught-Davis, a University of Cape Town Student Representative Council (SRC) spokeswomen on women's affairs, said she agreed there should be heavier sentences for rapists

Speaking as an individual, she said "I'm concerned that very few rapes are actually reported and only very few rapists eventually get convicted

"We should look at the whole manner in which rape trials are conducted and rapists should get very heavy sentences Society must realise that rape is unacceptable"

Fellow SRC member Ms Iliane van Es said she believed personally that rapists should be castrated

"Rape is a serious problem on campus and in society at large Women are not safe and that's shocking"

She also felt "strongly" about the small number of convictions for rape and said many women were so intimidated and harassed as rape victims that they often did not report cases

A spokeswoman for Rape Crisis said she supported the sentiment behind calls for heavier penalties for rape

"Probably on an emotional level we cheer when a rapist gets a heavy prison sentence, but on an intellectutal level we realise that this won't change rapists' attitudes, who often repeat the offence when they are released

"There are no rehabilitation programmes in jail, so heavier penalties won't work"

The law and court procedure were "powerful tools" which could change peoples' attitudes to rape and there had been a "definite" improvement in this regard, she added.

However, court procedure often still emphasised the alleged role of the victim in the rape — "and that should change", she said

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Human rights options open

(252) ARG 4/11/91

ALAN DUNN
Political Staff

JOHANNESBURG. — President De Klerk has left the government's options open on implementing a bill of fundamental human rights before a new constitution is ready

He said government would approach the Law Commission's recommendations, which merited serious consideration, "with an open mind".

Mr De Klerk was reacting last night to the commission's long-awaited report on a human rights bill.

Those in favour of an interim bill of rights believed it could embody all rights on which there was general agreement in negotations

The commission said an interim bill, including the establishment of a Constitutional Court, would build confidence in South Africa and abroad that reconciliation was possible.

Mr De Klerk said the practical implications of this proposal would have to be determined thoroughly

Thanking the commission for its work, he generally welcomed its views on "affirmative action" — that it should not be used for reverse discrimination or retribution.

He noted that government would proceed relentlessly, within the country's financial and manpower parameters, to reduce poverty

The government also supported the bill, which could be changed only by a two-thirds majority of directly elected members of parliament and a two-thirds majority of voters in a referendum, where it said protection of individual rights was a reliable basis for community and group preferences.

Mr De Klerk said government was prepared to support the principle of a special constitutional court, but believed its composition, structure, operation and jurisdiction required further consideration.

Call for interim bill of rights

CT 4/11/91

Own Correspondent

JOHANNESBURG — The SA Law Commission has proposed an interim bill of rights aimed at serving South Africa during constitutional negotiations.

The commission's proposal — which could be codified in law as early as the next sitting of Parliament next year — is contained in the Interim Report on Group and Human Rights released at the weekend.

The commission proposes that an interim bill of rights reflecting a broad consensus be introduced to "secure credibility, to foster a human rights culture and to spread knowledge of the application of such a bill".

"The proposal means that the interim bill could embody all the rights on which there is general agreement and that contentious aspects which also relate to the structures to be created under the new constitution — for instance the franchise — would stand over until the new constitution had been finalised, whereupon they could be incorporated into the bill of rights."

The commission says an interim bill could be introduced in two ways. Either by consensus, backed by the force of law, or by unilateral government action.

The commission says the former is preferable and suggests that the actual constitutional negotiations should begin with the bill of rights and the establishment of a special constitutional chamber of the Appellate Division of the Supreme Court.

The commission also recommends a five-point plan of action:

- The acceptance in principle by Parliament of the need for a bill of rights.
- The repeal of legislation conflicting with the fundamental rights contained in the bill.
- A national education programme to inform the public about the existence and utility of the bill.
- Reaching consensus on content and final wording.
- Legitimation by referendum of a constitution that includes the bill of rights.

It is widely felt that while the SA Law Commission is an independent, non-political statutory body, its ideas resemble what the NP has been saying it would like to see as a future SA.

Report stresses individual rights

252 ET 4/11/91

Statutory group rights seen as juridically 'unsound'

Own Correspondent

JOHANNESBURG — The SA Law Commission — the statutory guardian of SA's body of law — this weekend unveiled a report on group and human rights with recommendations that explicitly contradict much of what the NP has stood for over the past 40 years

Ruled out are detention without trial, property confiscation, persecution for a political belief and state preference for any one group over another

In fact, the idea of entrenched rights for a group, so often the Achilles heel of NP constitutional thought, has given way to individual rights based squarely on freedom of association

The report, released by Law Commission chairman Mr Justice Pierre Olivier and handed to President F W de Klerk late last week, seeks to entrench the rights to life, equality before the law, mental and physical integrity, personal liberty and security, habeas corpus and a trial

It also seeks to entrench the rights to privacy, good name and reputation, freedom from forced labour, speech, science and art, legal competence, free movement, citizenship, free association, public education and training, property, economic enterprise, political freedom, franchise, social security and to employ and be employed

The report is a part-reply to the ANC's own bill of rights released earlier this year

While the ANC's bill tends to concentrate on the rights of the state vis-a-vis citizens, the commission's report emphasises the rights of the individual and his protection from the arbitrary exercise of state power

Much of what the commission recommends is at odds with the practice of NP rule as it is presently constituted

The report, for example, recommends that anyone arrested be brought before a court within 48 hours and enjoy the opportunity to have legal representation This clause, if accepted, would effectively undermine what remains of the government's security legislation

More fundamentally, the report specifically outlaws policies and laws that favour one person over another on the grounds of "race, colour, sex, religion, ethnic origin, social class, birth, political and other views and disabilities or other natural characteristics"

On group rights, the report stresses freedom of association and protection of minority rights as an internationally and justifiably acceptable principle But the same minority is not afforded any privilege

The minority can exert its legitimate rights, the report argues, only if the society as a whole is based on fair and democratic principles

"The commission's view is that it is juridically unsound to adopt the standpoint that there are statutorily definable groups with statutorily definable 'rights' in this country, particularly if by those groups are meant entities which are to be given relevance for the purposes of human rights protection," the report argues

"Neither in legal theory nor in legal practice is it correct or necessary to recognise these values as anything other than individual rights in a bill of rights"

To the extent that the government is likely to advance the report as a basic reflection of what the NP would like to see in a future constitution, the report echoes and attempts to refute the ANC's proposals

The ANC's stress on affirmative action is answered by the report's emphasis on humane and realistic actions

While the report does not guarantee, for example, the right to a house or the right to food, it recognises the need for affirmative action

It recommends that the legislature be empowered to provide funds to achieve "equality before the law for all by ensuring that through education, training, employment and financing programmes all citizens are afforded equal opportunities of developing and realising their natural talents and potential to the full"

Law report a break with the NP's past

BPay 4/11/91

252

PATRICK BULGER

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The report is a part reply to the ANC's own bill of rights released earlier this year. While the ANC's bill tends to concentrate on rights of the state vis-a-vis citizens, the commission's report emphasises the rights of the individual and his protection from the arbitrary exercise of state power.

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Protection

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Proposal for interim bill of rights

252 B/Day 4/11/91

THE SA Law Commission has proposed an interim bill of rights aimed at serving SA during constitutional negotiations

The commission's proposal — which could become law as early as the next sitting of Parliament next year — is contained in the interim report on group and human rights released at the weekend.

The NP yesterday welcomed the report as a timeous contribution to constitutional negotiations

NP chief director of information Piet Coetzer said a declaration of fundamental rights should play a central role in a future constitutional dispensation.

The ANC was not available for comment.

B/Day 4/11/91

PATRICK BULGER

The commission proposes that an interim bill of rights reflecting a broad consensus be introduced to "secure credibility, to foster a human rights culture and to spread knowledge of the application of such a bill"

"The proposal means that the interim bill could embody all the rights on which there is general agreement and that contentious aspects which also relate to the structures to be created under the new constitution — for instance the franchise — would stand over until the new constitution had been finalised, whereupon they

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Rights

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could be incorporated into the bill of rights"

The commission says an interim bill could be introduced in two ways either by consensus backed by the force of law, or by unilateral government action. The commission says the former is preferable and suggests that the actual constitutional negotiations should begin with the bill of rights and the establishment of a constitutional chamber of the Appellate Division.

The commission also recommends a five-point plan of action, namely acceptance in principle by Parliament of the need for a bill of rights, the repeal of legislation conflicting with the fundamental rights contained in the bill, a national education programme to inform the public about the existence and utility of the bill, reaching consensus on content and final wording and finally legitimisation by referendum of a constitution which includes the bill of rights.

The commission's report downplays group rights by emphasising minority rights and freedom of association

At the same time it forbids any constitutional action that seeks to benefit one group at the expense of another

It also makes detention without trial illegal

It is widely felt that while the SA Law Commission is an independent, non-political statutory body, its ideas resemble what the NP has been saying it would like to see as a future SA

● See Page 5
● Comment: Page 8

Bill of rights report praised, pilloried

Star 5/11/91.

By Kaizer Nyatsumba and Sapa

252

The South African Law Commission's Interim Report on Group and Human Rights, welcomed by President de Klerk at the weekend, was yesterday praised by the Democratic Party and criticised by extra-parliamentary organisations.

The report proposes a deeply entrenched bill of individual rights enforced by a constitutional court at Appellate Division level The proposed bill includes the right to vote and a prohibition on discrimination by the State

However, the report

- Rejects affirmative action as envisaged by the ANC in its draft bill of rights, saying it was too wide and could sanction reverse discrimination
- Rejects the inclusion of "second-generation rights" — such as the right to a job and education — arguing that there could be a constitutional crisis if the State could not afford to honour such rights
- Says group rights cannot be protected as such in a bill of rights, but only through protecting collective values such as religion, culture and language

Yesterday, DP leader Dr Zach de Beer said that, judging from media reports, the commission's report appeared to be "a splendid document" The report, he said, endorsed a bill of rights which closely resembled one recommended by the DP's predecessor in the 1960s

Dr de Beer welcomed in particular the report's finding that the best way to protect group rights was by protecting the rights of individuals

Inkatha Freedom Party spokesman Suzanne Vos said her party would comment once it had gone through the report

Azanian People's Organisation publicity secretary Strini Moodley said the report was slanted in favour of "capitalists, the white minority and big business" It did not even attempt to put power into the hands of the working class

"Consequently, Azapo is left with no option but to reject the document The only way in which the rights of the people can be protected in their individual and collective capacities is by having the majority, through a democratically elected constituent assembly, draw up a bill of rights

Condemned

"The South African Law Commission is itself a creation of the regime and therefore would not be in a position to articulate the needs of the majority," Mr Moodley said

Pan Africanist Congress secretary for legal affairs Willie Seriti condemned the report's rejection of second-generation rights and affirmative action, but welcomed the move away from the protection of group rights

Mr Seriti said second-generation rights had to be protected, "particularly if one takes into account the deprivation suffered by our people over the years"

ANC information and publicity chief Dr Pallo Jordan said the organisation's legal and constitutional affairs department would comment later on the report

Conservative Party MP for Losberg Dr Fanie Jacobs said the commission had ignored the reality of the existence of different peoples and ethnic population groups

"If a bill of human rights does not take this basic principle into consideration, it has no chance of success

"The commission also ignores the internationally known principle of self-determination"

To ignore this basic principle would lead to greater polarisation in South Africa, as no nation which wanted to maintain its identity would allow a bill of rights to take away its freedom

Dr Jacobs said many of the first and second-generation rights contained in the proposed bill were nothing less than a form of obsolete socialism

The commission recognised rights "which are not justiciable, such as the right to work and the right to housing".

Dr Jacobs concluded that the proposed bill was probably too much for a developing Western society, and probably too little for an underdeveloped Third World situation

Boerestaat Party (BP) leader Robert van Tonder said "the beautiful promises" contained in the proposed bill of rights was "a sure passport to heaven on earth" What the commission had forgotten was that "the devil" would rule in the new South Africa

"The commission has neglected to make a final recommendation, namely that provision be made for the purchase of a dustbin in which the bill would be thrown after a black government had taken over"

Sowetan 6/11/91. 252

The right stuff

DRAFT proposals for a Bill of Rights in a future South Africa were released at the weekend by the South African Law Commission.

The interim report, which has been welcomed by the State President FW de Klerk, looks at many controversial and topical aspects of "group and human rights".

In welcoming the report De Klerk was quoted as saying: "Some of the matters dealt with in the report, have either been implemented by the Government already or are reflected in current policy.

"Specific institutions proposed by the commission, such as the office of an ombudsman, have already been given substantial substance by means of legislation during the past Parliamentary session."

***Sowetan* today gives you some of the recommendations in the report.**

Equality before the Law

(a) The Commission proposes that everyone has the right to equality before the law, which means, inter alia, that save as permitted in this article, no legislation or executive or administrative act shall directly or indirectly favour or prejudice any person on the grounds of his or her race, colour, sex, religion, ethnic origin, social class, birth, political and other views or disabilities or other natural characteristics.

(b) To this end the highest legislative body may by legislation of general force and effect introduce such programmes of affirmative action and vote such funds therefor as may reasonably be necessary to ensure that through education and training, financing programmes and employment all citizens have equal opportunities of developing and realising their natural talents and potential to the full.

(c) The provisions of sub-article (a) hereof shall not be construed as making it compulsory for any female person to perform military service.

Every citizen's right

(a) Freely to form and to be a member of political parties· Provided that no one shall be compelled to be a member of a political party or to take part in the activities thereof;

(b) to give expression to his or her political convictions in a peaceful manner; and

(c) to be appointed and elected to legislative, executive and administrative office.

Freedom of movement

The Commission says everyone has the right to move freely within South Africa and reside, to work or to engage in any lawful business, occupation, trade or like activity at any place therein.

Ombudsman

(a) There shall be a permament full-time Ombudsman who shall on his or her own initiative or in response to representations made -

(i) investigate complaints of maladministration by executive or administrative bodies or persons, including the violation of human rights as contained in this Bill;

(ii) investigate complaints against State institutions or administrative bodies or officers or employees thereof regarding unfair, unjust and discourteous conduct which infringes or has infringed human rights as contained in this Bill;

(iii) Act on behalf of groups of individuals, including patients in hospitals, taxpayers, pensioners, prisoners, children and other groups, whose individual rights have been prejudiced or are likely to be prejudiced by a specific act or acts by the executive authority or the administration;

(iv) generally watch over the upholding and respecting of human rights by the executive and administrative bodies or officers, and himself or herself take the initiative in protecting the human rights set forth in this Bill.

(b) Further provision shall be made in the Constitution for the functions of the Ombudsman

Free association

The right to associate freely with other groups and individuals:

The Commission recommends that everyone has the right to freedom of association, which means, inter alia, that no legislation or executive or administrative act shall -

(a) bar or restrain individuals or groups from associating with other individuals or groups;

(b) compel individuals or groups to associate with other individuals or groups;

(c) directly or indirectly make available to an individual who or a group which on the ground of race or colour refuses to associate with any other individual or group, any public or State funds to foster the creation or maintenance of such discrimination or exclusion.

Free assembly

The Commission proposes that everyone has the right to assemble and to demonstrate peacefully and unarmed and to canvass for and present petitions.

Human rights

(a) There shall be a permanent, full time Human Rights Commission under the chairmanship of a Judge of Appeal or retired Judge of Appeal which shall -

(i) assume responsibility for and co-ordinate education and information in respect of democratic values and human rights in South Africa and initiate educational programmes and information projects.

(ii) fulfill an advisory function in respect of -

(aa) any question as to the consistency with this Bill of proposed legislation at any level of Government;

(bb) any question as to the consistency with this Bill or any existing legislation;

(cc) any question as to any need that may exist for the extension of the protection of human rights and shall make recommendations to the legislature and the executive and administrative authorities regarding additional measures of any nature whatever;

(iii) inquire, on its own initiative or on the grounds of complaints lodged, into alleged violations of human rights and publicly and in writing report thereon to the highest legislative body.

(b) Further provision shall be made in the Constitution for the composition and additional functions of the said Commission

Forced labour

Everyone has the right not to be subjected to forced labour: Provided that legislation may provide for -

(a) such labour as may reasonably be prescribed to be performed during detention pursuant to a sentence of imprisonment imposed by a court of law; and

(b) reasonable military or civilian national service so that, save during a state of war or the duration of a proclaimed state of emergency, each individual shall have a choice on grounds of religious or conscientious conviction between military and civilian national service of equal duration

Voting

The Commission says every citizen over the age of 18 years has the right to exercise the vote on a basis of equality in accordance with the Constitution in respect of legislative and other institutions and other public offices at regular and periodical elections and at referendums.

Free speech

Everyone has the right to freedom of speech and other forms of expression and to obtain and disseminate information.

Bill of rights

DRAFT proposals for a Bill of Rights in a future South Africa were released at the weekend by the South African Law Commission

Sowetan gives you some of the report's recommendations on page 18 today

Attorneys to advertise

(252)

6/11/91

Own Correspondent

JOHANNESBURG — Attorneys will be allowed to advertise their services after a majority of Transvaal and Natal law society members supported the move

"Discretion will be the important factor," said Transvaal Law Society Council president Mr Tony Hutchinson yesterday

Natal Law Society president Mr Errol Smith said it could take up to six months before the first advertisements were seen

Mr Hutchinson said advertising would be subject to certain conditions, including a ban on comparative or competitive advertising

Not good enough, say callers

252

Sowetan 9/11/91

THE proposed Bill of Rights prepared by the South African Law Commission was yesterday greeted with mixed feelings on the *Sowetan*/Radio Metro Talkback Show

Most callers complained that the commission's proposals did not address fundamental issues affecting the lives of black people

They told Metro DJ Tim Modise that this report contrasted poorly with the ANC's Bill of Rights

However, Benjamin of Atteridgeville said he was happy with the law commission's proposals

"I think I am satisfied with what is contained in the future Bill of Rights There will obviously be contradictions between the South Africa Law Commission's proposals and those of the ANC"

Benjamin also had reservations "I am not happy that the proposals of the Law Society completely overlook the cultural, religious and language issues," he said

Ali Mkhonza of Soweto agreed "This is very dangerous especially to the already declining norms and values of black people

Julian Nkosi of Naledi, Soweto, said "The problem with the commission's proposal is that it does not address everyone else

Peter of Atteridgeville, Pretoria, said "The commission's proposal concentrates only on social rights It does not look into the survival rights"

Public defender system sought

(252)

South 7|11-13|11|91

THE LEGAL Aid Board will conduct part of a feasibility study into providing legal representation for every accused, says national director, Mr N Pretorius

This follows a landmark judgment on the issue, handed down by the Appellate Division (AD) last month

While the AD ruled accused persons need not be legally represented for a trial to be fair, the presiding judges did indicate sympathy for the issue.

The court looked at the practicalities of establishing such a right, and recommended a feasibility study be conducted

In an interview this week, Mr Pretorius said the Legal Aid Board had already met to discuss the AD's decision.

"As far as we are able to do so, we will undertake certain sections of the feasibility study.

The Board is unable to do the whole study, as various other bodies such as the universities and the Department of Justice should be involved "

Mr Petorius said the main problem was co-ordination of the study.

"Obviously things are still at a very early stage, and we will have to discuss the question of co-ordination with other people and institutions."

He said the work would tie in well with the feasibility study the Board was currently conducting into establishing a public defender system in the country

Commenting on the judgment, he said the AD was correct in saying the practicalities of providing legal representation for all should be investigated first

"I don't feel the judgment is negative at all — the way ahead is clear It seems to be a question of resolving the practical difficulties, and then the law will come."

Another indicator of judicial sympathy on the issue was the separate concurring judgment handed down by Chief Justice, Mr Justice Corbett, in which he made a plea to the authorities "not to forget the undefended accused"

Judge Corbett said the ideal of providing free legal representation to all indigent persons accused of serious crimes was "unquestionably a most worthy one".

Any system of legal justice which did not have this was "flawed", but it was essentially an ideal which "under present circumstances in South Africa is not capable of attainment," he said.

"The ideal should never be lost sight of and it should continue to guide and stimulate all who are concerned with the improvement of our criminal justice system," he said.

The National Director of Legal Resources' Centre, Advocate Arthur Chaskalson, who led the team of lawyers in bringing the historic appeal, has urged the government to "have regard to the comments of the Chief Justice

"We hope that the government will take the steps that are necessary to create a fair criminal justice system in South Africa," he said — Ecna

KTC PAYPOINT· Legal Resources Centre staff interview KTC residents who won damages from the Minister of Law and Order for the razing of the area in 1986. The LRC has appealed to residents to collect payments within six months. About 65 percent of the plaintiffs have come forward.
PIC. YUNUS MOHAMED

Law society says yes to advertising

TRANSVAAL attorneys have been given the green light to advertise services after the annual general meeting.

The decision was approved by a clear majority" at the Transvaal Law Society Council meeting.

The decision, said Mr Tony Hutchinson, would be handed down to ensure that only paramount advertising would be allowed and strict guidelines would be laid down.

Chairman of the Law Society's professional committee, Mr Ian Kahn, said the move could push up costs.

"It was held that the Arizona versus State Bar of America after the landmark case in the United States Supreme Court has been allowed since 1977 in all states.

Kahn said the profession could only benefit from the move.

"The public would be able to choose a lawyer according to his fees, reputation and specialised knowledge.

"Previously, attorneys were not allowed to advertise their services, but now they will be able to do so."

Mr Kahn said the move would also help to prevent unethical practices.

"Strict codes of ethics would have to be enforced by the Law Society for attorneys who advertise unfairly."

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"Strict codes of ethics would have to be enforced by the Law Society for attorneys who advertise unfairly."

Women hit out at Bill

Sowetan 7/11/91

THE African National Congress Women's League yesterday criticised the draft Bill of Rights for not mentioning women as a specific sector warranting special focus in a future constitutional order

"We start off, therefore, not expecting much from the present draft," the ANCWL said in a statement.

"From the little we are aware of, the present draft carries no promise for the thousands of our women who have been the most oppressed as its drafters are negative towards affirmative action

"Secondly, when they do mention women, it is to say that a future goverment must not make it compulsory for them to be in the military." - *Sapa*

Death: Police 'liable'

A JOHANNESBURG inquest court has found three policemen criminally liable for the death of an awaiting trial prisoner in the Hillbrow police station cells in February last year

A post-mortem examination found that the prisoner, Mr Uys Namane, had TB, an enlarged heart, broncho-pneumonia and anaemia

Sergeant Jacobus Postma, Constable Marthinus Smit and Constable Edwin Mkopane were called to the Diepkloof Prison to take Mr Namane to hospital Instead they took him to the Hillbrow police station where he was found dead the following morning

The inquest magistrate found the three knew Mr Namane had to receive urgent medical attention, and by not taking him for treatment timeously, had deprived him of his 10 percent chance of surviving.

Bill must wait - Azapo

By MATHATHA TSEDU

AZAPO has rejected the implementation of the draft Bill of Rights by the Government.

The organisation has, however, accepted the draft published at the weekend.

Azapo secretary-general Mr Don Nkadimeng said the Bill, if enacted under present conditions, would entrench black dispossesion of land and other properties and should therefore await ratification by a constituent assembly.

Nkadimeng said the notion of inviolability of private property, which is included in the Bill drawn by the Law Commission, should be approached with "extreme caution".

"The simple difficulty with this provision is that the wealth of this country is concentrated in the hands of a few white people. More importantly, whites own and occupy 87 percent of our land.

"Azapo's position is that the people themselves, through the constituent assembly, can decide which rights should be made sacrosanct and which not and at what stage."

The Bill has been welcomed by several bodies, including the National Party, ANC and Democratic Party.

SA advocates' incomes 'not excessive' claims Bar journal

(252) ARG 8/11/91

JOHN VILJOEN
Supreme Court Reporter

ADVOCATES' incomes are not excessive and general criticism of fees they charge is unfair, says the South African Bar journal Consultus, which reacts in an editorial to media claims of advocates charging exorbitant fees

Reports alleging certain advocates were paid exorbitant fees for appearing before the Harms Commission and in similar cases probably damaged the public image of advocates, says the article

Suggestions that advocates had become too costly were followed by calls for changes to the system to allow greater competition — for example by allowing attorneys to appear in the Supreme Court

While advocates have no objection to having the system scrutinised, the profession objects to misconceptions being created and used as grounds for proposed changes to the system, Consultus says

The journal says it is a misconception that advocates in general charge excessive fees. The true position is that the majority of them charge reasonable fees, according to Consultus

It says advocates have been severely affected by the poor economic situation and many have "great difficulty" in making a livelihood

The fees paid by the State in the cases which featured so prominently in the media must not be regarded as the rule

"We acknowledge that the roughly R66 000 per month paid to certain advocates involved in the Harms Commission seems high But this was an exceptional case"

According to the HSRC, advocates featured fairly high on the list of self-employed people, with incomes of R55 000 a year or more, but their incomes were not excessive — people in other professions earned more

It would be "totally unfair" to the advocates' profession as a whole to condemn it merely on the grounds of fees like those paid to the Harms advocates

The possibility of granting attorneys the right to appear in the Supreme Court should be judged on considerations other than the alleged high fees paid to certain advocates in isolated cases

An attorney appearing in the Supreme Court would not normally charge less than an advocate

The argument that the proposed change would make the law more accessible to the public is therefore not necessarily correct, says Consultus

Judge-President is no abolitionist

252 CT 8/11/91

Mr Justice George Glaeser Anderson Munnik, Judge-President of the Cape, who would ordinarily have retired today, his 70th birthday, is to remain in office until January 31 next year, when he is succeeded by Mr Justice Gerald Friedman He will also serve on the bench three months a year for the next five years In an interview with **RONNIE MORRIS** this week Mr Justice Munnik reiterated that he is not an abolitionist.

THE amendment to the Criminal Procedures Act on the imposition of the death penalty has resulted in many previously imposed death penalties being set aside and replaced with long prison sentences, Mr Justice Munnik said

The Appellate Division has therefore laid down guidelines for imposing the death sentence The case must be one of exceptional seriousness and the death sentence must be the only proper sentence Even when these tests are applied, however, the decision remains what it was under the old act — a value judgment

"What one judge thinks is a case of exceptional seriousness for which the death penalty is the only proper sentence is not necessarily the opinion of another judge"

Even in the Appellate Division there have on several occasions been dissenting judgments in the same case, Mr Justice Munnik said

"I personally am not an abolitionist and believe there are cases where the death sentence is the only proper sentence

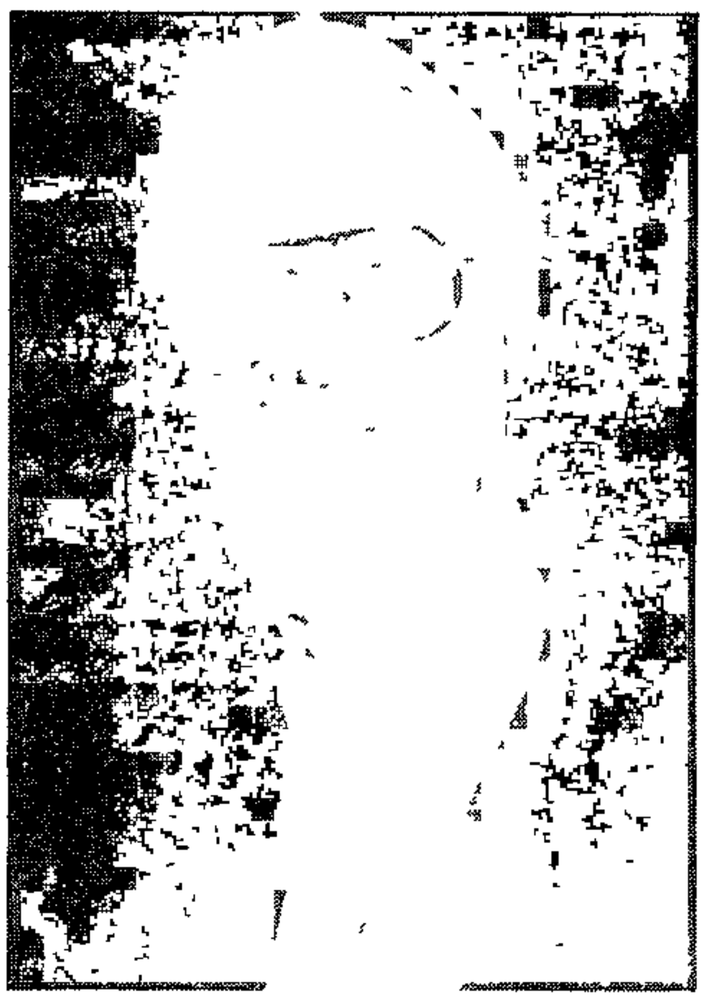
"At the moment, because no executions have taken place for two years and a number of death sentences have been reduced to prison sentences, a mistaken perception has arisen . that the death penalty has been abolished

"I firmly believe that the increase in serious crimes of violence — in which the pattern now seems to be to shoot first and then loot, rather than to shoot when resistance is offered — is largely due to the perpetrators holding the mistaken belief that at worst they can only go to jail"

The same reasoning applied to the large number of attacks on elderly people in their homes in both the cities and rural areas, Mr Justice Munnik said

Referring to the high cost of litigation, he said only two types of people could afford to litigate in the Supreme Court· Those who had assistance from the Legal Aid Board and those who had ample means

Some way had to be found to provide easier access to the courts Much had been achieved by the introduction of the Small Claims Court, and the problems were receiving attention that, hopefully, would produce solutions



70 TODAY . Mr Justice George Munnik

Mr Justice Munnik said that as South Africa entered a new era more people of colour would enter the legal profession

"One hopes that the temptation to appoint people to judicial posts merely for the colour of their skin will be resisted and that merit will continue to be the criterion in Supreme Court appointments

"There is no substitute for experience in any profession," he said

Mr Justice Munnik has the unusual distinction of having served in four different divisions of the Supreme Court

He was an acting-judge in the Transvaal division in 1960, a judge in the Eastern Cape in 1962, then the first Chief Justice of the Transkei Supreme Court in 1976 and finally Judge-President of the Cape division since 1981

"What has probably given me the greatest satisfaction is starting a new division of the Supreme Court from scratch — the Transkei High Court — which subsequently became the Transkei Supreme Court," he said "That, together with being Judge-President of a division as large and as prestigious as the Cape"

Mr Justice Munnik was born at Dordrecht in the Eastern Cape on November 8, 1921 He attended school in Dordrecht and then in Cape Town, where in 1938 he obtained a first class matric at the South African College High School

At the University of Cape Town he obtained a BA degree in 1941 and an LLB in 1943 He worked for a Johannesburg firm of attorneys for two years, started practising at the Johannesburg Bar in 1946 and became Queen's Counsel in October 1958 at the age of 36

He has served on the controlling bodies of five universities Witwatersrand, Port Elizabeth, Rhodes, Transkei and Fort Hare (where he served for 20 years)

In June 1989 the University of Fort Hare conferred on him an honorary Doctor of Laws degree in recognition of his services

He breeds Holstein Friesland and beef cattle at Bothashoek, the family farm at Dordrecht, and was president of the SA Holstein Friesland Association from 1979 to 1990 In 1987 he was made honorary life member of the association

He has been a member of the executive council of the SA Studbook Association for the past seven years, is a member of the Jockey Club of South Africa and is the administrator's representative on the Western Province local executive of the Jockey Club

LAW COMMISSION

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Some confusion

The SA Law Commission's report on human rights is essentially a liberal document It emphasises the rights and freedoms of the individual, believing that "group" rights would follow from such protection

The report pays the usual homage to the vital abstract freedoms of speech, movement, assembly and political affiliation, it supports accepted Western principles of justice, and favours a nonracial universal franchise

But its crucial recommendations are found in two particular Articles of a proposed Bill

Confin -D

FM 8/11/91. 252

of Rights, without which those abstract freedoms would be of little comfort These articles would provide that

☐ "Everyone has the right freely and on an equal footing to engage in economic enterprise, which right includes the capacity to establish, manage and maintain commercial undertakings, to acquire property and procure means of production, and to offer or accept employment against remuneration", and

☐ "Everyone has the right individually or jointly with others to be or to become the owner of private property "

The commission defends the first article against protests from the affirmative action, redistribution and socialist lobbies It says the article embodies "no more than common law rights or freedoms and it is purely coincidental if they are characteristic of a capitalist structure "

In writing the property clause, the ANC's proposed Bill of Rights was considered by the commission The report finds that while the ANC "pays lip service to the concept of private property, this concept is undermined rather than respected " For instance, in the ANC's proposals, "the existing right to ownership in any natural resource is overturned "

The commission also finds fault with the ANC's recommendations on compensation for expropriated property the nature and extent of expropriation could be legislated, rather than determined by market value and there would be no appeal to the courts against inequitable rulings

"In short," says the report, "the whole question of compensation is manipulated" by the ANC to provide for arbitrary nationalisation of private property

The ANC proposals on property, says the commission, compare badly with Article 16 of the Namibian Bill of Rights, which recognises private property and provides simply for fair compensation in the event of expropriation

The commission also considers what are known as secondary rights, which are intended to meet material needs such as medical care, food and shelter and to guarantee education and employment It points out that these go beyond protection of the individual, which is the watchdog role of the classical rights They would demand positive action by the State — which, in turn, would mean the allocation of resources to enforce them

There are obvious practical problems with these rights The commission, while noting the problems, sees a need to "afford them a greater measure of practical recognition " Thus, for instance, it recommends that free and compulsory education at primary school level be made a right

The minefield is immediately clear what if the State and the private sector combined are simply unable to pay for enough classrooms and teachers? How can this "right" be enforced? And if it cannot, the legitimacy of the entire Bill of Rights would be undermined

In this area the commission's thinking seems as confused as that of the groups it criticises so forcefully It is difficult to see why an acknowledged national priority should be made into a "right " ■

If this wanted man is caught, what then?

In two massacre trials the state has not opposed bail for men accused of wanton slaughter One has already disappeared By LINDA RULASHE

THIS man is suspected of being a train killer. The police want your help in tracing him, following a vicious attack on train commuters last month But if you do help them find him, what are the chances he will be effectively prosecuted? What are the chances he will even remain in jail?

In two massacre trials in the past 10 days, men accused of participating in attempts at wanton mass-slaughter have been given bail — without any opposition from the state.

In the most dramatic case, the alleged train killer who was caught by commuters in a landmark fight-back incident three weeks ago has been released on bail of R2 000

And a man who was accused of participating in a massacre of shebeen patrons in Sebokeng in August failed to arrive in court after being granted bail (see report on page 14).

Albert Dlamini was granted bail of R2 000 after allegedly attempting to kill commuters on a Germiston-bound train He was apprehended by angry commuters together with another man, Simon Komane, after three men boarded the train at Katlehong and began shooting, hacking and stabbing their way through the coaches

Charges were dropped against Komane, an activist in the African National Congress and National Union of Metalworkers of South Africa, when witnesses identified him as a victim rather than an attacker

Numsa organiser in the Witwatersrand, Alfred Woodington, said Dlamini's bail "did not make sense" considering the arrest was the key to the investigation of a whole range of related cases

He added: "The amount is an insult to the brave people that apprehended Albert Dlamini. It will also discourage people from handing over these men to the police in future."

Due to appear again on December 5, his bail conditions are that he report to the charge office at Cleveland police station every Friday between

6am and 9am

Dlamini has been positively identified by witnesses at an identification parade and by Komane, who said Dlamini used a butt of a gun to strike him at the side of the head

When the train stopped at Wadeville station — the next stop — Komane tried to escape by running out, but the attackers caught up and set upon him with knobkerries and blunt objects He was also stabbed on the head, shoulders and stomach

When Komane appeared on Monday, his face and body were still bruised and his jaw seemed askew Arrangements are being made for him to undergo an intensive medical examination and brain scan.

Woodington said police had been "unenthusiastic" at times when massacre cases were reported to them.

The most serious of these cases, he said, took place on October 31 at 5 15pm, when about 10 Zulu-speaking men carrying knobkerries boarded a train at Danswart station and started harassing passengers They walked up and down the carriages, asking for ANC members or Xhosa-speaking people

When people began disembarking at East Rand Station, a Transkeian, Cosmos Mbense, was held back and his foot jammed into a train door

With the rest of his body hanging out of the train, Mbense was dragged along the platform as the train moved along However, according to police reports, Mbense's leg got caught when he tried to jump and he then fell under the train, which led to his death. No arrests have been made

Woodington said: "We told the police we knew the men and could point them out, but they insisted they wanted names instead. How could we if we didn't know them personally? We were prepared to co-operate but the police showed little enthusiasm for the case"

Liaison officer for the East Rand, Lieutenant Wikus Weber said if Woodington or anyone else were perturbed about the way the police handled the case, they should report it, together with the name of the policeman concerned.

The effectiveness of the National Peace Commission's ad hoc committee of lawyers which is monitoring this case is also in question. The commission's chairman, John Hall, was "surprised" not only at Dlamini's bail application, but also that he had not received any report back from the ad hoc committee

Last week, when *The Weekly Mail* enquired about the slow movement of the case, which has been seen as an opportunity for the commission to probe the heart of the string of train massacres, Hall had expressed satisfaction in the manner in which the case was being handled.

● The identikit was issued by police this week in the wake of an attack on October 17 when 10 men boarded train No 0036 at George Goch station According to the SAP, the men, all Zulu-speaking, "got into the *mzabazazo* or ANC carriage armed with pangas, knobkerries and assegais As soon as the train started to move the men started to attack the passengers indiscriminately"

Eleven people were injured, and one passenger, Johannes Tsotsetsi, fatally wounded.

The attackers jumped off the train while it was still in motion and ran away.

The suspect in the identikit is 1,8m tall and appears to have a false right eye He has been seen in the vicinity of George Goch hostel.

Anyone who wishes to pass on information that may assist in the investigation can contact Detective Constable Lunnuburg at (011) 291733 or at home on 473-1019

Mpetha birthday damages award for ANC lawyer

ARG 9/11/91 (252)

JOHN VILJOEN
Supreme Court Reporter

THE Minister of Law and Order is to pay Western Cape ANC executive member and Cape Town advocate Mr Johnny de Lange R27 500 in an out-of-court settlement

The settlement arises from a damages claim Mr De Lange brought against the Minister. It related to events at Groote Schuur Hospital on August 5 1989 where a group of people gathered to congratulate ANC leader and veteran trade unionist Mr Oscar Mpetha on his 80th birthday

The claim was to be heard in the Supreme Court, Cape Town, starting on Monday

In papers, Mr De Lange claimed police arrested him at the hospital unlawfully and "without reasonable or probable cause".

After his arrest Mr De Lange alleged he was wrongfully and unlawfully detained at the Woodstock police station, Rondebosch police station and the cells at Wynberg police station until the afternoon of August 7.

Mr De Lange claimed R50 000 for impairment to his dignity and reputation and for the loss of his liberty as a result of the arrest and detention

In addition, during the arrest a Constable Lourens unlawfully assaulted him by grabbing his left arm and bending and forcing it behind his back, Mr De Lange alleged

As a result of this, Mr De Lange allegedly sustained injuries of his left arm, suffered shock, pain and discomfort, and was humiliated

For the assault Mr De Lange claimed a further R20 000 in damages.

After his arrest at Groote Schuur Hospital on August 5 1989, Mr De Lange was charged with being "verbally obtrusive" and attempting to prevent the dispersion of an illegal gathering, and of resisting arrest

He pleaded not guilty to both charges in the Cape Town Magistrate's Court and was acquitted on March 8 this year

Family wins human rights award

S/Times

Sunday Times Reporter

A LENASIA family has won a prestigious human rights award presented each year by a local newspaper

Members of the prominent Naidoo family are the joint recipients of the award — presented by the Indicator newspaper.

They shared the prize, presented at a ceremony on Friday evening, with Radio 702 10/11/91

The Naidoos have been at the forefront of the political struggle for decades, ever since their 85-year-old mother, Mrs Amma Naidoo, joined Mahatma Gandhi's passive resistance movement. (252)

The award was accepted by Mrs Shanti Naidoo, 55, who returned to South Africa last year after living in exile

An honorary award was also made to the ANC's national chairman, Mr Oliver Tambo

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First black judge 'step in right direction'

JOHN VILJOEN
Supreme Court Reporter

SOUTH Africa must have a democratic judiciary and legal profession and the appointment of the first black judge is a historic step in the right direction.

So says Johannesburg advocate Mr Essop Patel writing in the latest edition of Consultus, journal of the General Council of the Bar of South Africa

He says the South African Bar was "infected with racialism" and neither the General Council nor the Association of Law Societies had taken steps to change this

Judges had been drawn from a very small elite of senior white advocates with the occasional exception of an appointment from the ranks of white public servants

In the same edition of Consultus, Mr Milton Seligson, SC, chairman of the General Council of the Bar writes that the profession was becoming more representative

There had been a change in the pattern of bar membership with more women and blacks embarking on careers as advocates

Judge Mohamed ... first black judge.

The Bar had welcomed this and was encouraging and helping promising black law graduates to seek careers as attorneys

Miss Justice Leonora van den Heever had been appointed the first woman Judge of Appeal, and Mr Justice Ismail Mohamed the first black judge. Appointment to judicial office of worthy candidates would be made irrespective of race or gender, says Mr Seligson

Mr Patel writes that the appointment of Mr Justice Mohamed was a historic first step in the democratisation of the judiciary

There used to be strong arguments against black advocates accepting appointments to the Bench, but these were no longer relevant, according to Mr Patel

In the past a black judge could have found himself having to apply unjust laws and impose the mandatory death sentence

Now, with the abolition of the apartheid laws and the new discretion judges were allowed in imposing the death penalty, this was no longer a peril

However, the numbers from which black judges could be appointed were small and the fact that black advocates were a "peripheral minority" affects the democratisation process.

Mr Patel estimates that there were 1 128 practising advocates in the country, of whom less than 100 were black There were three black senior counsel out of 160.

Tony Leon examines the potential in a New South Africa for endangering rights while redressing wrongs

'Victimology' and other perils of affirmative action

Star 12/11/91

NIGEL Lawson, the politically brilliant and acerbic former Chancellor of the Exchequer in Britain, once dismissed his Labour Party opponents saying

"To be in opposition is to promise,
To govern is to have to choose"

In South Africa, we are lit by explosive forces — declining incomes, massive joblessness, inflation-driven increases in prices and marginal tax rates, and sky-rocketing crime — which have now reached combustion point

It is clear that the liberation parties will add another combustible ingredient heightened expectations They will contest a future election flourishing an endless list of promises that will expect quick fulfilment in the New South Africa However, when these political promissory notes come to be honoured, it will be found that they flattered only to deceive, that in order to spread wealth and opportunity it must first be created and husbanded Then the very institutions that offered deliverance, such as Parliament and the courts, will be undermined when unable to provide what the politicians promised

While blaming apartheid is often an accurate analysis of our past, it is reaching proportions of a national pastime, suggesting that the Left's agenda in the New South Africa will be a sort of "victimology" — creating a multiplication of rights and a withering of duties and obligations The most obvious manifestation of this tendency is the tripwire of affirmative action, which the ANC for example, presents as a paracea for post-apartheid South Africa

The ANC goes beyond simply suggesting affirmative action as one of several devices that might be useful in the quest for a society founded on opportunity and unshackled from its racist past

The ANC Bill of Rights states "Nothing in the constitution shall prevent the enactment of legislation, or the adoption by public or private body, of special measures of a positive kind designed to procure the advancement and the opening up of opportunities, including access to education, skills, employment and land, and the general advancement in social, economic and cultural spheres of men and women who in the past have been disadvantaged by discrimination"

Thus the principle of affirmative action will be the most significant right, trumping all others, in an ANC South Africa, since any legislation or practice committed in the name of reverse discrimination will be accorded constitutional preference over other, perhaps more fundamental, rights

The South African Law Commission's recently published revised Bill of Rights delivered a wrist slap on this proposal, stating that it was "unacceptable" to take things away from one person and give them to another, and equally unacceptable that some people could be favoured at the expense of others

No doubt, carefully applied and wisely executed, affirmative action is a necessary policy to help level the playing fields of South Africa In degrees, and on a wider scale than realised, it is already being applied, most notably in our universities and at various management levels of business Quite clearly, the civil service desperately needs to make race one of several factors in its recruitment and promotional practices, since race has been a factor in exclusions from state employment

However, we should learn the lessons of social engineering gone awry by studying recent lessons from the American experience

US Associate Justice Clarence Thomas was heavily criticised for his 1985 commencement address to black graduates when, instead of telling them how tough he had it as a student in overcoming racism, he advised his audience "You all have a much tougher road to travel Not only do you have to contend with ever present bigotry, you must do so with a recent tradition that almost requires you to wallow in excuses"

The revisionist opposition to affirmative action there is classically liberal, since it questions policies that concentrate less on individual opportunity and more on group outcome

One cynic dismissed the entire exercise on the basis of the rationale that "since race discrimination favoured whites in the past, justice demands pro-black unfairness now" A question that Americans consider relevant today, and South Africans must almost immediately confront, is whether such policies will allow their country to be globally competitive against ruthless trading rivals such as Japan and the Pacific Rim countries, where social engineering of this kind is dismissed as accidental nonsense

The extreme, and most controversial, form of affirmative action is so-called "race norming". Thirty-eight state employment services in America are currently using this device, which is the process of adjusting raw test scores within racial groups to compensate for low minority test results (from Hispanics and blacks) The rationale behind it is the allegation that any tests that emphasise logical, analytical methods of problem solving will be biased against such minorities

The most eloquent denunciation of race norming came from the pen of black journalist Colbert King "This comes dangerously close to suggesting that when blacks are called upon to demonstrate, through examination, their ability to reason objectively and methodically, they can be expected to come up short That is precisely the stereotype and racist caricature that bigots have always tried to project"

While affirmative action has certainly materially advanced minorities in America, it is the single issue that is central to understanding racial tensions in that country a cautionary note, perhaps, as we embark on our own hazardous journey of reconciliation and reconstruction □

● *Tony Leon is Democratic Party MP for Houghton*

Inheritance claim warning

LAWYERS' organisations have warned the public that unscrupulous businesses are charging large amounts to release inheritances from trust funds when beneficiaries could do so themselves for free

The businesses misled beneficiaries, most of whom had been left inheritances entrusted to the Master of the Supreme Court's Guardian's Fund until they reached majority, one near victim said

The businesses suggest they can collect the money from the fund more cheaply and quickly than the beneficiaries' lawyers or the beneficiaries themselves

An agent for one of the businesses said the standard rate for collecting the money was 33% of the inheritance and 50% of the interest it had accrued He denied this proportion was extortionate, saying the beneficiaries would not have known about the money were it not for the businesses involved

TIM COHEN

Association of Law Societies president Ed Southey said yesterday the Guardian's Fund did not charge beneficiaries for issuing the money and most lawyers would tell their clients how to get the money for free.

The names of beneficiaries who had not claimed their money were occasionally printed in the Government Gazette The practice of the businesses was undesirable and the amounts they charged unacceptable, Southey said

But as long as there was no misrepresentation, the contract signed by the beneficiary was valid and could not be overturned except in the most exceptional circumstances, he said

Johannesburg Bar Council vice-chairman Wim Trengove, SC, said the contract could be nullified if the agent had misrepresented the situation, and if the misrepresentation was deliberate the agent would be guilty of fraud

Grenade seen on night 11 killed

Own Correspondent

AN SA Police constable yesterday said he had noticed a stun grenade on the dashboard of the police vehicle, when he accompanied former New Hanover station commander, Lt Brian Mitchell, to Trust Feed the night 11 people were killed in 1988

Const Jason William Burton said Mitchell had fetched two black special constables, carrying shotguns, from the home of Inkatha leader Jerome Gabela that night He had dropped them, Burton and a reserve constable at a burning store

Shortly afterwards they heard shots and pellets falling onto a nearby roof

En route back to Trust Feed the next day they saw a spent shotgun shell lying on the floor, which Mitchell threw out the window He removed more shotgun rounds from his trousers and threw these away

The hearing continues today.

No bail for 2 linked to N Tvl murders

Star 15/11/91.

252

Pretoria Correspondent

Two rightwingers who allegedly stole two rifles, and who were found with weapons connecting them to the murder of a Louis Trichardt woman and two employees, have been refused bail in the Pretoria Regional Court

Magistrate A F Snyman yesterday dismissed the bail application by Cornelius Johannes van Wyk (21) and Jean du Plessis (21), both of Pretoria

Mr Snyman said there was no proof that the two men, who allegedly stole two R-4 rifles used in a shootout with police at Noeniepunt in the northern Cape, would stand trial

He said there was also the possibility they would commit further crimes while awaiting trial

The two are alleged to have been involved in a break-in at a Defence Force base in Potchefstroom and the theft of weapons from a base near Pretoria

The chief investigating officer, Lieutenant-Colonel Roelof Venter, of the SA Police Crime Information Service, said the four weapons found in the men's possession connected them to the October 14 murder near Louis Trichardt of Marie Roux (46), and two employees

Colonel Venter referred to Jurgens White (22) and Jurgen Grobbelaar (19), who killed themselves at Noeniepunt after a gun battle with police He said Mr White had been friendly with Mrs Roux's daughter and the two had been involved in a relationship at one time

The main reasons for recommending that Mr van Wyk and Mr du Plessis not be granted bail were the fact that they had contacts overseas, they were unemployed and devoted themselves fulltime to their political beliefs, their connections with the men who died at Noeniepunt, the seriousness of the crime with which they were connected, namely armed robbery, and their connection with rightwingers Henry Martin and Adriaan Maritz, who skipped bail while awaiting trial on charges of murder

Mr van Wyk and Mr du Plessis were close friends of Mr White and Mr Grobbelaar The four had formed a "cell" within the neo-Nazi Church of the Creator

Advocate Koos Smit, defence counsel for Mr van Wyk and Mr du Plessis, said Mr du Plessis owned one-third of the flat in which he was staying and was negotiating to buy the other two-thirds He also had R12 000 in trust and R130 000 as part of his inheritance These were reasons for him not to flee the country

The case was postponed to December 12 for further investigation.

Bail refused for right-wing pair

(252)
Bday 15/11/91

PRETORIA — Two members of the ultra right-wing Church of the Creator who apparently formed an underground cell were yesterday refused bail in the Pretoria Regional Court

The two former University of Pretoria students are allegedly responsible for the murders of three people in Louis Trichardt earlier this year, and the robbery and theft of arms from the SA Defence Force

Investigating officer Lt-Col R J Venter of the SAP opposed the bail application by right-wingers Cornelius Johannes van Wyk and Jean du Plessis, both 21, of Pretoria

The two men face a charge of armed robbery following an incident at a SADF unit at Wallmansthal, outside Pretoria, during which two R4 rifles stolen

According to Col Venter, the two rifles were later used to fire on police by two friends of the accused — Jurgens Matthews White, 22, and Jurgen Grobbelaar, 19, who committed suicide after a shoot-out at Noenieput on the Namibian border — Sapa

President in Taipei Chinese

linary shares. The

FOCUS: *The Law Commission and the case of private property*

Almost right about rights

W|Mail 15|11-21|11|91.

252

The Law Commission has almost got it right But, argues **DENNIS DAVIS**, its proposed Bill of Rights will severely hamper a future government's attempts to redress the wrongs of apartheid

IT is 6 o'clock and here is the news There has been widespread reaction to the decision of the constitutional court in the case of Du Plessis and Parsons v The State President which was handed down by the Chief Justice this morning In a unanimous decision, the constitutional court has declared invalid the Restoration of Lands Rights Act of 1994 which had been approved by parliament with an overwhelming majority

Government spokesmen indicated today that the government was seriously considering drastic changes to the Bill of Rights or alternatively a restriction of the powers of the constitutional court.

Political fiction? Maybe not, if the Law Commission's draft Bill of Rights becomes law in South Africa

While the Law Commission cannot be faulted for its commitment to civil liberties, its recommendation that the death penalty be abolished, its emphasis upon individual as opposed to group rights, its sensible provision in respect of a review of administrative Acts and subordinate legislation and its restrictive approach to a possible suspension of those rights guaranteed under the Bill, its underlying philosophy can best be understood by analysing its attitude to social and economic rights

The Law Commission has imposed a minimum of welfare obligations upon the state. It does recommend the provision of free state education to the end of the primary school phase, payment for necessary subsistence and medical needs of people who are unable to so provide by reason of physical or mental illness or disability, and a duty to ensure that every indigent child is provided with state aided medical care

But it rejects a full programme of socio-economic rights similar to the provisions in the African National Congress' draft Bill It argues that "the drawback in this option is that the 'rights' can never be legally enforced by the subject and are not justiciable. Therefore they are not 'rights' and they undermine the legitimacy of the other rights which are contained in the Bill of Rights and which are actually justiciable"

The distinguished comparative lawyer, Mauro Cappelleti, offers the most trenchant criticism of this approach· "To exclude social rights from a modern Bill of Rights, is to stop history at the time of laissez-faire, it is to ignore that the modern state has greatly enlarged its reach and responsibility into the economy and the welfare of the people "

Some constitutions, in particular those of India and Namibia, provide for a set of directive principles of state policy, which attempt to include such "rights" in a constitution as ideals of state policy and as guidelines to constitutional interpretation The Law Commission has rejected this more limited approach for "it is rather unlikely that consensus is going to be reached on socio-economic ideals and principles between even the main negotiating political parties and organisations This could wreck the whole process of negotiation and plunge the country into chaos, while the matter need not have been the subject of the dispute in the first place "

The commission's sensitivity to economic consensus does not seem to have extended to the issue of private property. It provides that everyone has the right individually or jointly with others to be or to become the owner of private property. It provides that legislation may authorise the expropriation of any property against payment of just compensation which in the event of a dispute shall be determined by a court of law

By contrast the ANC's Bill of Rights, which reveals a somewhat clearer understanding of the history of land removals in South Africa, provides that compensation shall be just, taking into account the need to establish an equitable balance between the public interest and the interest of those affected.

The Law Commission "sees naked and arbitrary nationalisation of private property of whatever nature without the courts being able to protect those prejudiced in any way whatever" as the motivation for the ANC's proposals It refuses to accept that the protection of private property might have to be trumped by policies designed to compensate those who suffered under apartheid removal laws since 1948

The Law Commission is also against affirmative action save where it is designed to ensure that all citizens have equal opportunity of developing and realising their natural talents and potential

For the Law Commission, affirmative action "involves the application of funds to give all citizens an equal position at the starting line as far as possible. In effect this may mean that more funds have to be expended per capita of black education and training, black housing, etc."

In short, by restricting the range of socio-economic rights provided in the constitution, by entrenching the right of private property, and by rejecting conventional affirmative action programmes, the commission has proposed a Bill of Rights which can only act as a defensive shield against the initiatives of a democratically elected government's attempts to redress socio-economic legacies of apartheid. This approach, if entrenched in a constitution, can only endanger a constitutional enterprise for a future South Africa.

• Professor Denis Davis is head of the Centre for Applied Legal Studies at the university of the Witwatersrand.

Introduce the following ...

Crisis reflects dilemma facing judiciary in SA

B/Day 15/11/91. (252)

SUSAN RUSSELL

THE vital importance of an independent judiciary to safeguard a future SA constitution has been publicly accepted by all the major parties involved in the negotiation process

However, a recent constitutional crisis in Namibia over sentences imposed on three right-wingers has highlighted the vast gulf between paying lip service to the ideal and the acceptance of its practical implementation

Controversy over what was seen in some quarters as the too lenient sentences imposed on the three, and subsequent public attacks on the trial judge and the Namibian judiciary as a whole, also foreshadows the difficulties that may face the judiciary attempting to apply the rule of law in a new SA

The Namibian constitutional crisis began two months ago shortly after the three right-wingers were given sentences ranging from a R500 fine to four years' imprisonment for unlawful political activities

Outraged by what he saw as the leniency of the sentences, Swapo chief co-ordinator Moses Garoeb initiated a public protest against the trial judge, Mr Justice Bryan O'Linn, which culminated in a protest march through Windhoek streets and a call for his dismissal and arrest

Despite public statements of support for Mr Justice O'Linn by Namibia's Justice Minister Ngarikutuke Tjiriange, its judge president and prosecutor-general, the state president was handed a petition demanding the dismissal of all "biased and disloyal" judges Mr Justice O'Linn was accused of being "anti-black" and "colonialist"

Tjiriange said while everyone had the right to make fair comment it was quite another thing to "scandalise or intimidate a judge by calling him or her names like "apartheid judge", "colonial judge", "racist judge" — whether expressly or by implication"

It was also "patently unconstitutional" to try to bring political pressure on a judicial officer by calling for his dismissal simply because he handed down a judgment with which a person or group disagreed

"Once this is allowed, a fundamental pillar of our constitutional democracy, the independence of the judiciary, is totally threatened and, with it, the rule of law and our constitutional democracy," he said

It was against this background three weeks ago that Mr Justice O'Linn, hearing another trial with political overtones, deemed it necessary to consider whether he should recuse himself On trial were two former People's Liberation Army of Namibia (Plan) members charged with murdering a policeman

Neither defence counsel Denis Kuny SC, acting for Matty Heita and Michael Kalenga, nor the prosecution applied for Mr Justice O'Linn's recusal Both told the judge they did not believe it necessary The judge felt however that "recent events" were "so notorious" he had to take judicial cognisance of them and consider whether to recuse himself

On October 22 he delivered a judgment in which he not only gave reasons why he had decided to proceed with the trial, but also spelt out the dilemmas facing a judge in his position

Mr Justice O'Linn said no judge could function properly unless the constitution, which guaranteed the judiciary its independence, was not merely regarded as a public relations document, but was enshrined in the hearts and minds of the people "The present trial has strong political overtones, as was the case in the so-called treason trial," he said

"As a result of (recent) events I am placed in the following dilemma If I acquit the accused or give them a so-called light sentence, a section of the population will believe that I have been intimidated If I convict and impose stiff sentences, the onslaught on myself and the judiciary may be repeated, which will be fatal to the prospects of maintaining the rule of law, as enshrined in the constitution, with disastrous consequences to our fledgling constitutional democracy and to the country as a whole"

The judge pointed out that while a Swapo leader was now calling for his dismissal, similar calls for his departure were made two years ago on the grounds of alleged sympathy with the organisation

He referred to a statement by Namibia's prosecutor-general who said the three accused had played minor roles in the events leading to their arrest and conviction which was reflected in the sentences imposed The judge said the public outcry against him had caused damage which could not be repaired, because many who had been misled were not in a position to get correct and unbiased information

"Suspicion has been sowed Racism has again raised its ugly head A pillar of the constitution has been gravely undermined," the judge said

He pointed out that a factor influencing his decision to continue with the present trial was that counsel for both the prosecution and defence had asked him not to recuse himself

"I am confident I will be able to decide this case on the merits, on the evidence and submissions put before me, undeterred by the abuse, malice and threats from a certain section of the population," Mr Justice O'Linn said

LETTERS

Proposed Bill of Rights 'perpetuates apartheid'

(252) Star 16/11/9

ESMARE VAN DER MERWE
Political Reporter

THE ANC yesterday sharply criticised the recently released Law Commission's proposals on a Bill for Human Rights, saying it perpetuated apartheid

"As it stands, the Law Commission's Bill of Rights is a Bill of Rights for the haves, who are largely big corporations and whites It offers very little to the have-nots, who are largely poor and black," the ANC's department of information and publicity (DIP) said in a detailed, long-awaited response to the Law Commission's proposals.

The ANC said there was a large measure of agreement between itself and the Law Commission on civil and political rights However, it differed sharply on "second-generation" rights, including social, educational, economic and welfare rights.

The Law Commission argued that these rights could not be enforced, while the ANC believed affirmative action programmes should be implemented to "rid our country of racism and the massive disparities created by apartheid"

The ANC said it rejected the commission's watered-down version of affirmative action Affirmative action could be applied effectively to land, housing, training, education, employmen and business

"The notion that affirmative action is retribution, as the Law Commission implies, is mean-spirited If it is not undertaken, the unequal power relations established by racism and apartheid will be perpetuated

"It is only dictators who pose a choice between bread and freedom The ANC says the people of South Africa deserve both bread and freedom"

However, the Law Commission's proposals were much more advanced than its preliminary report and "appropriate some of the language of democracy and of the democratic movement"

The ANC said the commission had only addressed the relationship between the State and the individual and not relations between citizens

The effect of this approach was that huge areas of racial practice would be left untouched in private spheres This meant the privatisation of apartheid

It concluded. "Sadly, the Law Commission has not fulfilled the mission it set itself The Bill of Rights it proposes will entrench the individual rights and preserve the interests of the rich and powerful at the expense of the large majority

"A Bill of Rights must enshrine rights which will ensure that the substance as well as the form of apartheid will be removed from our society"

Civil rights report slated

9 Pres 14/11/91

(252)

THE ANC says the South African Law Commission's report on civil rights reflects the perceptions of whites, and not those of blacks.

The report, released recently, was welcomed by President FW de Klerk.

In a detailed response this week the ANC said the commission failed to take account of the "massive disparities" created by apartheid.

The commission's proposed bill of rights would perpetuate apartheid and "preserve the interests of the rich and powerful at the expense of the majority", the ANC said.

The report differed fundamentally with that produced by the commission on social, educational, economic and welfare rights. The Law Commission maintains these rights cannot be enforced.

The ANC said: "All but one of the members of the Law Commission were drawn from the white section of the community. Its report consequently reflects the perceptions and the values of white South Africans."

It rejected the panel's view that affirmative action proposed by the ANC would amount to retribution.

"The notion that affirmative action is retribution, as the commission implies, is mean-spirited. If it is not undertaken the unequal power relations established by racism and apartheid will be perpetuated," it said.

Affirmative action was a "valuable mechanism to ensure orderly, responsible reversal of the effects of discrimination".

However, the ANC said there were areas of agreement between it and the Law Commission in regard to civil and political rights which ought to be enshrined in a new constitution.

"The commission's acceptance of the need for a human rights commission and the establishment of an ombudsman are important departures which can only enhance the rights enjoyed by the citizen," it said.

"What is unfortunate is that, like the NP in its constitutional proposals, the Law Commission employs the concepts of democracy only to give them a limited, if not completely different, meaning."

The ANC said the commission, in its formulation of a bill of rights, had ignored relations between individuals.

"Huge areas of racial discrimination and racist practice will be left unmolested as long as they are in the private sphere.

"We would say this is the privatisation of apartheid." Sadly, the Law Commission has not fulfilled the mission it set itself." – Sapa

TPA supervisors acquitted of attempted murder

By DAN DHLAMINI Citizen 14/11/91

TWO Transvaal Provincial Administration supervisors were this week acquitted by the Potchefstroom Regional Court of attempting to murder a fellow worker on May 29 (252)

Kobus Burger, 36, and Fanie van Eeden, 32, who shot and wounded Johannes Seruwe, 45, of Ikageng, were acquitted of the charge.

Seruwe told the court that on the day of the incident Burger and Van Eeden took him and other TPA workers to Burger's farm near Ventersdorp

He said although the workers were supposed to install an electric cable at Tshing township, the supervisors ordered them to clean cables at the farm while they braaied meat

Seruwe told the court that Burger then said. "I feel like shooting a kaffir."

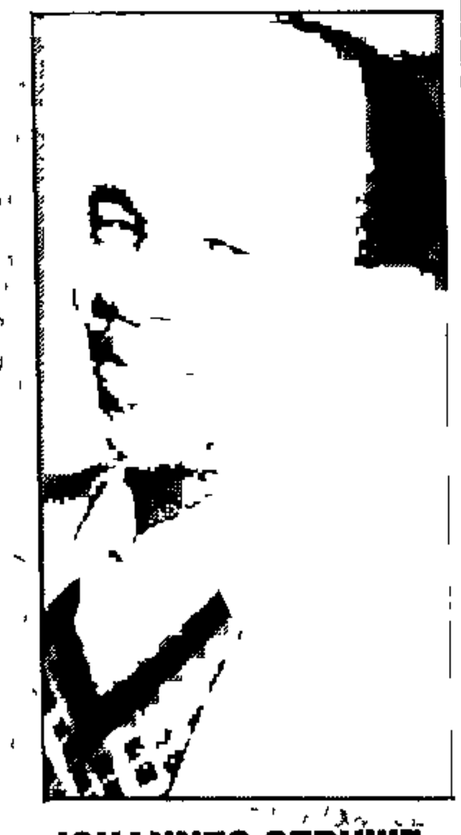
Burger fired two shots, one of which hit him in the shoulder, Seruwe said

He said he only regained conciousness at the Ventersdorp hospital

Burger and Van Eeden pleaded not guilty to attempted murder and denied they intended to murder Seruwe

They told the court they were testing their firearms when Seruwe suddenly appeared and was hit

They said they had taken precautions before firing and Burger said he did not realise anybody would in that direction



JOHANNES SERUWE

Defence advocate Faan Jacobs, a Conservative Party Member of Parliament for the Losberg constituency, told the court Seruwe was hit by a ricochetting bullet and the accused could not be held responsible

Magistrate TJ La Grange found it true that Johannes Seruwe, 45, had been hit by a bullet from Burger's gun, but said evidence that there was an intention to murder him was contradictory

La Grange said Burger and Van Eeden's evidence that they were firing in the direction of a swamp through which they thought nobody would pass, cleared them of negligence

He said Seruwe was not a good witness, and had tried to add untruths to his evidence

The magistrate said Seruwe could not say why the men two wanted to shoot him and could also not say why he did not run away when the first bullet whizzed past him.

Grant right-wing fugitives indemnity – ANC

By Brian Sokutu Star 18/11/91

The ANC was prepared to approach the Government about granting fugitive rightwingers Henry Martin and Adrian Maritz indemnity from prosecution and allowing them to give evidence before a commission of inquiry, a spokesman for the organisation, Carl Niehaus, said yesterday

"We are more than willing to facilitate their indemnity in order to clear the political air," said Mr Niehaus

He was reacting to numerous claims made by Mr Martin and Mr Maritz to a Sunday newspaper correspondent in London that their activities were part of a campaign orchestrated by the security forces to fan township violence

Orde Boerevolk members and former hunger strikers Mr Martin (50) and Mr Maritz (44) jumped bail on the eve of their trial for murder last month and fled to Britain using stolen passports

They had earlier approached the ANC for assistance to leave South Africa "and we told them we would not like to be involved in an illegal move", Mr Niehaus said

Referring to the men's claims, Mr Niehaus said "This information should come into the open before the commission of inquiry to expose who is behind the violence It has been clear for a long time that the Civil Co-operation Bureau, also mentioned by Mr Martin and Mr Maritz, was involved in the township violence

"We call for a total multiparty commission of inquiry reopening of the case against the CCB" He said the CCB was still operating, though the Government claimed to have disbanded it.

But Sapa reports that an SADF spokesman in Pretoria reiterated last night that Mr Maritz and Mr Martin never had any links with Military Intelligence or the CCB.

In the interview in Britain, the men admitted planting two bombs in bins close to a taxi rank in Bloed Street, Pretoria, in August last year

One of the bombs exploded during rush hour, injuring 15 people

They denied placing another bomb which killed a white ANC supporter in Durban, and claimed that a security policeman was responsible.

SOWETAN RADIO METRO

TALKBACK

Keep the death penalty say callers

Sowetan 20/11/91

(252)

THE death penalty should stay in the "new South Africa", most callers to the *Sowetan/* Radio Metro Talkback Show told DJ Isaac Phahla yesterday

The callers, however, said the penalty should be imposed after fair and just trials

Tebogo of Katlehong said capital punishment would be appropriate for those who advocated apartheid and their supporters "because they have killed so many people in their era".

Victor of Soweto said it should be kept for those who committed gruesome murders and Floyd said the number of criminals was likely to increase in a new South Africa and hanging should stay to deter them

They were supported by Mike of Johannesburg, who said capital punishment should stay to permanently remove hardened criminals from the society

Thuli said it should stay for murderers while rapists, robbers and other petty offenders should get anything up to life

Mpho Zwane of Johannesburg said those sentenced to death should be shot in a public place to deter others

"If you kill you deserve to die," said Octavia

However, there were some who saw capital punishment as a barbaric act.

"Hopefully the new constitution will be guided by a Bill of Rights which includes a right to life," said a caller from Cape Town

"No one has a right to take another person's life."

Thabo Molefe of Soweto also pointed out that in other countries people had been found innocent after spending years in jail

"What if those people had been hanged Courts are run by humans and they are not infallible," he said

Bheki of Katlehong recommended long jail terms with intensive rehabilitation programmes instead of hanging

Alleged killer seeking indemnity

A 30-year-old member of the ANC who allegedly murdered a taxi driver and took his minibus has applied for indemnity.

The minibus was later found packed with explosives.

Mr Sipho Mabena, of Mamelodi, was arrested last year in connection with the death of Mr David "Kimberley" Shongwe, whose body was found in Brits on July 28 last year.

The minibus he was driving was later found packed with explosives at Hallmark Parcade in Vermeulen Street, Pretoria.

Dwelfen 20/11/91

252

Shongwe (33), of 4 Lesitlakoa Street, Saulsville, was allegedly robbed of the minibus taxi while operating in the township during the night of July 26. His body was found next to the Pelindaba-Hartbeesdam road at about 5pm on July 28.

He had a bullet wound in the head.

A police spokesman yesterday confirmed that Mabena had applied for indemnity from prosecution through the ANC. He faces charges of murder and terrorism.

The police spokesman said Mabena could be indemnified against charges of terrorism but not the murder charge. He added that the accused appeared in the Pretoria Magistrate's Court on April 1 this year.

He was granted bail of R30 000 but this amount was not paid and he is still in custody. Mabena is expected to appear in court on December 9 this year.

Ombudsman will vet State misconduct

Star 22/11/91

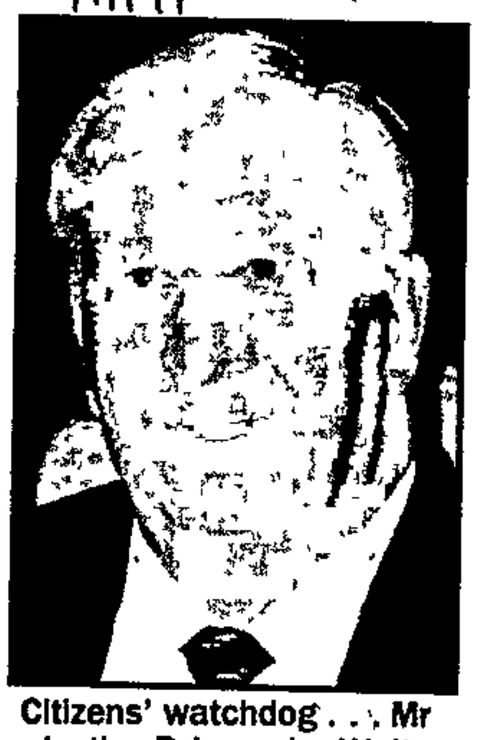
By Helen Grange
Pretoria Bureau (252)

The South African public will from today have the power to bring bureaucratic prejudice and misconduct to the attention of Parliament following the appointment yesterday of an Ombudsman

Advocate-General Mr Justice P J van der Walt was appointed Ombudsman by the Justice Department in terms of the Advocate-General Amendment Act promulgated earlier this year.

The amended Act provides for the conversion of the Advocate-General's office to that of Ombudsman — to act as a watchdog on behalf of ordinary citizens in terms of decisions made by State bureaucracy.

In effect, the Ombudsman office will have additional powers to the Advocate-General's office, which can investigate any complaints of unethical conduct in the handling of public funds



Citizens' watchdog . . . Mr Justice P J van der Walt.

The Ombudsman will have the charge of investigating cases where a South African citizen is improperly prejudiced by any State conduct without necessarily being harmed financially

Explaining his tasks yesterday, Mr Justice van der Walt said that although State conduct might well be in accordance with the law, it might be improper in the eyes of the broad community.

The Ombudsman would have the power to objectively judge in an informal investigation whether such conduct is prejudicial to a citizen — for instance, in cases where a citizen's human rights are infringed in terms of the worldwide interpretation of this concept

A report containing the Ombudsman's recommendations would then be handed to Parliament, which would decide on action to be taken.

"I will not be empowered to enforce decisions or recommendations. The Ombudsman's main sanction is publicity. The media could give teeth to the Ombudsman by publicising decisions and through investigative reporting," Mr Justice van der Walt said.

He said hearings by the Ombudsman would probably not be public because of the damaging prejudicial effect of publicity on complainants and defendants before a decision had been reached

However, he hoped to prove in practice that the Ombudsman's office could be relied on by everyone, of whatever colour, creed or gender. "The door will be open," he said.

The Ombudsman service will be rendered free of charge and is accessible through a toll-free number

● The Ombudsman may be reached by calling (012) 322-2916 or toll-free at 0800-1120-40. His address is Private Bag X677, Pretoria 0001

TELSTAR — Win a week for two at the Wild Coast Sun — Page 9

SA gets first ombudsman

(252)
CT 12/11/91

Own Correspondent

JOHANNESBURG — The government yesterday named Transvaal Supreme Court judge Mr Justice PJ van der Walt as South Africa's first ombudsman to investigate complaints lodged against public officials — especially in matters involving public funds.

Justice Minister Mr Kobie Coetsee said the establishment of the office of ombudsman — which incorporates the office of the advocate-general and extends its powers — was "indicative of the government's seriousness in honouring its commitment to clean government".

Mr Coetsee said the appointment was in line with the recommendations of the SA Law Commission, whose recent interim report on group and human rights called in principle for an ombudsman.

Mr Justice Van der Walt, who has been acting advocate-general, has been given power to investigate whether the state, the public or an individual has been prejudiced by illegal or improper state actions.

He said his office would investigate unethical state conduct in the issue of state tenders, for example, or where a state official enriched himself by misusing his office.

"He will perform his service free of charge to the public."

Judge is appointed ombudsman on govt

B1 Day 22/11/91 . (252)

PATRICK BULGER

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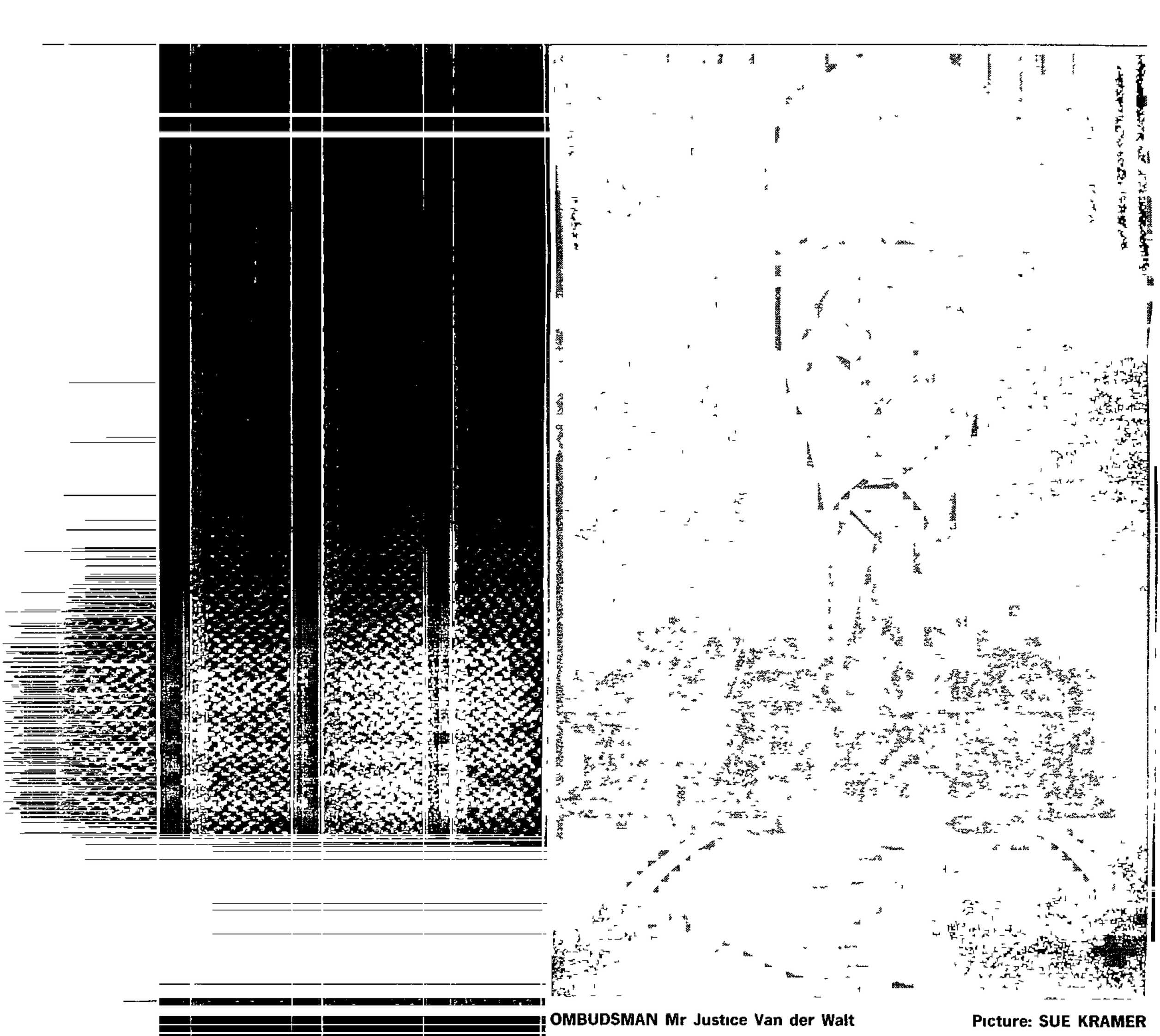
● Picture: Page 2



OMBUDSMAN Mr Justice Van der Walt Picture: SUE KRAMER

Meet the man who will probe gripes against the state

By CATHY STAGG

OMBUDSMAN Mr Justice PJ van der Walt will tackle his new position with fairness and balance — traits that characterise a man whom fellow judges, advocates and attorneys hold in high esteem

But Judge Van der Walt will not stop being a judge. The newly-created position of Ombudsman, important though it is, will be slotted into the full workload of the Supreme Court judge.

Ombudsman, a Swedish word, means legal representative, delegate or commissioner And that is just what Judge Piet van der Walt, 61, became on Friday.

Previously he was advocate-general, empowered to investigate alleged fraudulent handling of public funds and improper enrichment by public servants and institutions at the expense of the state.

Now he will also investigate cases in which members of the public believe there has been maladministration or prejudice by the authorities

The Ombudsman can take action, for example, if an application for zoning is turned down without any reasons being given, or a tender is awarded to a bidder when another offer appears to be better value.

But what sort of man is going to tackle improper conduct by officials on behalf of the public?

Asked for a thumbnail sketch of Judge Van der Walt, the Transvaal judge president, Mr Justice CF Eloff, said the Ombudsman was "a pleasant person, with a high sense of duty, who is held in high esteem by his colleagues and the profession"

Colleagues described him as self-effacing, a thorough gentleman, a great family man and someone with a good sense of humour and plenty of old-fashioned courage — the sort of courage that enabled him to act on his strong belief in justice

Some felt the Mayekeso judgment epitomised this

In that trial, Moses Mayekiso — a trade unionist and a member of the Alexandra Civic Association — and his five co-accused were acquitted of treason.

Mr Denis Soggot SC, who led the defence team, described the judgment as bold and imaginative.

But that trial was only one of many and, lawyers said, Judge Van der Walt would not hesitate to hand down a stiff sentence if he believed it was warranted

Talking about his new duties, Judge Van der Walt frequently mentioned the word "balance".

He said the role of an Ombudsman was not to be an ogre, waiting for the administration to put a step out of line, but to investigate complaints which could even vindicate officials who had acted correctly

One of the causes of public dissatisfaction, the judge believed, was that reasons for decisions were not always given This was something to strive for in future

If the flow of work to the Ombudsman's toll-free telephone number (0800-1120-40) proves overwhelming, Judge Van der Walt is empowered to appoint people to assist him

But unlike a court of law, the Ombudsman cannot issue orders

The judge said he hoped the media would publicise the recommendations he made.

These recommendations would be presented to parliament twice a year

Solly steps in to ease tensions at Thokoza probe

By CATHY STAGG

SEVERAL times during the inquiry into the political violence in Thokoza, the chairman of the committee, Mr Solly Sithole, interrupted the court interpreter.

"Please translate that again," he said. "I don't think it was quite what the witness meant."

The first probe into the violence which has racked the country is also headed by the first black ever to chair a judicial commission of inquiry in South Africa.

Mr Sithole, a member of the Pretoria bar, is a skilled lawyer and speaks several languages. When the nuance of what is being said is not accurately conveyed, he can step in and have it corrected.

This week he defused a clash of wills between a witness and an attorney over a language issue.

Mr MA Mzizi, the secretary of the Thokoza branch of the Inkatha Freedom Party and Mr David Dison, the attorney representing the Thokoza Civic Association and the family of Sam Nthuli, were clashing via an interpreter. Each question and answer had to be translated.

[redacted]

Mr Dison put it to Mr Mzizi that he understood the questions perfectly and was probably better able to translate his own replies than the interpreter, as Mr Mzizi himself had once worked as an interpreter. Mr Mzizi agreed, but said it was his right to choose to testify in the language in which he felt most comfortable.

In stepped Mr Sithole. Yes, Mr Mzizi had that inalienable human right, but wouldn't a man of his calibre consider aiding the committee to get through a lot more work by giving up that right?

He took an adjournment to let Mr Mzizi discuss the idea with his attorney.

Five minutes later, it was announced that in the spirit of the National Peace Accord, and because of the committee's important work, Mr Mzizi would testify in English.

The evidence went along at a cracking pace — but Mr Mzizi's misunderstanding of the idiom "take it to heart" showed his caution in wanting to use his mother tongue had not merely been a tactic to annoy Mr Dison.

The committee began its work a week ago. Last Sunday it held an inspection in loco in Thokoza.

On Tuesday evidence began.

Mr JP Pretorius, of the Attorney-General's office in Pretoria, has been seconded to the committee to lead the evidence as neutrally as possible. He leads each witness.

Then legal representatives of the interested parties cross-examine the witness. The lawyer whose client's interests are most closely linked to the witness then re-examines to sum up.

But if something new is raised, everyone has an opportunity to re-examine. At first it seemed this would be a time-consuming process — but the committee has managed to hear vast amounts of evidence each day.

Another difference from normal court procedure is that hearsay evidence is allowed. The point, Mr Sithole stressed, was not to convict anyone but to find out what had happened, why and what should be done about it.

The committee viewed a video taken by police of the aftermath of a shooting on September 8 which left 16 bodies lying in the red dust. There was a stark contrast between the air-conditioned comfort of the Sinodale Centre in Pretoria — where the committee is sitting because witnesses were nervous about testifying in Thokoza — and the scenes captured by the camera.

On Wednesday Mrs Gertrude Mzizi gave a graphic description of what happened that day as she, and others who were being driven to Thokoza stadium by her husband, were fired at by a man with an AK-47.

A third force theory was suggested by Mr Dison. The way the man scaled a wire fence, landed on his feet, pulled out a whistle, blew it three times then dropped to one knee to begin firing sounded professional, he said. "I can't differentiate between professional and non-professional," Mrs Mzizi replied.

"And you say other gunmen also fired on the car as you drove past?" Mr Dison asked.

"I didn't see what sex they were — they could have been men or women. All I said was I heard shots coming from the houses," she replied. Her wariness gradually changed as the evidence progressed.

When the evidence focused on the difference in approach between hostel dwellers and the Thokoza Civic Association regarding the future of the hostels, it became clear there was a huge communication gap.

Mrs Mzizi's summing up of what the civic association wanted was corrected by Mr Dison: No, his clients did not want the hostels destroyed, only changed so that a man could chose to live alone or with his family, he said. "It's a pity no one told the hostel dwellers that," she said, offering to tell them herself.

Her husband, however, asked Mr Dison to put it in writing.

The committee sits again on Wednesday and Friday next week.

Cop-killer gets 40 years

ST Times 24/11/91

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By CATHY STAGG

A JUDGE, who this week jailed a cop-killer for 40 years, said stiff sentences were a necessary deterrent to protect police from common criminals

Passing sentence on Themba Zikalala, 27, of Dobsonville, Soweto, Mr Justice Joop Labuschagne said in the Rand Supreme court that people were entitled to expect the police to protect them from criminals

Until November 11 this year, 119 policemen had been killed on duty

Zikalala, who murdered a policeman and attempted to murder two others, had a 9mm pistol and ammunition in his possession

Constable Dirk Johannes van Jaarsveld, who was shot in the head, turned 20 on the day he was killed

The court heard that at about 6 30am on March 5, Zikalala was involved in an accident on the N3 freeway As he sped away, he was followed by a police vehicle He was pulled off the freeway and put into the back of the police vehicle, which also contained Constable van Jaarsveld

Zikalala then grabbed Constable van Jaarsveld's pistol and fired several shots

He escaped from the van and fired at the other two policemen Then he jumped back into the car he had been driving earlier and drove to Johannesburg where the car was abandoned in Main Reef Road

Zikalala got into a taxi, but it was stopped He was arrested and the pistol found in the taxi

Zikalala had two previous convictions for assault and car theft At the time of the trial, he was serving five years for another car theft conviction

The judge said he had considered imposing the death sentence, but did not do so because it could not be proved that Zikalala had the direct intention to kill when he fired the shots

But lengthy imprisonment was necessary not only to deter Zikalala — who did not seem to have much hope of rehabilitation, based on his previous record — from again committing crimes, but also to deter others who had the idea that police could be the target of common criminals, the judge said

Van Schoor to tell his story

CP rep 24/11/91

CP Correspondent (252)

MURDER accused Louis van Schoor has the chance to tell his side of the story when his trial resumes this week.

Deputy-Attorney General, Alfonso Hatting, on Friday closed his case against the bearded former security guard with damning evidence from a ballistics expert.

Burly Van Schoor is charged with 19 counts of murder, 21 of attempted murder and three of assault with intent to do grievous bodily harm.

The alleged crimes took place between 1986 and 1989 when the 39-year-old ex-cop was a lone burglar-alarm investigator in East London.

For the past four months, Van Schoor has sat silently as a string of witnesses gave grim details of how they were gunned down.

Witness Coleman Teto said he was walking to work early one morning when Van Schoor appeared and shot him in the street. Teto was accused of breaking into a sports club, but was later found not guilty by a magistrate.

Twelve witnesses admitted they had broken in but testified that Van Schoor had either shot them after he had secured their arrest or after they had given themselves up.

Among those shot were a skinny 12-year-old boy and a frail 64-year-old man. Van Schoor, a former SAP rugby forward and a Border Tug-O-War team member, would say both had overpowered him and had tried to escape.

Before the State's case was closed, police ballistics expert Warrant Officer Burgher Kloppers testified that Van Schoor packed a deadly combination of weaponry. He said Van Schoor used a powerful 9 mm parabellum pistol loaded with hollow-nosed bullets.

The ammunition was designed to inflict heavy damage and was banned from use in war.

Former Port Elizabeth policeman Johan Maass told how he had bought the guard's company, Flash Security, in 1989 after Van Schoor had retired in the face of mounting public pressure and publicity.

Van Schoor had later said he wanted to go back to work because he felt like shooting "boys".

Alarm technician Leon van der Schyff said that after Van Schoor was injured during an investigation, he had said he "was not going to try to arrest them again".

He said Van Schoor "was not happy" with the 7,65 mm gun he originally used because it was not powerful enough.

Employer responsible for worker's poisoning

(252)

S/Times 24/11/91

By CHARLES LEONARD

FOUR years after the death of chemical worker Eric Nhlapo, a magistrate has found his employer responsible.

Mr Nhlapo, 21 at the time of his death, died of organo-phosphate poisoning, while working at the Agroserve factory in Springs.

Evidence at the inquest hearing was that on the morning of May 12 1987, Agroserve chief Willem Pienaar noticed organo-phosphate leaking from a big hole in a drum in the factory warehouse. He called Mr Nhlapo and told him to transfer the poison from a tap in the drum to smaller containers

It was not known whether Mr Nhlapo took off his protective mask when he performed his last job for Agroserve However, a representative of the Department of Manpower told the court that the masks were inadequate

About two hours after the transfer of the organo-phosphate, Mr Nhlapo started vomiting and said that he was feeling weak

Later he was admitted to the Far East Rand Hospital, where he died a few days later.

Now, four-and-a-half years later, magistrate Mr IM Potgieter has found Mr Nhlapo's employer responsible for his death.

A copy of Mr Potgieter's finding was sent to the Transvaal attorney-general for further investigation and possible prosecution.

Nhlapo family lawyer Barbara Adair said: "It happens very seldom that a magistrate makes such a damning finding."

Cape Times, Monday, N

Law body criticises new Act

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CT 25/11/91

Own Correspondent

PRETORIA — The Association of Law Societies has found shortcomings and omissions in the Ombudsman Act, which came into operation on Friday.

Association president Mr Ed Southey said a classical ombudsman should be appointed by Parliament, not the head of government.

Mr Southey stressed that attorneys welcomed the appointment of Mr Justice P J van der Walt as ombudsman.

However, the ombudsman should not be perceived to owe allegiance to any party.

It was unacceptable that the ombudsman could, under the Act, refuse to investigate a complaint until all legal remedies available to a complainant had been exhausted.

Also not acceptable was the provision that a charge could be laid only by means of an affidavit declaration.

burg has slated the schooling plan, saying no effort was made to consult extra-parliamentary organisations on the matter

"We agree with the NP and the government that the education system should

mentation of its Education Renewal and National Training Strategies The moratorium was necessary to ensure that curriculum reconstruction was not turned into a political struggle and so that inequalities were not further entrenched

Task group to investigate ways to end train killings

A SPECIAL monitoring group to look into ways of preventing attacks on train commuters was in the pipeline, Soweto police spokesman Col Jac de Vries said at the weekend

De Vries said the group would comprise representatives of the ANC, Inkatha, Spoornet and the SA Rail Commuter Corporation

"Discussions with the ANC and Inkatha on the matter are progressing well and the indications are that the group may be established in the near future," he said

It is understood the group will propose a ban on the carrying of any weapons, including traditional weapons, on trains

WILSON ZWANE

The ANC delegation which met police in Soweto last week said the monitoring group's proposals should fall within the context of the National Peace Accord

ANC spokesman Gill Marcus said her organisation was in favour of strong measures to ensure the safety of commuters

If the measures were taken in consultation with communities and were seen to be working, they would go a long way in addressing the problem

Inkatha spokesman Sue Vos said measures aimed at preventing killings on trains had the full support of Inkatha

Ombudsman Act slated by law body

GERALD REILLY

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However, the ombudsman should not be perceived to owe allegiance to any party

It was unacceptable that the ombudsman could, under the Act, refuse to investigate a complaint until all legal remedies available to a complainant had been exhausted

Also not acceptable was the provision that a charge could be laid only by means of an affidavit declaration

The Law Commission had pointed out that no provision was made in the Ombudsman Act for the protection of human rights

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New watchdog urges press to give him teeth

STAR 25/11/91

(252)

Political Correspondent ALAN DUNN speaks to SA's first Ombudsman, Mr Justice P J van der Walt (below).

SOUTH Africa's first Ombudsman, Mr Justice P J van der Walt, believes in the adage about not being able to please all of the people all of the time

But the veteran jurist, who has had almost 15 years' experience on the Bench, aims to achieve the next best pleasing many people most of the time.

In this way, he believes he can bring an authenticity and credibility to a powerful investigativee office assigned with wider scope and muscle as a watchdog on State corruption, unethical conduct or bad decisions.

"One must prove the office worthy of acceptance," he told reporters in response to a question on whether his appointment, in South Africa's present transitional phase where unilateral government appointments were often contested, would be controversial

"I certainly hope it won't become controversial," he said, noting that the post of Ombudsman was common to all constitutional suggestions including those of extra-parliamentary groups

"Whether the Act as worded will be fully in keeping with their needs, time will tell," Judge van der Walt said, foreseeing changes. "I hope to lay the groundwork for something that will be acceptable to all and will, as far as possible, fulfil the needs of all people and groups in the country

"As with other things, one must prove oneself in practice"

Judge van der Walt (61), born in Cape Town and a Maties graduate, was admitted to the Bar in 1954 and appointed as acting advocate-general in 1979 — a post created directly as a result of the Information debacle

"Other than in the case of the classical ombudsman, the emphasis here was on the protection of the interests of the State Gradually, however, the emphasis shifted to the protection of John Citizen's interests in government decisions," he said

The Ombudsman concept dates back to China's Han Dynasty between 202 BC and 221 AD

As advocate-general, he primarily probed any complaints of unethical conduct in the handling of State or public funds, such as crooked tendering

He retains that brief, but takes on far greater responsibility looking into the complaints of anyone who thinks he or she has been "improperly prejudiced" by the arbitrary action of any civil servant or public body

"If a person's representations have not been given a proper hearing by an official, or if his case or grievance, despite its merit, was simply rejected, a complaint can be lodged with the Ombudsman

"Here one thinks of someone who meets with all the requirements for a post or licence, but does not get it, or residents who are detrimentally affected by the closing of a street"

Judge van der Walt thought that in many cases, explanations of the reasons for decisions would prove State conduct to have been correct

The wider mandate also included State conduct which might be lawful but improper in the eyes of the broader community, such as human rights infringements

He was anxious to highlight the Ombudsman's independence of government — so much so that he insisted on a 14-hour gap between the justice minister's announcement of his appointment and publication of his views on the new job This he imposed by embargoing remarks he made at a news conference yesterday at the Union Buildings

"The Ombudsman is independent of the civil service and is only remunerated for his services by the State He is not a civil servant," he stressed

That Government-Ombudsman distance was underlined further by his adoption of an unfamiliar stance in Government — actively enlisting the aid of newspapers to check or root out corruption or harmful decisions He said publicity was one of the Ombudsman's main sanctions in the absence of authority to enforce his findings

"You can give teeth to the Ombudsman's office," the judge told reporters

He welcomed excellent investigative journalism, and promised full co-operation with the press

Publicity would constitute strong censure of any unethical activity, he said Another device he could use was interim recommendations to correct something if he found it to be wrong

His probes would not be held in public "It is inadvisable You often have slanderous statements made about people Once these are publicised, the damage is done"

He stressed again that the Ombudsman was for all South Africans, saying that his probes could frequently be telephonic He pointed out the easy accessibility to his office by toll-free telephone number 0800-1120-40 and said it was a cost-free way of addressing grievances □

Lawyers keep open the debate on political prisoners, writes **Jo-Anne Collinge**

UN asked for rethink on amnesty

STAR 25/11/91 252 252 221

LAWYERS for Human Rights has made an urgent appeal to the United Nations Committee Against Apartheid to ensure that the international community does not accept claims that all political prisoners in South Africa have been set free

"If the Government feels that it has succeeded in persuading foreign governments that the issue is indeed resolved, it is able to ignore calls from within the country for the release of remaining prisoners," argued LHR national director Brian Currin in a recent report to the UN body.

"The issue we face is political in nature, not legal Attempts to seek legalistic answers will not help us We require political action and we require it as a matter of urgency," Mr Currin said

He added that he believed the leadership of the African National Congress should be encouraged to act "more forcefully" on the issue, but that this would be insufficient. "It has become obvious that more pressure is needed on the Government to ensure that the issue is resolved and, sadly, we believe that the ANC is unable to do this on its own"

The revised strategy of the ANC after the Inkatha slush fund disclosures, when it declared the National Party government the chief obstacle to peace and set its sights directly on achieving an interim government, "meant that the obstacles (to negotiation) as detailed in the Harare Declaration . . have in effect been downgraded", Mr Currin reasoned

This allowed the Government to assert more confidently that the political prisoner issue had been resolved, he said LHR pointed out that members of Umkhonto we Sizwe were still in jail and that several members of the ANC national executive committee still had only temporary immunity, remaining at liberty "at Government whim"

The consequences of the failure to free prisoners were not insignificant Firstly, frustration among prisoners was mounting "and we fear they will resort to desperate measures — hunger strikes being the least of these Such actions will inflame emotions and cause further turmoil"

Secondly, a "political prisoner psychosis" was being nurtured "Until the issues of releases is resolved the 'political prisoner psychosis' will continue enabling every person — from the Left or the Right — who commits violent actions with some kind of political motive, to believe that they will be indemnified or released"

Mr Currin argued "The only way to end this kind of psychosis is to clear the jails of all those persons who are imprisoned as a result of their actions (violent or otherwise) in the struggle against apartheid

"If the Government wants to enter into some arrangement with the right-wing organisations, that they can do The right-wing issue should not, however, be allowed to delay the release of those people whose organisation entered into the Groote Schuur Minute and subsequent agreements" □

PW appeals to SA's new Ombudsman

STAR 25/11/91

252

By Peter Fabricius
Political Correspondent

Two new developments have ensured that the P W Botha/Nelson Mandela tapes row will continue raging this week

Former president Botha revealed that he had asked newly appointed Ombudsman Mr Justice Piet van der Walt to investigate the National Intelligence Service's destruction of the tape recording of his meeting with the then-jailed Mr Mandela in July 1989

Mr Botha said he had sent Mr Justice van der Walt the partial minutes that NIS director-general Dr Niel Barnard took of the Mandela meeting and also the transcript of the stormy interview Mr Botha had with Dr Barnard a few weeks ago about the destruction of the tapes

Director of Archives J H Snyman — who last week said he was investigating the legality of the NIS's action in destroying archival material — appears to have dropped the inquiry

The transcript of the tape recording of his meeting with Dr Barnard reveals a furious Mr Botha tearing into the intelligence chief and accusing him of "stabbing me in the back"

Mr Botha also tells Dr Barnard that his minutes of the Mandela meeting do not sufficiently stress the strong stand Mr Botha took against violence and the case of the Afrikaner

He gets Dr Barnard to admit that he insisted that Mr Mandela should renounce violence

He also accuses the NIS of spying on his family by tapping his telephone — which Dr Barnard denies and claims there is a specific instruction that his phones should not be tapped

Mr Botha ends the conversation by saying "You have kept your secrets, I have kept mine I am far from finished"

Dr Barnard's notes of the Mandela meeting reveal that Mr Botha had already decided in July 1989 to release Walter Sisulu, now ANC deputy president But Mr Botha expected Mr Sisulu not to start a propaganda campaign

According to the notes, Mr Mandela agreed that the ANC would renounce violence if the Government took certain steps to normalise politics such as unbanning the ANC and lifting the state of emergency

Meanwhile, the position surrounding an investigation by the director of archives of the destruction of the Mandela tapes is now unclear

Late last week when The Star inquired about the progress of the investigation, Dr Snyman refused to comment and said the matter was in the hands of the NIS

Under the Archives Act it is an offence to destroy official documents unless the director of archives gives permission — or if the destruction is authorised by another law

NIS has claimed that the destruction of the tapes was covered by the Protection of Information Act and Bureau for State Security Act — but this has been queried by Democratic Party legal expert Nic Olivier

Ombudsman Act has defects — law society

STAR 25/11/91

252

By Helen Grange
Pretoria Bureau

The newly appointed Ombudsman, Mr Justice Piet van der Walt, should have been appointed by Parliament — not the State President, says the Association of Law Societies (ALS)

Mr Justice van der Walt was appointed last week by President F W de Klerk as Ombudsman to investigate on behalf of the public complaints of alleged maladministration or prejudice by government

Although the appointment of Mr Justice van der Walt — a man well-equipped with qualifications, experience and fair-mindedness — was warmly welcomed, there were certain shortcomings in the Ombudsman Act which needed attention, the ALS said

The Law Commission, in its most recent report on group and human rights, had pointed out that no provision was made in the Ombudsman Act for the protection of human rights These and other defects in the Act demanded to be addressed urgently

The ALS urged Justice Minister Kobie Coetsee to give his attention to these defects in the near future

● Last week, The Star incorrectly reported that Mr Justice van der Walt was appointed by Mr Coetsee

Police save 9 from 'courts'

Sowetan
26/11/91
252

POLICE saved nine people from almost certain death in two separate incidents in Natal after the victims were found guilty by "people's courts" on Sunday.

Police spokesman Captain Bala Naidoo said seven men were rescued by police at Inanda.

It is believed the men were witnesses to a murder which occurred in the township early this month

Escaped

Two suspects charged with murder escaped from police custody and then told local residents the names of the seven men who had made statements to the police

The men were dragged from their homes and tried by a "people's court" before a large gathering

Nearby police found seven tyres which they believed were to be used to "necklace" the men.

In another incident at Ezakheni, Ladysmith, two woman were tried by a similar "people's Court".

Police van

Police arrived and rescued the woman and put them in a police van

A mob then surrounded the van and stoned and tried to overturn it

The mob fled when police fired shots One person was wounded - *Sapa.*

19 men on Death Row, says rights commission

DENNIS CRUYWAGEN
Political Staff

(252) ARG 27/11/91

THERE are 19 men on Death Row for political crimes, the Human Rights Commission says in its latest Update

Four have been waiting to be hanged since 1987

The publication said no deaths had been recorded in police cells in October, but two people died in detention in September

Mr Thandile Mtya, 26, died in Punzana police station, near Zwelithse, Ciskei, on September 12 after being arrested the previous day

His mother was told he had hanged himself in his cell

Mr Peter Thaele died in a cell in Odendaalsrus, Free State, on September 26, a day after he had been arrested He also allegedly hanged himself in his cell

The commission said no organisations had been banned or restricted, but the Wilgespruit Fellowship Centre was still a "reporting organisation" under the Declaration of Foreign Funding Act The centre is obliged to report any foreign funding it gets

Last month 19 people, all of whom had been charged with treason, were freed

Cops went too far

Sowetan 27/11/91

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Hundreds of bullets fired judge finds

POLICE had used excessive force in their handling of African National Congress supporters during a clash in Daveyton, Benoni, which resulted in 12 people being killed, a judge said yesterday.

By SONTI MASEKO

Rand Supreme Court judge Mr Justice B O'Donovan made this finding at the end of an inquest into the deaths of 12 people during a clash between about 200 ANC supporters and the police on March 24

Thirty-seven other people were injured and a policeman was killed during the clash

The finding will be referred to the Attorney-General for his decision.

Justice O'Donovan also ruled that a group of six residents who were part of the crowd and had taken part in the brutal attack on a policeman, Lance-Sergeant Jan Petrus van Wyk, were guilty of murder

Making his finding, the judge said the only issue was whether, on a balance of probabilities, the deaths of the 12 were brought about by an act or ommission amounting to an offence on the part of any person

"The one feature in my mind which is of decisive importance is the enormous number of the rounds of ammunition fired by the police.

"It appears to me that the policemen involved in the incident were guilty of an excessive use of firearms in their defence and exceeded the limits of self-defence," the judge said

The police version was that a policeman had fired teargas to disperse an unlawful gathering and the crowd had then launched an attack on Van Wyk, badly injuring him.

The police then moved to rescue Van Wyk and were forced to withdraw from the scene. In the process they were forced to fire at the crowd in self-defence.

Justice O'Donovan said while this version

• To page 3

Judge hits at police

Sowetan 27/11/91

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• From page 1

may be accepted and the fact that the whole incident had lasted "only a minute or two", it failed to explain why it was necessary for the police, acting in self-defence, to have fired more than 250 rounds of ammunition

He had taken into account the fact that the policemen directly involved in the incident had not had the chance to correctly weigh their decisions before acting and that they had to make the decisions in a moment of crisis

"However, I am still of the view that the slaughter of numbers of persons exceeded the limits of self-defence," he said

On the evidence put on behalf of the residents, Justice O'Donovan said he took an unfavourable view of the fact that there was "not a single resident" who was prepared to admit he recognised any of the assailants who attacked Van Wyk

"To disclaim any knowledge of the attack on Van Wyk simply cannot be true," the judge said

The version put forward by the residents that Van Wyk had driven his Casspir at high speed towards them, jumped out and with another policeman fired blindly and injured two residents was "inherently unlikely"

He said it also did not correspond with the contents of the radio signals between the police, which was much in his view supported the police version to a limited extent.

He disagreed with the submission by counsel for the police Mr Hattingh that all members of the Xhosa tribe in the area - the terminology he used to describe the residents - should be found guilty of the common purpose of murdering Van Wyk because the incident did not satisfy the criteria laid down in law

Justice O'Donovan said he regretted that there was no finding on the death of an eight-year-old girl who was struck by a bullet.

Evidence was that the calibre of the bullet was of a size which did not match those used by the police.

"One is troubled by the extraordinary coincidence of an innocent person being shot by a handgun about the same time as the fracas involving the residents.

"The truth must be known at least to the person who fired the shot and who has chosen to say nothing about it," he said.

Justice O'Donovan's finding means that the policemen involved in the shootings could be charged with murder or culpable homicide.

Mamelodi shootings: woman gets R260 000

By Mckeed Kotlolo
Pretoria Bureau

A 25-year-old victim of the Mamelodi shootings, Marjorie Thoko Mahlomuza, who still has a bullet lodged in her head, is to receive R260 150 in damages from the Minister of Law and Order.

This was confirmed yesterday by Ms Mahlomuza's legal representative, Benedicta Monama of the Legal Resources Centre in Pretoria.

Ms Monama said her client was shot in the head on November 21 1985 — the day thousands of Mamelodi residents took part in a protest march against high monthly rentals and called for the resignation of local councillors.

Ms Mahlomuza, who is unemployed, was a Std 9 pupil at Mamelodi High School at the time of the incident.

A letter from the office of the State Attorney in Pretoria, dated October 29 1991, confirmed the settlement, stating that she is to receive R260 150 "in full and final settlement of her claims, without prejudice and without admitting liability"

Ms Mahlomuza had claimed R389 552 in damages.

She claimed R20 000 for pain, suffering and shock; R80 000 for disability and loss of amenities of life; and R1 250 for special damages in respect of past and future medical expenses For past and future loss of earnings, alternatively loss of earning capacity, she claimed R43 374 and R244 928 respectively.

Lawyers feel the pinch as foreign funding wells dry up

South 28/11 - 4/12/91. (252)

Without foreign funding to cover legal costs, thousands of South Africans would have entered the dock naked in the past three decades But, REHANA ROSSOUW discovered, with cuts in foreign funding to the legal profession, it is attorneys and advocates who are not appearing in court as well-dressed as they were a few years ago:

IN APRIL this year, the international defence and Aid Fund (Idaf), which in three decades channelled a staggering R500 million into South Africa ended its flow of funds to the country For attorneys and advocates representing victims of apartheid, Idaf was probably their most reliable client.

The organisation had more than 150 attorneys and 80 advocates on its books.

From its exile base in London, the banned Idaf provided legal defence funding for thousands of anti-apartheid activists, bankrolling an estimated 70 percent.of South Africa's human rights cases.

The announcement of the closure of the cash-strapped fund was a severe blow to lawyers whose firms received regular work from the organisation.

The South African Legal Defence Fund was launched in Cape Town last week to assist in providing legal defence and promote human rights in South Africa, and most of Idaf's funders have pledged to redirect funds to the local body although on a smaller scale than in the past.

"Since the change in political direction in South Africa, funding has to a large extent dried up, particularly for victims of apartheid," said Cape Town attorney Mr Essa Moosa, whose firm handled the largest volume of political work in the Cape.

"The financial assistance that was available for detainees and prisoners has now been allocated for the purposes of empowering people to meet the new challenges of the post-apartheid South Africa," said Moosa.

"As a result of this different emphasis, funding for political cases has dried up completely "

While most attorneys and advocates who handled large political caseloads did so as a genuine contribution to the political cause in South Africa, some had "jumped on the bandwagon" to reap the guaranteed payments from foreign donors.

However, abuses were not widespread, as organisations like Idaf paid half the tariffs laid down by the Law Society and the Bar Council

While a number of progressive attorneys and advocates in the Cape and Transvaal did political work because of personal commitment to the anti-apartheid struggle, in the Eastern Cape and Natal there were some instances of abuse.

Advocates from other centres would fly in to handle lengthy political trials, take up residence in the most expensive hotels and bill funders for excessive amounts of consultations with clients or witnesses, both inside the country and abroad

"Most of us were very genuine about the work we did and still are, but we are suffering in the process," said a local advocate.

"The gravy train mentality was really bad in firms which were created expressly to do political work

"What has happened in the end is that these people just don't have a practice anymore

"Others are struggling to build up a completely new client base — something they neglected to do while they were working on foreign-funded trials "

Moosa agreed some smaller practises which handled political work almost exclusively were unable to meet financial commitments when funding stopped

With less political work available, some firms were close to collapse.

Moosa's firm was one of the few in the country which handled political cases because of the partners' commitment to the anti-apartheid struggle

Before 1985, very few lawyers were willing to take on the police harassment associated with political casework.

AT THE LAUNCH: (From left) Mr Albie Sachs, Mayor Frank van der Velde and Advocate Arthur Chaskalson at the launch of the South African Legal Defence Fund

Essa Moosa

"At one stage, we were swamped with political work and were forced to give those matters priority while pushing our other work into the background," Moosa said

"The majority of the funding for that work came from Idaf as our clients often did not have the means to afford legal representation "

Obtaining financial support from Idaf was illegal, and the firm had to be careful not to advertise where their funds came from as they were afraid the government would cut off that channel

Moosa said although his firm handled a significant amount of political work, their other legal services continued, even at the height of state repression.

In the past year, however, their legal department has been reduced from six professional people to one

But, he said, the new political climate has opened up new opportunities for people in the legal profession

Black South Africans now had to learn how national and local administration worked the laws regulating budgets, rates and taxes which opened up a completely new field of work for lawyers

"The process of adopting a new constitution, a bill of rights and electoral laws will also need the expertise of the legal profession," he said

"The challenge now is to educate ourselves and service our clients effectively "

Moosa said another exciting new field for progressive lawyers was the debate on the democratisation of the judiciary

Black lawyers would need to prepare themselves to serve on the Bench, to become ombudsmen and to staff a public defenders' system

"Doors will open in the new South Africa and opportunities which were denied us for so long will become available," Moosa said.

In Natal, only six firms represented people in political matters prior to 1985 and only one firm opened when political work began pouring in

ATTORNEYS THERE have also experienced a dramatic decrease in their political caseloads in the past year "From February 2, my firm anticipated a fall-off in political work, especially after banned organisations were legalised," said Durban-based attorney Ms Daya Pillay

"The work that we were doing was then taken over by political organisations themselves, like monitoring the violence in the townships and making applications for marches

"Since the Peace Accord was signed, there has been a dramatic fall off in litigation because going to court is no longer the proper course in instances of violence "

Pillay said her firm was not adversely affected as they had also maintained a conventional legal practice as well as a political department.

They have since restructured the firm to give more attention to conventional legal work

"What has been painful though, is that we are still waiting to be paid from abroad for political work which we completed more than a year ago," Pillay said

"We are not sure what the reason is for the funders' delaying payments."

Pillay said she could count her firm's recent political cases "on one hand"

They ranged from assassinations of policemen to damages claims for the Operation Vula trialists and one case of police spying on an ANC member

"While we are far from closing down, we have been financially affected by the lack of political work," she said.

Human rights vs economic survival

W|Mail 29/11-5/12/91 252

Human-rights lawyers are facing a crisis a dramatic drop in funding means they can no longer take on the mounting number of cases of victims of political violence and oppression By ANTON HARBER

SCORES, perhaps hundreds, of victims of political violence and repression are being turned away from lawyers' offices because of a crisis in the human-rights law industry

At a time when demand for political-legal expertise is soaring, attorneys who specialise in the field are being retrenched, whole departments in some of the bigger firms are being shut down and some of the smaller human-rights law firms are facing total closure In the words of one Johannesburg attorney "Public-interest lawyers — as many as 50 to 100 of them — are being made to walk the streets at a time when political violence is greater than ever"

The problem is funding the International Defence and Aid Fund (Idaf), which for many years oiled the motors of the human-rights industry with an annual budget of almost R30-million, has closed down shop at its base in London Its replacement, the Cape Town-based South African Legal Defence Fund (Saldef), is getting off to a much-delayed and unsteady start

There is general agreement among lawyers that it was correct for the funding body to be repatriated and fall under local control, but there is also a strong feeling that it has been done too hastily, with Idaf closed down before Saldef was ready to start its work In the interim, the lawyers are finding they cannot keep their practices alive in a recessionary economic climate

"We are seriously facing the danger of closure," said Johannesburg attorney Priscilla Jana, who was associated with many major political trials during the past decade

She has cut her staff to almost one-third of what it was — from eight attorneys to three — and still may not survive

Priscilla Jana and Associates was one of a number of small or medium-sized firms that were built around political work and who now find themselves most vulnerable The bigger firms often have enough commercial or other work to sustain themselves, but lawyers like Jana had put everything into their political practice "I have done no other work and that means we are starting from the beginning in building up a practice in other fields That is not easy at this stage," she said this week

She says she has had almost no funding since April and the new funding organisation, Saldef, has not given her authorisation to continue with any work. "The irony is that the volume of work has increased These are not show trials and prominent people are seldom involved, but the work on cases of public violence, murder, intimidation, sedition, obstruction of justice and other human-rights issues has increased There is also a lot of work to be done for exiles and for new organisations springing up

"But we have to turn away virtually all of these people," she said

Jana warns of the grave consequences of this Apart from the fact that more people are going undefended in the criminal courts, it is causing resentment.

"People on the ground do not understand why they are not getting the support they have had in the past. It stretches so far as to cause disillusionment with organisations that were previously seen to provide this backing"

At one of the few bigger Johannesburg commercial firms involved in human-rights work, the public-interest department has been reduced to a handful of people who are handling only outstanding obligations "The tragedy is that it comes at time when this work is absolutely necessary," one of the firm's attorneys said

Another hard-hit firm, Cheadle, Thompson and Haysom, is reducing its staff through natural attrition, though the firm will be sustained by labour work

"We are seriously affected The funding cutback has meant that we have not been paid for work done a year ago and a huge bill is outstanding," said Halton Cheadle

"We have built up an enormous debt on the promise of funding and now they (Idaf) are saying they cannot pay

"The effect is disastrous We saw it coming a while back, so we lessened our dependence on this money, but we are having to turn clients away all the time We cannot take the work on without guaranteed funding, and the guarantees are not there," Cheadle said

The Delmas trialists .. Who will defend people like these?

Most seriously hit are small town and rural legal firms, often one-person operations that provided the only access many people had to advice and assistance These will be the first to close

Less seriously affected are institutions such as Lawyers for Human Rights (LHR) and the Legal Resources Centre (LRC) There is still funding for the kind of "development" work they are increasingly focusing on, such as legal education, development of new law and policy formulation

LRC deputy national director Geoff Budlender said there was a "disastrous hiatus in funding" because all of us were too slow in getting Saldef off the ground"

Budlender and LHR director Brian Currin are both Saldef trustees and are hopeful that the new organisation will have sufficient funding to step into the breach soon "Maybe we will not have the same level of funding, but it will still be substantial," Budlender said

Though few lawyers in private practice share this optimism, the newly appointed Saldef national director, Ntobeko Maqubela, is attempting to be reassuring "Some firms are in serious trouble because of previous debts that Idaf was unable to meet. We can't meet these demands, but we will have sufficient funds to meet demands for any work done now"

Idaf cannot be blamed for the debt crisis, he said Many firms had submitted huge bills — running into millions of rands — long after Idaf's deadline and there simply wasn't enough money to meet all these demands

Horst Kleinschmidt of Idaf said fingers could not simply be pointed at funders "Yes, we are in arrears and are trying to address that.

"I am quite aware that some very important and very good legal firms are being hurt. The last thing we want is any of these firms to close."

But, he added, some of them "have to adjust radically" They had to account better for the money they had spent and those who ran exclusively political practices dependent entirely on funding would have to broaden their work

"They must realise that funds which have gone to the lawyers are seen in some quarters as disproportionate to the needs of other areas of the struggle," he said

Whoever is to blame, the current crisis is likely to have serious long-term consequences Attorney David Dison believes it is contributing to current violence "Black people are being turned away from lawyers' offices, they don't have legal redress for their grievances, and so they feel they must take matters into their own hands."

Apart from the increase in people going undefended in court, the legal firms that are closing down are those which have also helped shore up the defences for media, trade unions and women's and other special-interest groups

They have also provided many of the experts needed in negotiations and contributed to debates over a future constitution

"A Bill of Rights will only work if it is litigated. Who is going to do that if all these firms close down?" one attorney asked.

If and when Saldef starts funding public-interest work, it could find there are far fewer lawyers to do it. To survive they will have had to turn to commercial or other law

It may be that what is happening is those who rode the international-funding gravy train — and there were plenty of those in the profession — are now being thrown off.

But there are three catches to this Firstly, honest lawyers are being cut off along with the chancers

Secondly, the dual bar system which separates attorneys and advocates in our courts means that it is the former, and not those advocates who received the bulk of the funding, who have to bear the brunt of the crisis

More importantly, many people desperately in need of legal advice are being thrown to the wolves

Act against the right to pry

W1 Mail 29/11 - 5/12/91.

Apartheid may — officially — have ended but many of the laws concerning privacy are still intact, reports **BARBARA LUDMAN**

PRIVACY, says a constitutional lawyer, is like motherhood everyone's in favour of it, in the abstract.

But in South Africa the right to privacy, like other fundamental rights, is grounded in common law, so it can be — and has been — overridden by legislation

"The whole apartheid system was a flagrant invasion of privacy," says dean of the Law Faculty at the University of Natal, Professor David McQuoid-Mason But while the Immorality, Prohibition of Mixed Marriages and Group Areas Acts are gone, others not racially-based, like the Publications Act, are still with us

Attempts since February 1990 to remove laws infringing civil liberties have left much of the privacy situation untouched The Criminal Procedure Act of 1977 is substantially unchanged, and Section 118 of the Post Office Act still allows interference with private communications The Internal Security Act has been radically amended, but those portions dealing with search and seizure remain

New laws have invented new intrusions in June, parliament passed the Investigation of Serious Economic Offences Act which empowers an official to search business premises and seize documents

Presumably, the state's right to look at the post, tap the phones and seize the private papers of its citizens will be dealt with in a new constitution But in an electronic age, the state isn't the only agency people have to worry about

"At the moment, the area of computer privacy — the collection of personal information on computers — is not sufficiently protected It must get attention," says Unisa private law Professor J Neethling "Millions of bits of information have been collected by credit bureaus on creditworthiness The collection of information, if there's no justification for it, infringes that person's privacy

"You would have to give the individual some amount of access to the data, so that incorrect, misleading or irrelevant data could be erased A person must have some control over what's happening to all these bits of information concerning him"

Earlier this year in the United States the Lotus Development Corporation announced it was ready to unveil something called Lotus Marketplace Households, with the names, addresses, estimated incomes, consumer preferences and other details of 120-million people, compiled by Equifax — one of the Big Three credit-reporting bureaus — and designed to run on Apple computers The package was available to anyone willing to pay $695 for it

The outcry from people who believed their privacy was being invaded was so loud that Lotus cancelled the project But on a smaller scale, this sort of invasion is common, in South Africa as well as the US. Mailing lists — although not as sophisticated as the Lotus one — are sold to businesses and politicians as a matter of course

The US Supreme Court has interpreted the US constitution in favour of the individual's right to privacy, largely from government agencies Germany's Basic Law specifically mentions an individual's right to privacy So does the Universal Declaration of Human Rights, the African National Congress constitutional proposals and the Law Commission's recommendations

Legislation in many democracies concentrates on the individual's right to sue for information In Britain, for example, says McQuoid-Mason, "you have to be told that an agency is holding your file, you have to be informed of the name and address of anybody making an inquiry about you, you have the right to inspect, correct and update your file and you must be notified by the agency each time your data is released, in terms of legislation" These constraints apply to civil, not security, matters

"Those countries which have dealt with access to information have generally had a freedom of information Act," says Democratic Party MP Tony Leon "In South Africa there is no such concept" There is a possibility that the National Intelligence Service may have contravened the law when, citing the Prohibition of Information Act, it destroyed the tapes of then-State President PW Botha's first conversation with then-prisoner Nelson Mandela "Ironically," Leon says, "there is a suggestion in this saga that the state has a right against the destruction of its property But this will not avail the individual claimant"

It's a philosophy that pervades the system "Whatever government has on file is their property and their document One has no access to it," says the Legal Resources Centre's Geoff Budlender

Says Neethling, whose concern is largely with private, rather than government, incursions "You must know that information is being collected about you Otherwise all your remedies, statutory or common law, won't help you — because you won't know your privacy is being infringed"

The vital second wheel of the chariot

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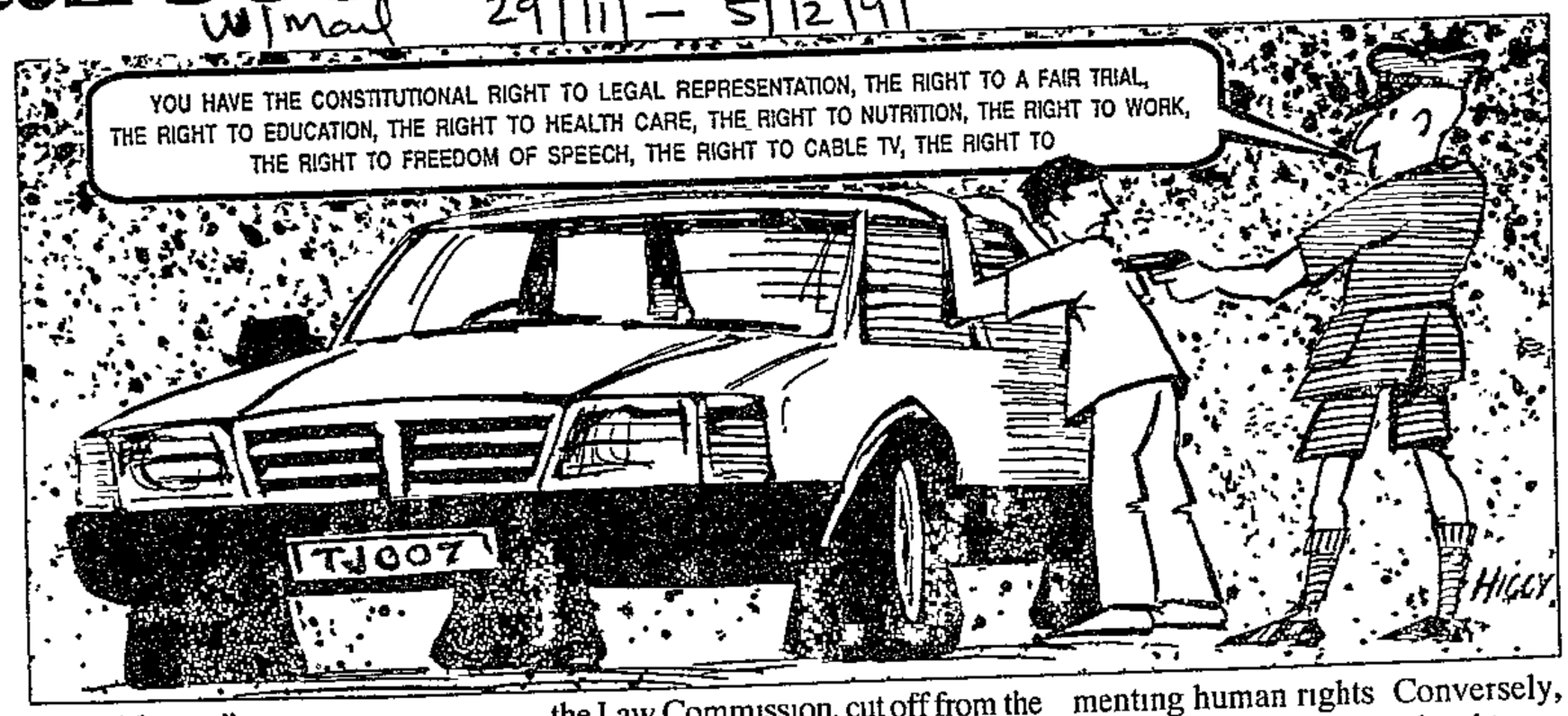
Entrenching first-generation rights in a constitution without including socio-political rights will create a smokescreen that obscures the underlying forces which dehumanise people, argues KADER ASMAL



THE battle lines for the debate on the content of a future constitution of South Africa are slowly but inexorably being drawn

One serious area of combat will be over the content of the Bill of Rights, the basic document of citizens' rights which will form an integral part of the entrenched constitution Although there is a large measure of agreement concerning the traditional civil and political rights, the debate has not been advanced by the inability of the National Party and the Democratic Party to produce their own versions The government-appointed Law Commission has finally produced its revised second version

However defective in its research and ahistorical in its approach, the fact that it has changed its mind on a number of areas bodes well for the emerging debate on what have been described as first generation rights

As prescribed in the Harare and the United Declarations of 1979, the first stage of negotiations is expected to agree on a "new constitutional order" based on a number of common-form principles vital for a democracy Significantly, both sets of proposals refer to the need for the creation of an "economic order which shall promote and advance the well-being of all South Africans"

The view of the African National Congress is that social and economic rights are integral to any discussion of rights-based approach to the constitution Nelson Mandela, with the acuity often found lacking in the Law Commission's approach, put it very well earlier this year when he said

"In accordance with international standards of human rights, we assert the indivisibility of human rights The reason for asserting the co-equal status of the so-called second generation of rights is simply put a vote without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched"

Some South African lawyers, like the Law Commission, cut off from the judicial activism of the benches of Canada and India, for example, are wont to dismiss the inscription of the right to housing, health care, education and other such rights on two grounds Firstly, that they are not directly enforceable through a court of law and, secondly, that they would undermine the legitimacy of the first generation of rights, which impose simple restrictions on governments while the former are claims by the community

Any systematic study will show the incoherence and illogicality of both approaches There are civil and political rights which make claims on resources A fair trial requires legal aid in criminal and in some civil cases Only the state can provide this and the Indian Supreme Court has said that neither administrative nor financial reasons can stand in the way of implementing human rights Conversely, some economic and social rights are immediately enforceable, as the Law Commission recognises itself when it recognises the right to free primary school education

Who can argue, apart form the casuistic lawyer obsessed by forms of action, against the direct enforceability of the right to clean water, to adult education and of minimum nutrition for children against a recalcitrant local authority?

Courts may not be competent to deal with all economic and social rights because the need to improve the minimum floor of rights is dependent on resources But constitutional devices can be used to ensure that, as in the case of the modern Spanish constitution, an idividual may only be able to rely on some rights when parliament has passed legislation to provide for the benefit to such rights

The Indian Supreme Court has viewed the first and second generation of rights as two wheels of a chariot, each indispensable to the other

Enforceability of rights is not dependent solely on judicial intervention Even our crabby positivists must be able to recognise that political and administrative methods can be used for enforcement The ANC rejects the marginalisation of socio-economic rights by relegating them to the status of "directive principles of state policy" as in the Namibian constitution (this is like throwing a rope of sand to the poor) or by describing them as enforceable ideals, *pace* the Law Commission

There has to be a genuine debate as to the most effective way of implementing all human rights But we must guard against the approach which presents a truncated view of humanity by treating non-justiciable rights as not really rights Such an approach slides to the perception that they do not reflect fundamental societal values or commitments A denial of such rights is to accept the bias in favour of the powerful, reflected in extreme form in the Law Commission's unique invention of employer rights

To deny, therefore, the status of rights to socio-economic claims in a South Africa committed to reconstruction can only perpetuate conflict

Kader Asmal is professor of human rights law at the University of the Western Cape and a member of the NEC and constitutional committee of the ANC

What rights do we want in the 'New' South Africa?

Exposing the myth of free speech in a free market

(252)

With monopolies controlling the media in South Africa, can the two proposed Bills of Rights adequately ensure freedom of speech? By MARK GEVISSER

w/Mail 29/11/ – 5/12/91

IN the old days, if you had something to say, you set up your soap-box in the village square and said it And if you wanted to hear what someone else had to say, then you positioned yourself beneath the soapbox and listened Simple.

But the days of soap-box oratory are long gone now that we live in a web of electronic communication, with satellites and frequencies and multi-million rand printing presses defining what we know and how we know it, the basic imperative, that "everyone has the right to freedom of speech" has become as quaint and as archiac as Speakers' Corner a well-meant, but quite ineffectual symbol

In South Africa, there seems to be consensus that freedom of speech should be constitutionally entrenched, that constraints on publishing — like the Publications Act — and on reporting (the Police Act) should be scrapped

With the history of censorship in our country, this is exciting news: a freedom of speech clause in a Bill of Rights would make censorship unconstitutional, and people would be allowed to say what they like, as long as their free speech didn't in any way encroach on the freedom or well-being of others

"But," asks Michael Markowitz of the Film and Allied Workers' Organisation, "what good is it if we guarantee people the right to speak but don't give them access to the technology that will allow them to be heard?"

Even if a state gives everyone the right to speak, it can still make sure that only a few get heard by giving some airspace or broadcasting licences and turning down others

And even though advocates of an unrestrained free market hold free speech as one of their most cherished values, the principles of a free market make sure that only a few get heard — the few who can afford broadcasting technology or printing presses

In the two draft Bills of Rights circulating South Africa at present — that of the African National Congress and that of the government-appointed Law Commission, freedom of speech is covered

The ANC says "there shall be freedom of thought, speech, expression and opionion, including a free press which shall respect the right to reply", and the Law Commission says "everyone has the right to freedom of speech and to other forms of expression and to obtain and disseminate information"

A third draft Bill of Rights, that proposed by the kwaZulu/Natal Indaba, says: "Everyone shall be entitled to freedom of expression, which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas "

With the phrases "freedom to obtain and disseminate information" and "freedom to seek, receive and impart information" the Law Commission and the kwaZulu/Natal Indaba do allude to rights of access But Markowitz feels that if freedom of speech is to be more than a noble ideal, then the language in the constitution should be more specific, as it is in the American and European Conventions on Human Rights

The language Fawo has proposed, based on these conventions, is the following "The right of expression shall not be restricted by indirect methods or means such as the abuse of government or private controls over newsprint, radio, TV broadcasting and frequencies, or by any other means "

Such a clause would render the SABC unconstitutional The newspaper monopoly could also be found to be unconstitutional, as could a printing company or a paper supplier that has a monopoly

If a radio broadcaster was denied a licence or if a political party was denied fair airtime, they could take the matter to a constitutional court

Perhaps the language of the Law Commission covers this. But, given the fact that the media is controlled almost exclusively by the government and a couple of corporations and, given the fact that the recently-published Task Group on Broadcasting gives the SABC and M-Net the right to broadcast into a new dispensation for at least seven years without having to reapply for a license, there is a strong argument for explicit constitutional checks to be written in to a Bill of Rights

When a new constitution is negotiated, the parties sitting round the table could all blithely nod in agreement about freedom of speech and then move on to more thorny issues

Or they could acknowledge that there cannot even be free and fair elections until there is guaranteed equal access

Labour: Courts or constitution?

W1 mail 29/11/-5/12/91.

By DREW FORREST

AT a glance, the 12-article section on worker rights in the African National Congress' draft Bill of Rights seems absurdly detailed

The right to form unions, bargain collectively and strike — fair enough But is there really a need to protect the right to picket, to "reasonable" union access to company premises and to the deduction of union dues "where appropriate"?

Shouldn't such relative minutiae, evidently included at the behest of the ANC's labour ally, the Congress of South African Trade Unions, be dealt with in statute law or collective agreements?

Also enshrined in section 6 of the ANC's Rights Bill — which covers workers and unions — are union rights to participate in lawful political activities and to form national federations and join international federations, the principles of equal pay for equal work and equal access to employment, and rights to state-provided pension, unemployment and workplace injury benefits.

Internationally respected labour law expert Bob Hepple, of the University College of London, certainly believes ANC proposals to be off-mark He has written to the ANC arguing that section 6 should be largely enacted in ordinary labour law, rather than in the constitution

Hepple is vitally concerned that the nurture of progressive labour legislation in South Africa requires "an autonomous labour court .. administering a self-contained system of labour law"

If article 6 is dropped holus-bolus into the constitution, he argues, the Constitutional Court, whose officials may know nothing of labour law, may have to determine fundamental labour law issues

Hepple believes no more is needed than constitutionally guaranteed rights to freedom of association, to form and join unions, to bargain collectively and to strike, subject to certain limitations

Legal advisor to Cosatu Halton Cheadle concedes the danger, but argues that a balance has to be struck between giving labour too little protection and putting too much in the hands of an unspecialised court.

"Consider what happened under (former British premier) Margaret Thatcher: there was no British court to strike down laws which substantially undermined trade union rights and were severely criticised by the International Labour Organisation."

A possible compromise, he said, would be to second an officer of the Labour Appeal Court as an ex officio member of the Constitutional Court when labour matters were at issue

Cheadle defends section 6 by arguing that the job of a democratic constitution must be to protect and foster collective bargaining within a common law system which is fundamentally hostile to it.

"The law must provide a protective arena in which unions and employers can both exercise power, and in that context negotiate with each other," he said

Unlicensed picketing, for example, had been typically prosecuted in South Africa as a form of illegal advertising

Property and privacy rights preclude automatic union access to companies and to the disclosure of "such information as may be reasonably necessary", another right enshrined by section 6.

What of the "left" argument that by encouraging too much reliance on the constitution, one may indirectly sap the labour movement's organisational vitality? Isn't the ultimate guarantee of rights the collective power of "civil society"?

"We've had 50 years of the all-powerful state, and we've seen what that has done," Cheadle said.

"In South Africa, civil society consists of a couple of struggle organisations

"I accept that you need people to insist on and defend constitutional rights. At the same time, you've got to entrench freedom of association, to protect associations from the state You've got to have a framework within which civil society can thrive."

REVIEW: *Shaping the new Constitution*

Deciding now on our future rights

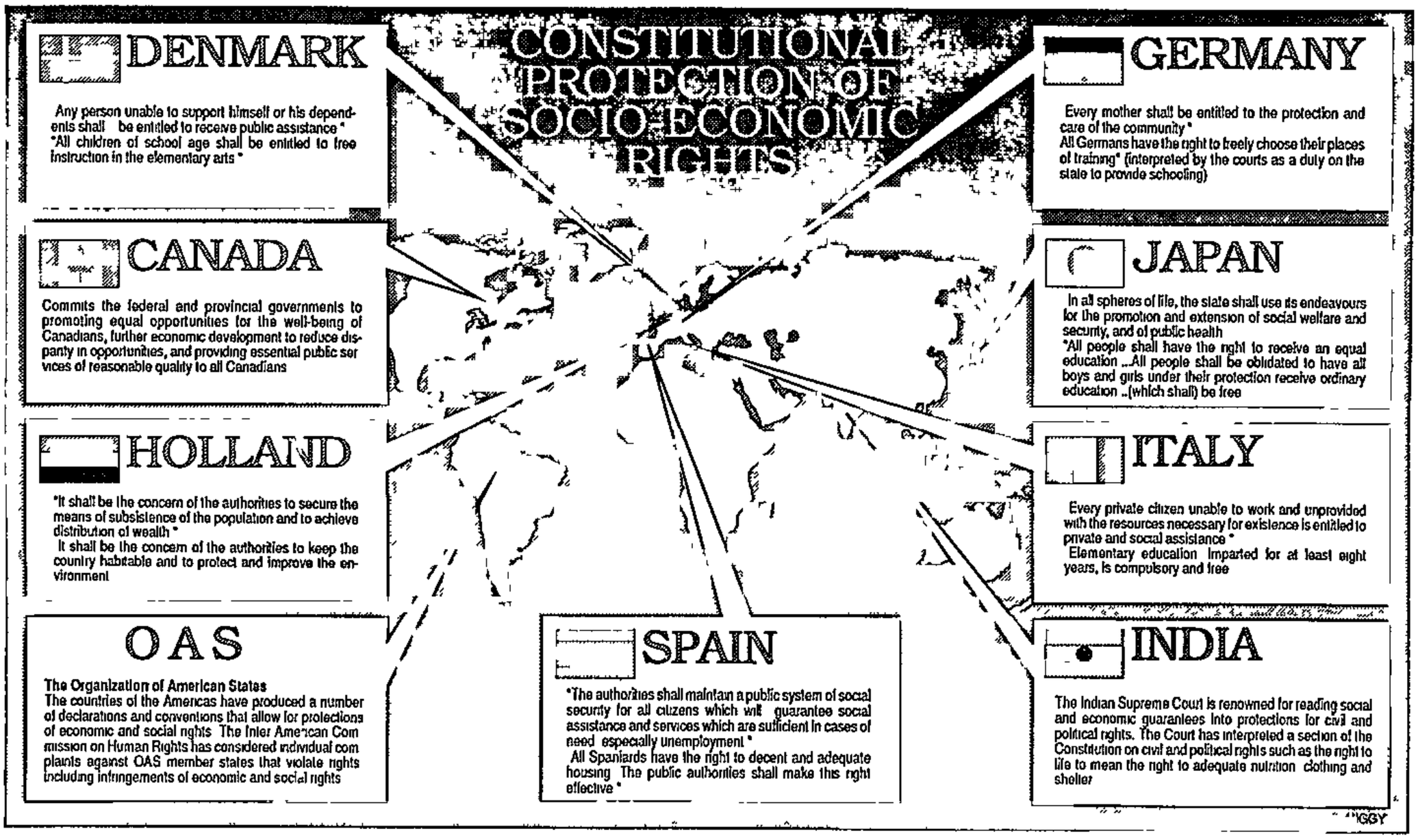
SOUTH AFRICA is on the verge of negotiating a new constitution — an event as significant in our history as the drawing up of the constitution in 1791 was to the United States of America.

But as parties wrangle over procedures, chairmen, venues and forums for drawing up the constitution, and emotions rise over the Springbok symbol and the national anthem, there is a startling silence from the public over human rights.

South Africa has come a long way in the field of rights both the government and the anti-apartheid opposition agree that there should be a Bill of Rights containing a number of basic liberties that have always been denied to the majority of the population.

However, there is a bitter argument brewing over the incorporation of civil rights such as the abolition of the death penalty and economic rights, the right to shelter, education, health care, a clean environment and social assistance. These are rights that will set the tone for our new society.

As a contribution to the ongoing struggle for human rights, *The Weekly Mail* this week publishes a seven-page supplement reviewing some of the issues that could dominate the public debate over what rights we should put in our constitution.



How the rest of the world looks after second generation human rights

Graphic JOHN HIGGINSON

Aluta continua – but no one realises it

After years of suffering under apartheid and fighting the oppressive system, South Africans can now guarantee their rights. But they are strangely apathetic. By PHILLIP VAN NIEKERK

THE preparatory meeting for the All Party Conference to be held today brings talks on the new South Africa a dramatic step closer.

After almost two years of haggling over the obstacles, public confrontation and behind the scenes talks between the country's main political protagonists, the job of making a constitution is about to begin in earnest.

Yet the lengthy delays in talks do not seem to have inspired the kind of public debate that the historic moment in South Africa calls for.

The act of forging the new society is being left to an elite group of politicians and their backroom advisors — constitutional lawyers and negotiation funds.

This is a strangely passive response from a population where people's rights have been so comprehensively trampled on for so long and where we have witnessed every form of resistance and defiance.

What human rights should we write into our constitution? The question is far from self-evident, and certainly should not be overshadowed by the parallel debate over what kind of democratic system is to be negotiated.

Constitutional rights, usually contained in a Bill of Rights, are an extremely important form of empowerment setting out the basic definition of citizenship. They cannot be taken away at the whim of one election.

The state-appointed Law Commission, under Mr Justice Olivier, has made an impressive contribution to shifting the parameters of the debate on a Bill of Rights.

It has played a major role in consigning racial group rights to the garbage heap.

But the Law Commission's more-than-700 page report is unlikely to be read by more than a handful of the people whose rights are being entrenched in the constitution.

And, while it is progressive on the issue of individual rights, it has been criticised by the African National Congress for being equivocal on a host of fundamental civil liberties, such as the abolition of the death penalty and a freedom of information clause.

An even more serious failing is that it has been accused of being reactionary in its approach to those rights that protect or provide for the basic necessities of life — social assistance, health care, housing, employment, education, the environment, culture and so on.

To prove this point, the passage that is most often quoted from the Law Commission's submissions is the finding that "surely the right to health (of a child) is not a legally enforceable right but a privilege which the creator may grant or take away from human beings."

Legal experts tend to break the two groups of rights down into 'first generation', "second generation" and even "third generation" rights. The first generation rights include the political and civil liberties that we most often associate with a Bill of Rights.

These relate to democratic and equality rights, legal rights in the criminal process, freedom of expression, association and movement, and the right to liberty and security of the person.

The distinction between civil and political rights and the "second generation" social and economic rights is that the second generation rights are positive rights dependent on the available economic resources and requiring the active intervention of the state.

Civil and political rights are negative obligations, requiring the government to refrain from unreasonably interfering with the autonomy of an individual or a group.

Third generation rights include the rights to peace and a clean environment — a more recent cluster of rights being written into constitutions.

The second generation rights are not only an innovation of post World War II constitutions, as they are often held to be.

They were recognised as basic rights at the very beginning of the emergence of the liberal state.

As early as 1758, the French philosopher Montesquieu argued that the state owed all citizens "nourishment, suitable clothing and the opportunity for a healthy life".

The French constitution of 1791 required the government to establish a system of free public education and public assistance for orphans, abandoned children and the indigent, and to furnish work for the able bodied who cannot obtain it for themselves.

Social and economic rights and principles are contained in the constitutions of a majority of the countries of the world, particularly in those of many Western industrialised nations.

Over 55 constitutions have provisions for health care, more than 30 constitutions have a right to housing, more than 60 constitutions enshrine the right to employment, more than 70 constitutions ensure the right to education, the right to a clean and healthy environment is contained in 25 constitutions, and 30 constitutions impose a duty on the state to promote culture.

The Law Commission, while conceding the right to a primary school education, rejects inclusion of the second generation rights largely because it claims they are unenforceable and would undermine the credibility of the Bill of Rights.

However, in many countries, these rights are enforceable. One of the most activist courts in this regard is India.

And, even where they are not enforceable, their entrenchment serves as an expression of shared values and aspirations and as a guide for national policy-making. As the ANC said in its response to the Law Commission report: "The people of South Africa deserve both bread and freedom."

However, the people of South Africa will only get the rights they want if they become more involved in debating and fighting for them.

Appeal Court rejects Nofomela application

BLOEMFONTEIN — The Appeal Court yesterday rejected an appeal by former security policeman Almond Nofomela to lead evidence in mitigation of a death sentence for a murder unrelated to his police work.

Sapa reports that the court's ruling means Nofomela's appeal against the death sentence for the murder of Johannes Hendrik Lourens in the Brits district on September 1 1986 must fail and the sentence be confirmed

Nofomela and Johnny Abraham Mohane were convicted and sentenced to death for Lourens's murder by the Transvaal Supreme Court in September 1987 Both lost appeals to the Appeal Court in May 1989

Mohane succeeded in a petition to the President and his death sentence was commuted Nofomela's petition did not succeed and he has now exhausted all procedures open to him for an appeal or review

On October 19 1989 — the day before he was to be executed — Nofomela made an affidavit in which he denied he had killed Lourens, but made a series of sensational disclosures, including that he had been briefed by senior police officers to "eliminate" Durban attorney Griffiths Mxenge and that he had been involved in about eight other assassinations as a member of a hit squad

He was granted a stay of execution and subsequently gave evidence to the Harms commission of inquiry into certain alleged murders In his evidence there, Nofomela admitted for the first time that he had killed Lourens and that his previous denials had been false

This confession was repeated in the submissions made on his behalf to the review panel, established under the Criminal Law Amendment Act of 1990

Attached to the submissions to the panel was a report by clinical psychologist Lloyd Vogelman, which stated that Nofomela "presents a positive prognosis for his rehabilitation and possible reintegration, at some future date, into society"

Remitted

The panel considered that had the amended Act been in force at the time of Nofomela's trial, the death sentence would probably have been imposed The sentence had to be reconsidered by the Appeal Court under the provisions of the present law.

At the appeal, Nofomela's counsel submitted that the death sentence should be set aside and that the matter should be remitted to the trial court for it to consider the new material that had emerged since his trial

Mr Justice Nienaber said "He (Nofemela) has told so many lies, for so long, and on so many occasions, that little if any credence can be attached to his most recent version of what happened on the day of the murder There is nothing in the record or in any subsequent document to support his version that the deceased taunted and threatened the appellant before the latter stabbed him five times — his co-accused gave no evidence to that effect, then or now, and the probabilities, far from supporting it, point the other way"

The judge said it was no excuse for Nofomela to say that he was trained and taught to kill, he was not trained to prey on elderly innocent people Arrogance was not a mitigating factor. That he was a policeman was a distinctly aggravating factor

The judge also doubted whether there was a realistic possibility that the trial court would find, if all the evidence was placed before it, that a maverick policeman who killed an elderly farmer in a planned robbery, and who confessed to eight other cold-blooded murders, was promising material for rehabilitation

WILSON ZWANE reports that Lawyers for Human Rights national director Brian Currin said lawyers would petition President F W de Klerk to commute Nofomela's death sentence.

"I am disappointed in the Appeal Court's finding. Nofomela should have been given an opportunity to lead such evidence (in mitigation)," Currin said.

ANC spokesman Gill Marcus said "We have called for a moratorium on executions That a person who has exposed hit squads should hang is a poor reflection of what is happening in the country"

2 judges may chair meeting

By Peter Fabricius STAR 29/11/91 and Esmaré van der Merwe

Today's historic preparatory committee meeting to set the scene for next month's multiparty negotiations may be chaired by two Supreme Court judges, The Star has learnt

As last-minute arrangements for the historic meeting were made yesterday, the names of Mr Justice P J Schabort and Mr Justice I Mahomed — the country's first black judge — were mentioned

The meeting is scheduled to start at 10 am at the Jan Smuts Holiday Inn, near Kempton Park

Sources said late yesterday the main players had been consulted, and the Government, ANC and DP had already agreed to the issue of the chairmanship

But it was possible that all the parties would not reach agreement before talks started and the meeting itself would have to decide

Another proposal was that the chairmanship should rotate among the five bigger parties — the Government, ANC, PAC, IFP and DP

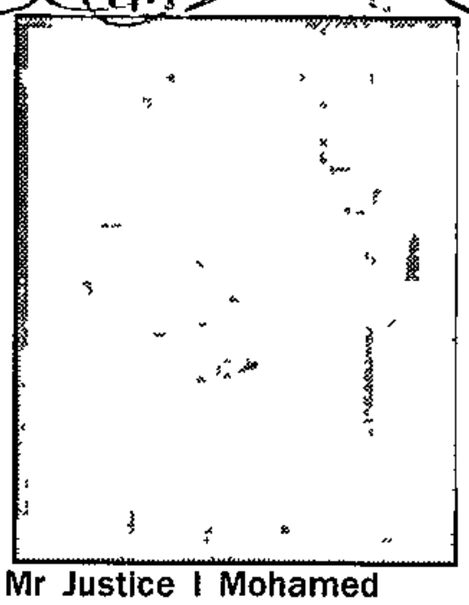
About 20 parties — including the six self-governing national states and the four TBVC states — will attend

The dispute about the chairmanship underlined the sensitivity about arrangements which has characterised preparations for the meeting Exactly what would happen at the meeting remained something of a mystery yesterday

Because the meeting has not officially been convened by anyone, no official agenda has been prepared The meeting itself will have to decide on one

This week, the ANC finalised a "statement of principles" to be presented at today's meeting

It outlines basic ANC policy on a new constitution, stating that the country should be a non-racial, non-sexist democracy, that there should be free political choice, that human rights should be entrenched in a bill of rights, and that there should be an independent, representative judiciary



Mr Justice I Mohamed tipped to co-chair talks

The statement also said there should be a separation of powers between the legislature, executive and judiciary

Today's meeting will take place behind closed doors and the participants themselves will decide whether to issue a statement or hold a press conference afterwards

The meeting is expected to continue tomorrow

The PAC yesterday sent a delegation to some embassies in Pretoria to drum up support for its demand for an outside venue and neutral convener for the multiparty conference Sources said the PAC did not receive a sympathetic hearing

● President de Klerk yesterday confirmed that the NP's Cape leader, Dr Dawie de Villiers, would lead the NP delegation to the meeting and that Constitutional Development Minister Dr Gerrit Viljoen would head a separate Government delegation

● More reports — Pages 3 and 14

'Hunger' lawyer: No steps

PRETORIA — There was no need for action following the professional conduct of lawyer Mr Wim Cornelius, who had represented the right-wing hunger strikers, the Law Society of the Transvaal said here yesterday

The society's president, Mr A C Hutchinson, said this was the conclusion a committee had come to after a "thorough" investigation during which medical evidence had been studied

Mr Hutchinson said the investigation had followed on the statements made by Mr Cornelius about the hunger strikers

There was an uproar after allegations that two of the hunger strikers, Adrian Maritz and Henry Martin, had secretly eaten chocolate bars while in hospital According to reports, the men had also put on weight in preparation for their fast

Mr Cornelius reportedly made repeated statements that the men were in very poor physical condition Medical reports subsequently confirmed that they had undergone a substantial loss of weight

Maritz and Martin, facing a murder charge, have since skipped bail and fled to England — Sapa

PUBLIC SECTOR_GOVT. – JUSTICE

Killer told he can live

ST Times
1/12/91
252

By CATHY STAGG

THE panel of judges appointed to review death sentence cases has for the first time reversed a Supreme Court judge's decision which had been upheld by the Appeal Court ST Times

They replaced the death sentence with life in jail for a man a psychiatrist said was "extremely likely to commit a crime of violence again"

Willem Jacobus Bosman, now 21, was sentenced to death for shooting a man in the back after he had given him a lift in September 1987 and then dumping his body in a river near Kersiefontein, Cape

Mr Justice B Lategan sentenced him to death, and the Appeal Court upheld the sentence

But Mr Justice Vivier, with Mr Justice Milne and Mr Justice Eksteen concurring, found Bosman's youth to be extenuating

Van Schoor 'discussed methods with police'

EAST LONDON — When former security guard Louis van Schoor fired at suspects with the intention to wound them and so "effect an arrest", he would aim at the lower half of the body below the buttocks, the Supreme Court in East London heard yesterday

Mr van Schoor told the court he had no specific reason for using hollow-nosed bullets which he knew had better "stopping power than a hard nose".

Prosecutor Alfonso Hattingh said X-rays taken of a shooting victim, John Swartbooi, had shown that two different types of bullets had been used alternatively.

In 1988, Mr van Schoor shot 14-year-old John three times — in the right leg, left buttock and right shoulder

Mr van Schoor agreed that the events resulting in 19 murder and 13 attempted murder counts he faces had begun in 1986.

On Monday Mr van Schoor's defence attorney Johan Wssels cited lack of criticism from magistrates and the police for making Mr van Schoor believe he was right to use a firearm

Mr van Schoor yesterday named the high ranking police officers whom he had approached regarding his methods as a Major Petzer, a Captain van der Vyver, a Captain Walker and the District Commissioner of police at the time — whose name he could not remember.

Mr van Schoor said he knew he spoke to Major Petzer about "the way I act when I arrive at a scene . to satisfy myself that the different actions I took were correct"

He "probably" discussed a specific case with Major Petzer and asked him his views on the actions he had taken

Mr van Schoor said he also discussed his actions with Captain van der Vyver and had had "various" discussions with Captain Walker on the same subject.

At the request of Roy van Zyl of Buffalo Alarms, Mr van Schoor said, the two men had visited the District Commissioner in late 1986 or early 1987 to discuss his actions

The District Commissioner had told Mr van Zyl that there was "nothing wrong as far as the police were concerned" with Mr van Schoor's actions and that "everything was above board"

Mr van Schoor said Mr van Zyl had asked him if the shootings were necessary

"I told him I only used my firearm if my life was in danger or there was no other way of effecting an arrest"

Mr van Schoor said he did not remember Mr van Zyl telling him to "cool it" and did not recall discussing examples of his actions with the District Commissioner "But I am sure he was aware"

Mr van Schoor said he could not remember the names of the prosecutors at the East London Magistrate's Court whom he approached — Sapa

Courts on wheels take to the townships

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JONATHON REES

SA's first courts on wheels will start dispensing justice in SA's townships next week

Justice Minister Kobie Coetsee said yesterday the mobile courts would operate from three heavy articulated trucks, "suitably furnished as court rooms", in areas where court facilities do not exist

Mobile courts would be set up within days at unrest hot spots Thokoza and Vosloorus (both on the East Rand) and Port Shepstone

Coetsee also announced that all magistrates and other court officials in 80 magisterial districts adjacent to SA's four main road routes (the N1, N2, N3 and N4) would be put on standby to hold court sessions after hours and on Saturdays during peak holiday periods

A Justice Department spokesman said "Justice on Wheels" was Coetsee's brainchild The spokesman said it followed a recognised increase in the courts' workload

Mobile courts would be able to bring charges rapidly in unrest cases, adjudicate common crimes and deal with plea proceedings and bail applications in areas where court facilities were lacking.

"The combination of these two systems makes it possible for court facilities to be available at all times at more locations," Coetsee said.

A major advantage of extending court hours was that motorists not wanting to pay an admission of guilt fine would be able to appear in court without having to travel back to the court at a later stage

The National Road Safety Council hailed the plan as a breakthrough for road safety.

Amnesty visit for death squad probe

Soweto 5/12 — 11

12/91

By Karen Williams

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AMNESTY International human rights activists are on a two-week visit to South Africa to investigate political assassinations.

The delegation is led by Mr Stephen Owen, Ombudsman for British Columbia, Canada, as well as Dr Piet van Reenen, former director of the Dutch Police Academy, and two members of Amnesty's international secretariat.

The group will meet lawyers and representatives from the police and the Department of Justice.

While Amnesty International recognised the improvement in human rights in South Africa since February 1990, it was concerned with the escalation in political killings.

A press statement said Amnesty was concerned that security force members were implicated in the killings and that perpetrators of the violence were not prosecuted

The delegates will also inquire into the effectiveness of the National Peace Accord structures, including the implementation of a code of conduct for the police.

● The Human Rights Commission has a programme on human rights on December 10, which is International Human Rights Day, in the St George's Cathedral hall.

Speakers will talk on the 1991 Nobel Peace Prize Winner, Burmese activist Aung San Su Kyi, and the current taxi war.

Mobile courts take justice to the roads

(252) CT 5/12/91

JOHANNESBURG — Justice took to the roads in South Africa yesterday with the introduction of mobile courts by Justice Minister Mr Kobie Coetsee

The first will arrive within days at Thokoza and Vosloorus on the East Rand and Port Shepstone on the Natal South Coast to deal mainly with cases involving driving offences and violence

In a statement Mr Coetsee said the mobile units were intended as temporary bases from which to dispense justice in areas which had no courts They would be used to process charges related to unrest, to rule on traffic offences and general crime, and to deal with plea proceedings and bail applications

In addition to "justice on wheels", all courts along the N1, N2, N3 and N4 traffic routes had been placed on standby to work after hours and on Saturdays if the pressure of offences during the holiday season overloaded the system

Mr Coetsee emphasised that there would be no legal shortcuts in either the mobile units or the after-hours courts, and that both measures had the blessings of the police and the legal profession

For the motorist who chose to defend himself in court rather than admit guilt, speedier processing could save a return trip to a distant court.

Cop's alleged abuse is probed

Sowetan 5/12/91

POLICE have opened a docket against a Messina policeman who allegedly kicked a youth welded to a steel table near the town last year.

Far Northern Transvaal Police spokesman, Captain Cas Jones, said yesterday that investigations were still being conducted The docket would be sent to the Attorney-General after completion of the investigation

By MATHATHA TSEDU

The policeman, who has not been identified, had not been suspended and was still working, Jones said

The investigation followed evidence in the trial of a white farmer, Johan van der Westhuisen, who welded a 15-year-old youth, to a steel table at Hayoma farm, Tshipise

The youth, described as a reliable witness who had impressed the court with his honesty, told the court that after he was welded and set alight by Van der Westhuisen, the latter had called a policeman who arrived in an open Isuzu van

He told the court that the policeman had kicked him as he sat slumped on the floor, still welded to the steel table, and laughed He said the policeman later handcuffed his burnt hands, and pulled him up, before loading him into the back of the van He was then manacled to the body of the van which drove him to Messina.

He was taken to the Messina police station where, he said, he was kept for several hours before being taken to hospital He had suffered second degree burns to his body, which needed more than four months of hospitalisation, a doctor testified

When *Sowetan* first approached the police for confirmation after the incident in December last year, they said it had happened accidentally while Van der Westhuisen was welding near the manacled youth. The police said they were, then, not investigating any case against Van der Westhuisen

Police investigations against Van der Westhuisen only started after *Sowetan* insisted that police check the youth's version of the events The farmer was later charged with attempted murder

an election-monitoring group will oversee the procedure JOE SLOVO

Amnesty members arrive to probe SA political killings

Soweten 5/2/91

FOUR members of the Amnesty International yesterdasy began a two-week investigation into political killings and allegations of security force complicity

At a Press conference in Johannesburg yesterday, the team said Amnesty International had expressed concern that in some cases, members of the security forces appeared to be directly implicated in the killings

"In other cases the police and other authorities appear to have failed to take appropriate action to bring those responsible to account"

The organisation had noted there had been positive developments in the human rights situation in South Africa since February 1990.

"However, Amnesty International is gravely concerned at the deterioration in other areas of human rights"

Political and human rights activists and others had died as a result of assassinations, large-scale armed attacks on whole communities, attacks on black commuters, funeral mourners and others, assault and torture of prisoners in police custody, the police misuse of lethal force against demonstrators

They said they would also be looking at the effectiveness of structures created under the National Peace Accord, including the implementation of a code of conduct for the police

The delegation is led by Mr Stephan Owe, Ombudsman for British Columbia in Canada Other delegates are former director of the Dutch Police Academy Dr Piet van Reenen, Mary Reyner of the United Kingdom and Mr Joseph Gitari of Kenya - *Sapa*

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Mobile justice hits the road

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Sowetan 5/12/91

By MONK NKOMO

THE Department of Justice yesterday announced the introduction of mobile and standby courts to deal with traffic and criminal offences in unrest areas and on the country's major routes.

Speaking at a Press conference in Pretoria, Minister of Justice, Mr Kobie Coetsee said mobile courts were yesterday to begin adjudicating traffic offences on all major routes.

Termed "Justice on Wheels", Coetsee said three buses equipped with tables and chairs would be put into service during the next few days. The project cost about R1 million.

The mobile courts, Coetsee said, would be applied to bring charges resulting from unrest more speedily before the court.

Coetsee also said personnel at normal courts would work 24 hours a day including on Saturdays during peak periods such as school holidays.

Mobile and standby courts are expected to be in operation at unrest areas such as Tokoza and Vosloorus on the East Rand and on main routes to Durban, Cape Town and the Free State.

Coetsee stressed that the proceedings at these courts would not detract from the rights of the individual. He added that in cases where a lawyer of the accused was not available, the department would supply defence counsel.

These measures were instituted in support of the processes activated by the National Peace Accord aimed at promoting speedier adjudication, Coetsee said.

He said the project would be maintained if it produced good results and if there was enough funding.

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Vol. 318 PRETORIA, 5 DESEMBER / DECEMBER 1991 No. 13670

GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN JUSTISIE

No. 2951 **5 Desember 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan Khulekani Mthimkulu, gebore 1 Januarie 1969, Nkululeko Mthimkulu, gebore 3 Februarie 1970, Musa Mpanza, gebore 8 Julie 1969, en Mondli Shezi, gebore 1 Februarie 1974, ten opsigte van die gebeure waarop die aanklag van besit van ontplofbare stowwe in stryd met die bepalings van artikel 28 (1) van die Wet op Ontplofbare Stowwe, 1956 (Wet No 26 van 1956), in Saak No 92/91 in die Streekhof te Empangeni gebaseer is

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Twintigste dag van November Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident

Op las van die Staatspresident-in-Kabinet

H. J. COETSEE,
Minister van die Kabinet

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. 2951 **5 December 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to Khulekani Mthimkulu, born 1 January 1969, Nkululeko Mthimkulu, born 3 February 1970, Musa Mpanza, born 8 July 1969, and Mondli Shezi, born 1 February 1974, in respect of the events upon which the charge of possession of explosives in contravention of section 28 (1) of the Explosives Act, 1956 (Act No 26 of 1956), in Case No 92/91 in the Regional Court at Empangeni is based

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twentieth day of November, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet

H. J. COETSEE,
Minister of the Cabinet

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Justisie, Departement van			
Goewermentskennisgewing			
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Vol 318 PRETORIA, 5 DESEMBER DECEMBER 1991 No. 13679

GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN JUSTISIE

No. 3021 **5 Desember 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN TYDELIKE VRYSTELLING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Nademaal ek van oordeel is dat dit nodig is vir die bevordering van vreedsame konstitusionele oplossings in Suid-Afrika, verleen ek hierby kragtens die bevoegdheid my verleen by artikel 1 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), onvoorwaardelik vrystelling soos vermeld in artikel 1 (2) van voormelde Wet, aan die persone in die Bylae vermeld gedurende die tydperk vanaf die datum van hierdie kennisgewing tot en met 31 Januarie 1992

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Vierde dag van Desember, Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident

Op las van die Staatspresident-in-Kabinet

H. J. COETSEE,
Minister van die Kabinet

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. 3021 **5 December 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF TEMPORARY IMMUNITY UNDER THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Whereas I am of the opinion that it is necessary for the promotion of peaceful constitutional solutions in South Africa, I hereby under the power vested in me by section 1 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), unconditionally grant to the persons specified in the Schedule, immunity referred to in section 1 (2) of the aforementioned Act for the period from the date of this notice up to and including 31 January 1992

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Fourth day of December, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet

H. J. COETSEE,
Minister of the Cabinet

BYLAE • SCHEDULE

BASSON, Johannes/SMIT, Hendrick Johannes
BIXA, Mzimkhulu
DLAMINI, Jabulane

DUBE, George
GOAGA, Aaron
HERMANSSEN, Theodore/VAN NIEKERK, Dirk
MAGUBANE, Lennox Malixole/MAVUSO, Albert
MAJALEFA, Jimmy Tshepo
MAJOLA, Jabulani Alfred
MAY, Ernest Lawrence Mbhapa
MOFOKENG, Thabiso
MOGALE, James/NKOSI, Jerry
NGWENYA, Themba/MUFAMADI, Gasius Mashondo
SIMELANE, Sipho/MASEKO, Thomas
ZITHA, Johannes Muzi

INHOUD

No		Bladsy No	Koerant No
	GOEWERMENTSKENNISGEWING		
Justisie, Departement van			
Goewermentskennisgewing			
3021	Wet op Vrywaring (35/1990) Kennisgewing van tydelike vrystelling	1	13679

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13679—1

Team from Amnesty in SA for talks

STAR 5/12/91

By Michael Sparks

For the first time in its history, Amnesty Internatonal has sent a team to South Africa for discussions with the Government on a range of issues including allegations of police violence

The four-person team which arrived on Tuesday will visit the Johannesburg area, Natal and Cape Town during their two-week visit.

Dr Stephen Owen, Ombudsman for British Columbia, Canada, and chairman of the mission, said they hoped to meet government, justice and police officials, as well as human rights organisations, to assess the structure and role of government and police officials in a society undergoing very significant change

The team also hoped to look into the continuing high level of violence and allegations of police complicity, either through direct involvement in the violence, or through indirect complicity by not investigating allegations quickly and thoroughly

Dr Owen added "Confidence in the police is particularly important as a society goes through a period of transition"

Mary Rayner, a member of the organisation in London, said the team was "predominantly concerned with the failure of police to investigate and bring people to justice after incidents have occurred"

Joseph Gitari, a London-based researcher for Amnesty, said although allegations against the ANC had been looked into in Zambia and Tanzania, that organisation would not be investigated as part of the current mission

The group hopes to meet senior police officials to discuss the current violence

Mobile courts to be set up on major traffic routes

STAR 5/12/91.

Staff Reporter (252)

Justice Minister Kobie Coetzee has announced the introduction of a system of mobile courts to hold sessions in unrest areas and on major traffic routes during peak travel periods

In addition, all magistrates and other court staff of courts adjacent to the four main routes — the N1, N2, N3 and N4 — have been placed on standby to hold court sessions after-hours and on Saturdays during peak holiday periods

Mr Coetzee said yesterday that the new system was aimed at dealing with increased criminal cases resulting from unrest and increased traffic volumes

The mobile courts, some of which will come into service within days, will be placed in areas where such facilities do not already exist, such as Tokoza, Port Shepstone and Vosloorus

Mr Coetzee said the new system was being introduced to

- Bring charges resulting from unrest more speedily before the courts
- Adjudicate other forms of crime and deal with plea proceedings and bail applications
- Adjudicate traffic cases of every nature summarily

Reacting to the announcement, National Road Safety director Eric Wise said the move constituted a breakthrough in road safety

It meant that criminals on the roads would be summarily charged, sentenced and possibly removed from the road

"In 1990 there were more than 19 000 prosecutions for drunken driving and more than 16 000 for reckless driving

"If these road users can be removed from the traffic, it will prevent road accidents and make the roads safer for law-abiding motorists."

He said the number of traffic offences committed on South African roads each day made these steps essential

John Schnell of the Natal Co-Ordinating Traffic Committee also welcomed the announcement, saying it would improve road safety.

A spokesman for the Institute of Traffic Officers said it trusted that suitable sentences would be handed down to offenders which would act as a deterrent

6 Wysiging in die mate van korting op vleis van beesrasdiere, bevrore, ontbeen, vir die vervaardiging van bereide of gereserveerde vleis, indeelbaar by kortingitem 304 01/02 02/30, vanaf volle reg min die grootste van 20% of 440c per kg min 80% tot vry

[RHN-verw T5/2/1/3/1 (910453) (Mnr J v d Merwe)]

Applikant:

S A Vereniging van Vleispakkers, Posbus 801, Hartbeespoort, 0216

(Opmerking Hierdie aansoek word as dringend behandel en kommentaar moet die Raad binne vier weke na die datum van hierdie kennisgewing bereik)

Lys 46/91 is by Algemene Kennisgewing 1141 van 22 November 1991 gepubliseer

(6 Desember 1991)

6 Amendment to the extent of rebate of meat of bovine animals, frozen, deboned, for the manufacture of prepared or preserved meat, classifiable under rebate item 304 01/02 02/30 from full duty less the greater of 20% or 440c per kg less 80%, to free

[BTI Ref. T5/2/1/3/1 (910453) (Mr J v d Merwe)]

Applicant:

S A Meat Packers Association, P O Box 801, Hartbeespoort, 0216

(Note: This application is being dealt with as a matter of urgency and comments should reach the Board within four weeks of the date of this notice)

List 46/91 was published under General Notice 1141 of 22 November 1991

(6 December 1991)

KENNISGEWING 1162 VAN 1991

DEPARTEMENT VAN MANNEKRAG

WET OP ARBEIDSVERHOUDINGE, 1956

INTREKKING VAN REGISTRASIE VAN 'N VAKVERENIGING

Ek, David William James, Nywerheidsregistrateur, maak hierby kragtens artikel 14 (2) van die Wet op Arbeidsverhoudinge 1956, bekend dat ek die registrasie van die Munisipale Werknemersvereniging met ingang van 28 November 1991 ingetrek het

D. W. JAMES,
Nywerheidsregistrateur
(6 Desember 1991)

NOTICE 1162 OF 1991

DEPARTMENT OF MANPOWER

LABOUR RELATIONS ACT, 1956

CANCELLATION OF REGISTRATION OF A TRADE UNION

I, David William James, Industrial Registrar, hereby notify, in terms of section 14 (2) of the Labour Relations Act, 1956, that I have cancelled the registration of the Munisipale Werknemersvereniging with effect from 28 November 1991

D. W. JAMES,
Industrial Registrar
(6 December 1991)

KENNISGEWING 1163 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT DIE INLIGTING BEDOEL IN PARAGRAAF (b) VAN GOEWERMENTSKENNISGEWING No 3013 VAN 18 DESEMBER 1990 VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting in die Bylae bekend, die name van persone wat die inligting bedoel in paragraaf (b) van Goewermentskennisgewing No 3013 van 18 Desember 1990 volledig verstrek het, vir sover sodanige inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing, ten opsigte van die verlating van die Unie of Republiek sonder 'n geldige paspoort of 'n permit of sonder magtiging by 'n ander plek as 'n toegangspoort, soos bedoel in paragraaf (a) daarvan, deur sodanige persone

NOTICE 1163 OF 1991

DEPARTMENT OF JUSTICE

252

ANNOUNCEMENT OF NAMES OF PERSONS WHO FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (b) OF GOVERNMENT NOTICE No 3013 OF 18 DECEMBER 1990

The Director-General Justice hereby makes known for general information in the Schedule, the names of persons who furnished in full the information referred to in paragraph (b) of Government Notice No 3013 of 18 December 1990, in so far as such information relates to the granting of indemnity in accordance with the said Government Notice, in respect of the departure from the Union or Republic without a valid passport or a permit or without authority at a place other than a port, as referred to in paragraph (a) thereof, by such persons

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Buthelezi	Mbongeseni	1970–05–23
Cele	Maxwell	1973–01–17
Dladla	Irvin	1970–03–21
Govuza	Mzwandile Eric	1954–12–15
Gumbi	Mzwandile	1973–08–22

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Kweta	Mongesi Michael	1969–03–14
Legari	Michael	1963–11–25
Mahlakoane	Nniki Ratson	1960–03–03
Mbele	Soka	1969–09–16
Metsing	Ezekiel Morethebe R	1959
Mhlongo	Clive Bhekizitha	1970–03–20
Mkatshwa	David	1955–05–15
Mkhantshwa	Johannes Elias	1971–09–03
Moetane	Betty	1959–09–14
Mokgatla	Andrew Leshupo	1963–10–22
Motsepe	Munnik	1957–03–14
Mpulanyana	Thamsanqa Aubrey	1967–06–10
Mthembu	Sicelo	1970–06–04
Ngxata	Stephans Bernard	1967–03–21
Nkosi	Jeffrey	1973–02–12
Nkosi	Thandi Avotia	1969–08–23
Nkota	Phaphama	1971–05–12
Ntuli	Abednigo	1971–08–08
Phoku	Vusi Moses	1972–12–27
Radebe	Arthur	1971–09–09
Serete	Baskanye	1963–10–22
Shezi	Ntando	1973–09–09
Tsoari	Thomas	1971–01–30
Vusani	Mcebisi Donald	1970–01–17
Zondani	Zola Lennox	1975–02–06

(6 Desember 1991)/(6 December 1991)

KENNISGEWING 1164 VAN 1991

DEPARTEMENT VAN JUSTISIE

BEKENDMAKING VAN NAME VAN PERSONE WAT VOLDOEN AAN PARAGRAAF (a) VAN GOEWERMENTSKENNISGEWING No. 501 VAN 6 MAART 1991 EN DIE INLIGTING BEDOEL IN PARAGRAAF (d) VAN GENOEMDE GOEWERMENTSKENNISGEWING VERSTREK HET

Die Direkteur-generaal Justisie maak hierby vir algemene inligting, in die Bylae hiervan, bekend die name van persone—

(a) wat lede van die African National Congress of Umkhonto we Sizwe is, of wat, in die geval van persone wat nie sodanige lede is nie, die beginsels van vreedsame oplossings en ontwikkeling ooreenkomstig paragraaf (a) van Goewermentskennisgewing No 501 van 6 Maart 1991 onderskryf het; en

(b) wat die inligting bedoel in paragraaf (d) van genoemde Goewermentskennisgewing volledig verstrek het,

vir sover sodanige onderskrywing en inligting betrekking het op die verlening van vrywaring ooreenkomstig genoemde Goewermentskennisgewing ten opsigte van die ondergaan van opleiding in stryd met die bepalings van artikel 2 (1) (b) van die Wet op Terrorisme, 1967 (Wet No 83 van 1967), of artikel 54 (1) (ii), saamgelees met artikel 54 (7), van die Wet op Binnelandse Veiligheid, 1982 (Wet No. 74 van 1982), na gelang van die geval

NOTICE 1164 OF 1991

DEPARTMENT OF JUSTICE

ANNOUNCEMENT OF NAMES OF PERSONS WHO HAVE COMPLIED WITH PARAGRAPH (a) OF GOVERNMENT NOTICE No. 501 OF 6 MARCH 1991 AND WHO HAVE FURNISHED THE INFORMATION REFERRED TO IN PARAGRAPH (d) OF THE SAID GOVERNMENT NOTICE

The Director-General Justice hereby makes known for general information, in the Schedule hereto, the names of persons—

(a) who are members of the African National Congress or Umkhonto we Sizwe, or who, in the case of persons who are not such members, in terms of paragraph (a) of Government Notice No. 501 of 6 March 1991 subscribed to the principles of peaceful solutions and development, and solutions and development, and

(b) who have furnished the information referred to in paragraph (d) of the said Government Notice in full,

in so far as such subscription and information relate to the granting of indemnity in terms of the said Government Notice in respect of the undergoing of training in contravention of the provisions of section 2 (1) (b) of the Terrorism Act, 1967 (Act No 83 of 1967), or section 54 (1) (ii), read with section 54 (7), of the Internal Security Act, 1982 (Act No. 74 of 1982), as the case may be

BYLAE • SCHEDULE

Van Surname	Volle voorname Full christian names	Geboortedatum Date of birth
Dlomo	Albert	—
Guma	Aaron	1942–01–10
Hlatshwayo	David Jabulani	1970–03–08
Jwili	Alfred Zanele	1963–07–23
Kebotlhale	Christopher Tebogo	1967–11–14
Lesuwye	Daniel Sello	1969–06–06
Maja	Orphaniel Oupa	1958–01–23
Malindisa	Abednego Fana	1942–02–24
Mamabolo	Jerry Nyamane	1955–08–13
Maphumulo	Bonga Edison	1953–07–06
Maseko	Edgar	1954–12–12
Mathambo	Christopher Themba	1950–02–27
Mntambo	Leonard	1968–06–05
Modiboa	Winston Tokelo	1964–09–21
Moikangoa	Naniki Nthabiseng	1961–09–10
Mokebe	Johannes Matsobane	1937–02–27
Mokgoro	Tuewo Reward	1957–07–09
Moloi	Sam Tshakolo	1970–12–21
Moloto	Narius	1959–11–23
Motaung	Aaron N Edwin	1958–10–06
Mothupi	Ezekiel BoyBoy	1932–03–30
Mthethwa	George Nathaniel	1966–06–23
Myeza	Zwelisha Maxwell	1966–08–13
Nkabinde	Abel Norman	1965–01–18
Nkabinde	Nelson Muzikaufani	1955–11–26
Nkosi	Nicholas Bafikile	1937–08–14
Nkula	Keke	1928–09–19
Nzube	Andile	1958–05–03
Phetise	Isaiah Thabiso	1969–02–19
Qamata	Wandile Arthur	1967–05–06
Ramfolo	Donald Anthony Mayise	1960–12–06
Sekete	Josias Siyabonga	1958–08–27
Senokwane	Michael Modisagarekwe	1955–08–16
Silinga	Mlindo	1964–01–01
Skhosana	Nicholas Lucky	1967–09–05
Thipe	Nicodemus Kakadi	1957–09–13
Vundla	Merry Mhlangabezi	1943–12–25
Zwane	Steven Linda	1950–10–17

(6 Desember 1991)/(6 December 1991)

Marital rape looked upon as a crime

SOUTH African courts could be affected by a landmark judgment in the Ciskei Supreme Court which overturned the rule that a husband could not be convicted of raping his wife, according to legal experts.

Welcoming the judgment, Dr Kate O' Regan of the University of Cape Town's law faculty said the marital rape exemption in South Africa could now become a "dead letter"

She said the whole of common law underpinning the marital rape exemption had been "swept away" by last week's judgment by Mr Justice William Heath

Although SA's Criminal Procedure Act of 1989 confirms the exemption, simply stating rape within a marriage to be an "aggravating factor" in an assault case, Dr O' Regan said the statute was not without doubt

The statute still stood, she said, but it appeared the Ciskei judgment could affect South African courts

Criminal law expert Mr Clive Plasket of the Legal Resources Centre (LRC) in Grahamstown also welcomed the judgment, saying he hoped it would be followed in SA courts.

"Mr Justice Heath's judgment shows that the courts can, in the absence of legislative reform, intervene decisively to protect these victims if they want to"

He said "The 'rule' that a husband cannot be convicted for raping his wife only has to be stated for its repugnance to be demonstrated Despite this, however, it has been assumed to be part of South African law."

Plasket said the LRC hoped Heath's strong rejection of the contention that a husband enjoys immunity from prosecution for the rape of his wife would play a role in "putting the myth to rest" in other jurisdictions, and bring South African law into line with the law of other countries

In 1989 the South African Parliament rejected the Law Commission's recommendation that marital rape be criminalised

Plasket said Parliament chose to ignore the interests of the victims of marital rape "for largely unconvincing reasons"

The national director of Lawyers for Human Rights, Mr Brian Currin, said his organisation regarded the Ciskei judgment as "a major step forward in the long and hard battle for an end to legitimated violence against women"

He said LHR hoped the precedent set by the judgment would be noted by those entrusted with legal decisions, and by husbands who believed marriage was akin to ownership and control

In his judgment, Heath said "The fiction of consent and irrevocable consent by a wife to intercourse with her husband has no foundation in law . the marital obligation does not entitle the husband to take the law into his own hands by having intercourse with his wife against her will"

A volunteer worker for Rape Crisis in Cape Town, Ms Karen Buckingham, said they welcomed the judgment and demanded South African legislators unequivocally recognise marital rape as a crime

She said Rape Crisis also called on judges to challenge the conservatism of the Criminal Procedure Act

"Our statistics show about 60 percent of battered women have experienced marital rape However considering the prevalence of rape in our society, it would be foolish to consider rape within marriage is confined to battering relationships," said Buckingham

O' Regan said there was a fear that women would "cry rape" when there was no rape, but research overseas had shown this to be a false premise - *elnews*

Crucial task for assertive, yet discreet, judge

STAR 6/12/91

Political Reporter ESMARÉ VAN DER MERWE manages to persuade publicity-shy Mr Justice Schabort, one of the two judges to chair the multiparty negotiations, to talk about himself

252

A TALL, reserved and distinguished grey-haired man was elevated to international media status last week when he was chosen as one of two Supreme Court judges to chair the historic preparatory meeting for the multiparty talks

Nobody could have been more surprised than the man himself, Mr Justice Schabort

Together with Mr Justice Mahomed, he performed the duty so well that they have been asked to fulfil the crucial task again as joint chairmen of the December 20/21 Convention for a Democratic South Africa

At his elegant Emmarentia, Johannesburg, home, Mr Justice Schabort (55) refuses to be drawn on the honour, except to say it came "completely out of the blue"

It remains the politicians' secret as to why these two judges, among all others, were requested to step down temporarily from the Johannesburg Bench for this distinctly different role

"There is an ambiguity to the assignment We have been thrust into the political arena where we do not belong Yet, the value of our contribution probably lies precisely in the fact that we are not politicians"

To oversee the process of negotiations between political rivals and the many enigmatic personalities , representing about 20 political groupings is a daunting task Tempers will flare, walk-outs and deadlocks are likely to occur

Judges are perhaps best equipped for the job And this judge displays all the qualities required

Petrus Johannes Schabort, known to family and friends as Piet, is friendly, easy-going and very down to earth Clearly a family man

The judge — he regards his role in the negotiations process as falling strictly in the line of duty as serving the country and its peoples — is unassuming, correct and seemingly unexcitable

He is self-assertive — the "political past, present and future" is not to be discussed during this rare interview, he emphasises — yet discreet to the point of refusing to express an opinion on most topics In short, the very epitome of a judge

Born in the Free State, he grew up on the farm Silverbank in the Standerton district.

A firm believer in family tradition and staying close to one's roots, Mr Justice Schabort and his wife Helena have sent all five of their children to boarding school in Heidelberg, where the second-youngest has just completed matric at the Hoër Volkskool

Silverbank has remained in the family, and "with the left hand" the judge farms with merino sheep and commercial cattle

A BA LLB graduate from the University of Stellenbosch, he started his legal career in Johannesburg in 1960 He was called to the Bar in 1963 and became a senior counsel in 1979 In 1984 he was appointed to the Transvaal Provincial Division of the Supreme Court

If the grandfather of two could choose again, it would undoubtedly be law the second time round he says

"The law secures the incidence of justice in human affairs the situations are infinite and affect all spheres of activity Today it relates to a collapsed bridge, tomorrow it concerns the functioning of the kidney Far too often these days, however, it is a question of who's dunnit in a murder case"

Although law is an all-consuming profession he has various other interests

Music and books are a delight He does not have favourite authors only favourite topics

Recent reading included a social study of Rome in the era of philosopher Cicero, a text-critical evaluation of the New Testament, an anthropological study called "Mankind in the Making" and a history of the Stellenbosch Moederkerk

Hopefully, he says, this year's edition of the "The World of Andy Capp" will be in the bookstores soon

He is a keen traveller with a soft spot for Scandinavian countries

Over the years he has made an in-depth study of the Schabort family, which has been in South Africa for 10 generations

Then the inevitable question is he related to Professor Johan Schabort, the leader of the Blanke Bevrydingsbeweging, the only ultra right-wing organisation to have been banned in recent years?

Yes, they are second cousins on their fathers' side

As to this relative's politics, the judge maintains a firm silence

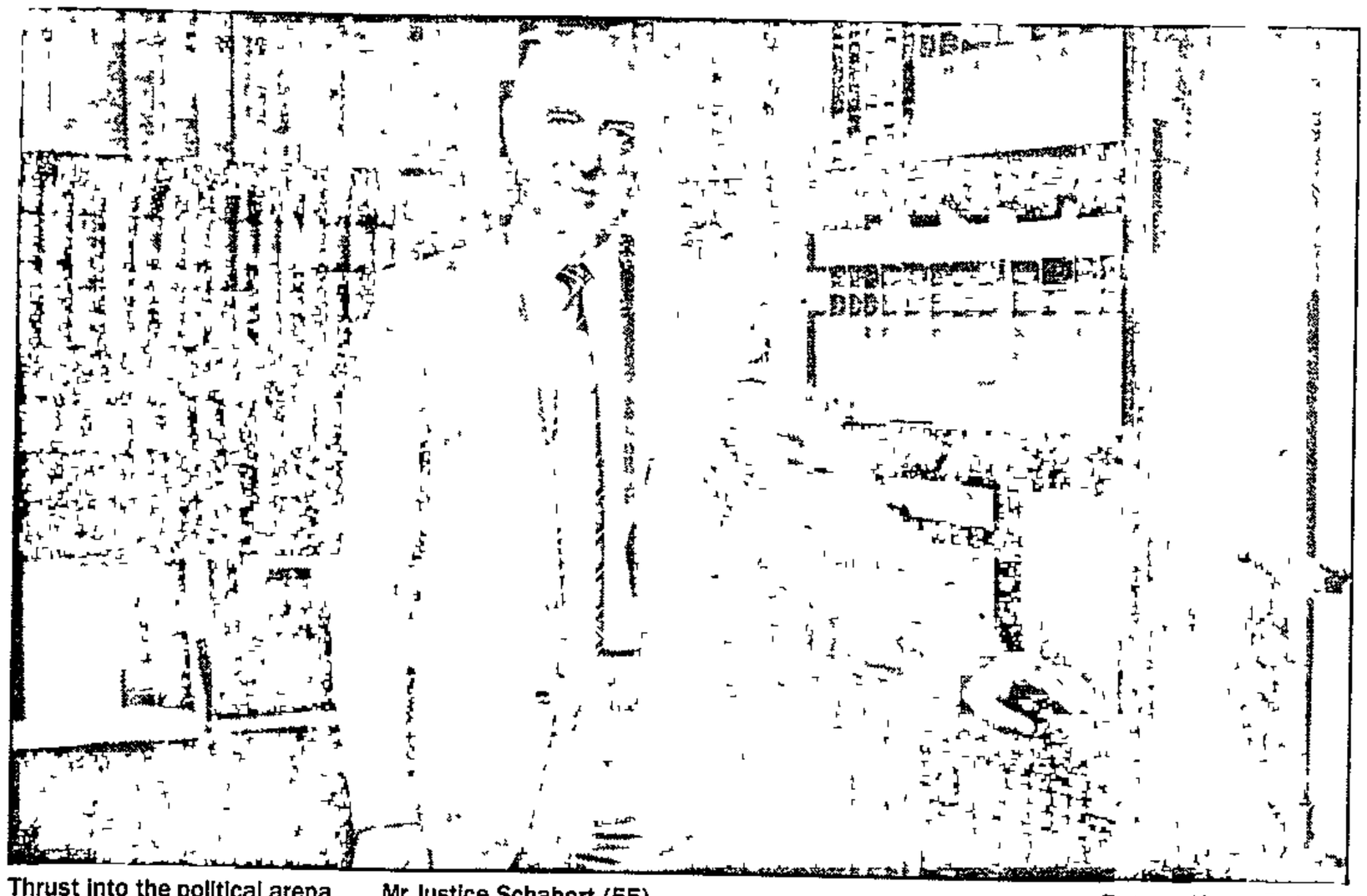
Back to avocations Throughout his career, he has tried to stay fit "in a disciplined way" Sport provides "a wonderful window on life", he says

He was part of the South Africa team at the 1982 international gymnastradas in Berlin (1975) and Zurich (1982)

In Zurich, with South Africa listed as 'Afrique du Sud", it was the judge's privilege as flag bearer of the South African team to lead 20 000 gymnasts into the stadium at the opening and closing ceremonies

The proud moment has been captured in a huge framed photograph in the judge's study

Obviously this leads to questions on his feelings on the current South African emblem row But once again he has anticipated the question, and says 'Naturally I cannot comment on these symbols' □



Thrust into the political arena **Mr Justice Schabort (55)** Picture Karen Fletcher

Quiet death of the Walkman-bomb case

W/Mail 6/12 - 12/12/91

252

One of the cases referred to Major-General Ronnie van der Westhuizen was that of human-rights lawyer Bheki Mlangeni — killed by a parcel bomb early this year. Last week the case was closed without the perpetrators being identified. **FERIAL HAFFAJEE** spoke to his widow

"I NEARLY fainted when the presenter said that the docket into his death had been closed," says the softly spoken young woman

In the deathly quiet boardroom at Ipelegeng Centre in Soweto, she pauses before adding "I could not believe it . I was shocked".

The willowy, elegantly dressed young woman is Seipati Mlangeni She is the widow of Bheki Mlangeni, the young human-rights lawyer who was killed when a booby-trapped Walkman player exploded in his ear in February this year.

Last week the attorney-general of the Witwatersrand announced there would be no prosecution arising from police investigations into his death and the docket was quietly closed

Nobody bothered to inform Mlangeni — she heard it on the early news on TV2 last Monday night. "They did not even tell my attorney," she says disbelievingly

But this indiscretion was only the climax to an investigation which she alleges was shoddy from the beginning

Mlangeni was killed in February by a bomb intended for Dirk Coetzee — the policeman who blew the whistle on the Civil Co-operation Bureau hit-squads — and whichwas addressed to him But the deathly package never reached its destination: by some quirk of fate, it landed in Mlangeni's hands because he was named as the sender on the little brown paper-wrapped packet.

A stranger phoned him at the offices of Cheadle, Thompson and Haysom — the firm of attorneys he worked at — and told him the parcel was at the post office He fetched the parcel, took it home and tried to play the cassette. He never lived to hear it

Soon after his death, the police came round to investigate, says his widow. They asked many questions and demanded the clothes he was wearing when he died "We did not give them to the police," she says. "Traditionally they were ours and he was wearing the trousers we got married in." She says he was buried in his wedding suit after she had the trousers dry-cleaned.

By May this year, when she had heard nothing about the investigation into her husband's death, she went to Protea police station to find out what was happening

"They told me that they were leaving no stone unturned in their investigations They promised to keep us informed," she says angrily.

But the police never did and neither did the attorney-general. The next she heard of the investigation was on SABC news last week, and the news

Seipati Mlangeni

Photo: GUY ADAMS

was cold comfort because all it told her was that the docket into her husband's death had been closed

She believes the docket was closed because "the police were closely involved .. they know who did this. The people who did this were professionals

"I will not despair till the perpetrators are prosecuted because Bheki fought for human rights All that will make Bheki rest in peace is an independent investigation into his death"

She and Bheki met in 1984 and were married in December last year, just two months before he was killed They have a five-year-old son called Mandla. Mlangeni says she still cannot bring herself to answer her little boy's queries about where his daddy is and both she and Mandla go for counselling to help them deal with his death

Determined to get on with her life, Mlangeni is planning to go to university next year to study education Mandla's education is also planned for by an educational trust opened for him by the firm of attorneys at which his father worked

David Klatzow, a forensic expert hired by Cheadle, Thompson and Haysom to investigate Bheki Mlangeni's death, refused to sign the SAP forensic report into Mlangeni's death Like the widow, he charged in media reports that the police had been "pathetic and unprofessional" during the investigation.

Klatzow also said that the police were themselves suspects, that the bomb had been disturbed before he could examine it and that he had been denied access to "police personnel and property" integral to his investigation.

A representative of the Justice Ministry said that an inquest into Mlangeni's death would definitely be instituted but that a date could not be specified

In response to queries about why the docket into Mlangeni's death had been closed, the attorney-general's office said. "Notwithstanding an exhaustive investigation, which involved various bodies including the Council for Scientific and Industrial Research, no evidence could be found to identify the perpetrators

"In the event, the attorney-general, Witwatersrand local division advocate Von Lieres, has no option but to refuse to prosecute."

(252)

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06 JAN 1992

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Vol. 318 PRETORIA, 6 DESEMBER / DECEMBER 1991 No. 13678

GOEWERMENTSKENNISGEWINGS

DEPARTEMENT VAN JUSTISIE

No. 3016 **6 Desember 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan Mzimkulu Gwentshe, gebore 3 Maart 1949, ten opsigte van sy versuim gedurende 1976 om aan kennisgewings wat ingevolge artikels 9 (1), 10 (1) (a) en 10*quat*(1) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No 44 van 1950), aan hom oorhandig is, te voldoen

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident
Op las van die Staatspresident-in-Kabinet

H. J KRIEL,
Minister van die Kabinet

No. 3017 **6 Desember 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring

GOVERNMENT NOTICES

DEPARTMENT OF JUSTICE

No. 3016 **6 December 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to Mzimkulu Gwentshe, born 3 March 1949, in respect of his failure during 1976 to comply with notices delivered to him in terms of sections 9 (1), 10 (1) (a) and 10*quat*(1) of the Suppression of Communism Act, 1950 (Act No 44 of 1950)

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President
By Order of the State President-in-Cabinet

H. J. KRIEL,
Minister of the Cabinet

No. 3017 **6 December 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in sec-

bedoel in artikel 2 (2) van genoemde Wet aan Paulos Shezi, gebore 23 Desember 1976, ten opsigte van die besit van 'n petrolbom op 17 Augustus 1990, in stryd met die bepalings van artikel 28 (1) van die Wet op Ontplofbare stowwe, 1956 (Wet No 26 van 1956)

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident

Op las van die Staatspresident-in-Kabinet

H. J. KRIEL,
Minister van die Kabinet

No. 3018 **6 Desember 1991**

KENNISGEWING VAN DIE STAATSPRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KENNISGEWING VAN VRYWARING KRAGTENS DIE WET OP VRYWARING, 1990 (WET No 35 VAN 1990)

Kragtens die bevoegdheid my verleen by artikel 2 (1) van die Wet op Vrywaring, 1990 (Wet No 35 van 1990), verleen ek hierby onvoorwaardelik die vrywaring bedoel in artikel 2 (2) van genoemde Wet aan—

Motsumi Andrew Moraladi, gebore 24 April 1974, en Moreothata Daniel Seleke, gebore 2 Junie 1973,

ten opsigte van die gebeure wat op 12 Julie 1990 te Christiana plaasgevind het en waarop 'n aanklag van roof in Saak No 35/91 in die Streekhof te Wolmaransstad gebaseer is

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Sestiende dag van Oktober Eenduisend Negehonderd Een-en-negentig

F. W. DE KLERK,
Staatspresident

Op las van die Staatspresident-in-Kabinet

H. J. KRIEL,
Minister van die Kabinet

tion 2 (2) of the said Act to Paulos Shezi, born 23 December 1976, in respect of the possession of a petrol bomb on 17 August 1990, in contravention of section 28 (1) of the Explosives Act, 1956 (Act No 26 of 1956)

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet

H. J. KRIEL,
Minister of the Cabinet

No. 3018 **6 December 1991**

NOTICE BY THE STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE OF INDEMNITY IN TERMS OF THE INDEMNITY ACT, 1990 (ACT No 35 OF 1990)

Under the powers vested in me by section 2 (1) of the Indemnity Act, 1990 (Act No 35 of 1990), I hereby unconditionally grant the indemnity referred to in section 2 (2) of the said Act to—

Motsumi Andrew Moraladi, born 24 April 1974, and Moreothata Daniel Seleke, born 2 June 1973,

in respect of the events which occurred on 12 July 1990 at Christiana and upon which a charge of robbery in Case No 35/91 in the Regional Court at Wolmaransstad is based

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixteenth day of October, One thousand Nine hundred and Ninety-one

F. W. DE KLERK,
State President

By Order of the State President-in-Cabinet

H. J. KRIEL,
Minister of the Cabinet

INHOUD

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Prosecute the company, says inquest court

w\m ad 6|12-12|12|91

(252)

By DREW FORREST

IN A highly unusual finding, an inquest magistrate has recommended the prosecution of a company after the work-related death of an employee.

Lawyer Barbara Adair, who represented the worker's family, said she knew of no precedent for the finding It was of particular significance for the chemical industry, she said, where workers were at much higher risk than in most other sectors

The finding, in the Springs Magistrate's Court this month, was the climax to a four-year battle by the family and the Chemical Workers' Industrial Union to have the inquest re-opened An informal inquest was held without the family being notified

It followed the death on May 18 1987 of Eric Nhlapo (21) after exposure to deadly organophosphate poison at Agroserve on the East Rand, a fertiliser manufacturer According to Adair, Agroserve has been renamed Farm Machinery, now a large Durban-based firm

Ruling that the safety equipment at Agroserve had been inadequate and rarely checked, magistrate IM Potgieter found Nhlapo's death to have been the result of negligence and recommended the prosecution of the company and its manager, W Pienaar If the Attorney-General decides to prosecute, they could face culpable homicide charges

The magistrate also took a startling tilt at the Manpower Department's safety inspectorate, saying its conduct in respect of Agroserve indicated a lack of discipline and supervision and was cause for extreme concern.

Sithole needs wisdom of Solomon

w/Mail 6/12 - 12/12/91 252

By WALLY MBHELE

PRETORIA advocate Solomon Sithole is facing the most difficult task of his career to probe the incidents of violence and alleged intimidation that took place in Thokoza township this year

Perhaps what makes the task even more testing is that Sithole views it as a the only meaningful contribution he can make towards finding peace in the country.

Sithole was seconded to head the team to probe the violence in Thokoza followed the appointment of Mr Justice RJ Goldstone to head the Commission of Inquiry into Intimidation and Public Violence established in terms of the National Peace Accord.

"It came as a surprise," he says of his appointment, "but I took it as a challenge I feel that I have a duty on my shoulders. the only meaningful contribution I can make towards a peace effort in the country"

Despite the challenges involved in seeking out the truth about violence, "Solly", as he is popularly known, is a township resident and is familiar with many manifestations of township violence

For him, "violence in the townships is a phenomenon that affects everybody, some of us are sick and tired of it

"I think there are great challenges lying ahead in seeking the truth about the causes of violence."

He presently lives in Atteridgeville — one of the Pretoria townships to be hit by violence focused on black local authorities last year.

Sithole was born on June 14 1941 in Lady Selborne, Pretoria Described as a talented debater at school, he went on to study for a BA in Polical Science, Philosophy and Economics at the University of South Africa.

His strong interest in human rights prompted Sithole to further his studies in the field of law at the University of the North, where he finished an LIB degree in 1973

He lectured for 15 years at the University of the North before joining the Pretoria bar in 1988 He serves on the national council of Lawyers for Human Rights and is an official in the organisation's Pretoria branch

"I have a special interest in human rights law, specifically procedural human rights, like the right to a free trial," says Sithole

"These are changing times," he says, referring to black advancement "I fully realise that people of my colour have never had an occasion to be exposed to this kind of a job

"For that reason, this places great challenges and responsibilities on me because the successes or failures of this project will always be seen in terms of those who are involved in it."

Sithole says South African blacks must follow the success story of their American counterparts

"As blacks we must participate in any project that can lead to empowerment, that empowers us as people"

Famous United States Federal Supreme Court judge Mr Justice Thurgood Marshall and Mr Justice Clarence Thomas — who recently hit international headlines on allegations of sexual harassment — were quoted as examples to underline his point.

"Blacks need empowerment in all fields of life This will make us contribute a meaningful role in a future democratic government."

HUNT LASCARIS 18WA 11115

JUSTICE MAHOMED

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W/Mond 6/12 - 12/12/91

THERE are countless stories about Mr Justice Ismail Mahomed Some may even be true

Does he "terrorise his juniors", as lawyers put it? Does he lecture junior counsel and instructing attorneys and reduce them to tears?

Possibly Such a celebrated workaholic is unlikely to suffer in silence what he perceives as slackness

Has he recently sent an attorney away with a sheaf of foreclosure notices with instructions to "try to do something for these people"?

Hard to track down the sources, but maybe As a prominent advocate puts it, "my guess is that it's not that unusual, but simply because it's Ismail Mahomed who is doing it, it's attracting some attention"

Was he, as a young attorney, forced to use the desks of white colleagues when they were in court and the public library when they were consulting because as an Indian he wasn't allowed to rent chambers in a "white" Group Area? Definitely

Born in Pretoria in 1931, Mahomed was called to the Bar in 1957 and, in 1974, became South Africa's first black senior counsel

By August this year, when he was elevated to the Bench as South Africa's first black judge, he was already president of the Lesotho Appeal Court, a member of Swaziland's Appeal Court and a judge on the Namibian Supreme Court

As legal adviser to the South West African People's Organisation (Swapo), he is credited with drafting the Namibian constitution

In a recent judgment there, he defined a constitution as "a mirror reflecting the national soul, the identification of the ideals and aspirations of the nation, the articulation of the values bonding its people and disciplining its government"

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6/12-12/12/91.

w/mail

SIGNATURES INVITED

Declaration on Human Rights Day

December 10th has come to symbolise the affirmation of our common humanity. Forty-three years ago when the United Nations Declaration of Human Rights was adopted South Africa abstained. Today, as we stand on the threshold of consitutional negotiations, we look forward to the creation of a constitution which will enshrine the values reflected in the UN Declaration.

In the long hard fight for democracy in our country, we have been inspired by the universal values reflected in this Declaration and we therefore dedicate this Human Rights Day to all those involved in this struggle. Without democracy there can be no human rights, and without the full protection of human rights democracy becomes meaningless.

We therefore look forward to a Constitution with a Bill of Rights beyond the reach of any government.

Many political prisoners who fought to end the tyranny of Apartheid, will spend Human Rights Day in prison and on Death Row. We call on the Government not to place any further obstacles, technical or otherwise, in the way of their immediate and unconditional release and the safe return of all exiles. In this declaration, we rededicate ourselves to ensuring that all those who fought for our freedom are given their freedom, so that they too can participate in the process towards full democracy.

NR MANDELA
President
AFRICAN NATIONAL CONGRESS

Organisations and individuals are invited to join Mr Nelson Mandela in signing this declaration for publication early in the New Year.

Ad placed by the Co-Ordinating Committee for the release of Political Prisoners. At present comprising:

Lawyers for Human Rights	African National Congress	World Conference on Religions For Peace
National Association of Democratic Lawyers	Civic Assoc. Southern Transvaal	COSATU
Five Freedoms Forum	Market Theatre	Institute for Contextual Theology
Young Christian Students	Muslim Judicial Council	Mafikeng Anti-Repression Forum
Jews for Social Justice		
Call of Islam		

To add your signature contact: Aubrey Lekwane at Lawyers for Human Rights
Tel: (011)331-3465 Fax (011)331-6860

W/M ail 6/12 - 12/12/91. (252)

He is best known for civil-rights work and his appearance for the defence in political trials, notably the Pietermaritzburg Treason Trial in 1984-5 involving the United Democratic Front leadership, at which he destroyed the testimony and credibility of the government's "expert witness" so thoroughly that charges were dropped.

Colleagues believe the government has tried for years to persuade him to accept judicial office. If that's true, one can add to his other gifts — wit, eloquence, intellectual prowess — an impeccable sense of timing.

JUSTICE VAN DER WALT

MR Justice PJ van der Walt has presided over three major treason trials in the past decade, and all have been controversial

When he sentenced Umkhonto weSizwe fighter Marion Sparg to 25 years' imprisonment in 1986, he took her race into account A black South African "espousing the cause of revolution" could be understood, although not excused — but the fact that Sparg is white was an "aggravating feature".

Three years later, he acquitted trade unionist Moses Mayekiso and four other Alexandra Action Committee members charged with forming people's courts, running consumer and rent boycotts, and campaigning against town councils People might use intemperate language in pursuit of political goals but most of the time, he said, they were "just striving for a better South Africa".

In 1983 he granted bail to Methodist minister Cedric Mason, who promptly fled the country, leaving the judge a personal letter of apology.

"I certainly hope it won't become controversial," Judge Van der Walt was quoted as saying about his appointment as ombudsman, into which his previous post, as advocate-general, was seamlessly incorporated

Born in Cape Town 61 years ago, he was admitted to the Bar in the mid-1950s, elevated to the Bench two decades later and appointed advocate-general when the post was created after the Info scandal

Lawyers talk about his "courteousness", "independence", "fearlessness", "boldness". They don't talk about his politics. He's not among the ranks of judges known for their concern for human rights; the "liberation movements" haven't much to say about him, but neither do conservatives.

As advocate-general, he's hit out at everyone from the National Road Safety Council (for letting its PR agencies get involved in management decisions) to a range of politicians, eventually calling for a code of ethics for cabinet ministers.

JUSTICE GOLDSTONE

IT can be argued that successful challenges to the pillars of apartheid began in 1981, when Mr Justice Richard Goldstone, then a supreme court judge, ruled that a person convicted of contravening the Group Areas Act could not be evicted unless alternative accommodation was available

He hadn't been a judge for long when the eviction of Gladys Govender reached his court, and when one considers his colleagues' descriptions — along with "objective", "very highly regarded" and "fair", many use the word "careful" — the number of precedents his rulings have set may come as a surprise.

In 1986, he ruled that possession of a poster of Winnie Mandela and a cassette recording made at a funeral was not sufficient to justify the detention of a sound engineer in terms of the State of Emergency

A year later, he ruled that refusing to work overtime did not amount to a strike.

In 1988, when Baragwanath Hospital wouldn't confirm the appointment of a doctor who refused to apologise for signing a letter complaining about conditions, he cited the doctrine of legitimate expectation and ordered her reinstated

He's made a point of visiting detainees and prisoners; during the Emergency, he was one of the only judges who did In an interview last year, he said the visits "serve to reassure not only the prisoners but the administration that someone is taking an interest".

He was born in Boksburg 53 years ago, admitted to the Bar in 1963, took silk in 1976 and was appointed an acting supreme court judge in 1978, an appointment made permanent in 1980.

He has been active in the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) for several years When he sentenced a man guilty of culpable homicide to work under Nicro supervision seven years ago, it was the first community-service sentence in the country.

He's also involved in Jewish affairs — says one young lawyer, "You name it, he's been the chairman of it" Among those celebrating his elevation to the Appellate Division in late 1989 were the Bloemfontein Jewish community, because now he would have to spend time there

Nine policemen were charged with murder after the findings of his commission of inquiry into the March 26 1990 shootings in Sebokeng, but he was tough on everyone involved; he found the police had no justification for using live ammunition on demonstrators, but that organisers of the march had not planned well, making possible a tragic chain of misunderstandings

His appointment in October to head the Standing Commission of Inquiry into Violence and Intimidation has been generally hailed. Says Lawyers for Human Rights chairman Jules Browde "No better person could have been found to do it It will be done swiftly, fairly and with strength, which is what we need at the moment."

Justice Schabort Justice Mahomed Justice Goldstone

Judges are rarely willing to comment on their work The profiles on these pages are based on details gleaned from the legal fraternity

JUSTICE SCHABORT

MR Justice PJ Schabort puzzles some observers. How is it, they ask, that a man whose career as a lawyer was spent defending the government, and usually the police, has — as a judge — built a reputation for acting sensitively?

Acting for the minister of police at the inquest into the death in detention of trade unionist Neil Aggett in 1982, he was criticised for refusing to produce documents which he said would prove his client's claim that Aggett killed himself because he betrayed colleagues In fact, he secured a ministerial certificate designating the documents privileged

Yet years later, when trying two whites accused of raping a young black woman, locking her in the boot of their car and setting the car on fire, he ordered that his judgment be translated simultaneously into an African language so that people in the packed gallery could understand it — "a sensitive and meritorious thing to do," says a senior advocate

The two were found guilty and sentenced to death.

"He's done nothing as a judge which would have attracted criticism," says one young attorney. "The fact that some people are always briefed by the state and others are generally briefed by the 'liberation forces' does not necessarily invalidate the appointment of such people to the positions they now hold."

Born in 1936 in Frankfort, in the Free State, Schabort was called to the Bar in January 1963, took silk in February 1979 and was appointed a supreme court judge five years later

"He's a man with a great sense of justice," says the attorney, "conservative but fair. Quite frankly, the decision to choose him as co-chairman of Codesa may not be as uninspired as some people think it is "

LHR launch education drive on human rights

ET 7/12/91 (252)

Political Correspondent

LAWYERS for Human Rights (LHR) will launch a national human rights education programme on December 10 — International Human Rights Day

The LHR programme plans to use "innovative teaching techniques" and a "visually attractive and user-friendly" manual to promote a human rights ethic and a democratic culture in South Africa

Among target groups for the LHR programme will be the police, Defence Force, prisons, the civil service, magistrates and schools

It will be launched locally on Tuesday

Veil of secrecy surrounds Alexandra Justice Centre

STAR 7/12/91.

(252)

ABBEY MAKOE

THE Alexandra Justice Centre is as busy as any official court in the country. The difference, however, is that "justice" here is meted out behind closed doors

Despite several attempts, the Saturday Star has been unable to penetrate the secrecy surrounding proceedings at the centre

All efforts for permission to attend hearings in the past three weeks have been fruitless because, in the words of registrar Ben Dhlomo, "there is no guarantee you will give us positive coverage".

About 50 cases are believed to be handled daily since the centre started operating in September.

When the Saturday Star visited the building this week there were a few mediators moving from one room to another Mr Dhlomo, meanwhile, was alone in his huge office.

Another office had pictures of ANC leaders and Umkhonto cadres adorning its walls

A group of about 20 people sat along the rows of neatly arranged chairs and waited until an unidentified "comrade" called them individually to his table, taking notes of various grievances

Interviews and the taking of pictures were not allowed

Iron door

Security, manned by a teenager glued to a video-monitoring machine, was tight

Visitors had to enter through an electronically controlled iron door

In his office, Mr Dhlomo slowly glanced through a newspaper while answering questions

"The reason why newsmen are not allowed to attend the proceedings is because of bad coverage of 'court' proceedings in the past to the police

However, sources close to the "court" have said cases such as car accidents and property disputes have been handled by the centre

In at least one instance, a man was fined R30 after being "summoned" to appear before the court after a minor traffic accident

Following a Saturday Star inquiry on whether the centre had the authority to do this, a Justice Ministry statement said the Alexandra centre enjoyed no legal status

"The Alexandra Community Court has no official status and the settlements reached by it cannot be enforced without resort to the ordinary courts It may also not impose any penalty," the statement said

"Proceedings at the Alexandra Community Court do not exclude the authorities from instituting a prosecution in the same matter or one of the parties instituting civil proceedings in the same matter"

Mr Dhlomo has attended a five-day course at the University of the Witwatersrand "specialising" in identification, jurisdiction and mediation

The five-day course had enhanced his experience in solving disputes, Mr Dhlomo once said

Asked how he and his "arbitrators" survived financially, Mr Dhlomo refused to comment.

The SAP directorate in Pretoria said it had never received any case from the Alexandra centre

A spokeman said there was no official contact with Mr Dhlomo or his staff since the centre enjoyed no legal status

"The executive meeting held to consider your application unanimously found your previous article about us was malicious and damaging You did not even care to write an apology when I pointed this to you in the past," Mr Dhlomo said

It proved impossible to get Mr Dhlomo to say exactly what kind of cases he and his staff were handling

In an interview with this paper in August, however, he said he would concentrate strictly on "petty disputes" — such as a "a quarrel over a washing line"

Criminal cases such as murder, rape or child abuse would be referred

Another police chief is probed

C/Press 8/12/91.

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By S'BU MNGADI

YET another Natal police chief is at the centre of a police murder probe

Mooi River station commander Lieutenant George Nichas was this week suspended from the force after he was implicated in an alleged murder and attempted murder

A statement released by the SAP public relations division in Pretoria said the lieutenant was implicated following the arrest of a number of murder suspects and following evidence heard during two inquests

Ironically, Mooi River magistrate JJ Augustyn this week found that local police were not criminally responsible for the death of Bruntville resident Sibusiso Madela on June 16, last year

Earlier in the week, Nichas told the inquest hearing that the police fired rubber bullets, shotguns and pistols at an unruly Bruntville crowd on the night in question, when police believed their lives to be in danger

Nichas's alleged involvement was already being investigated by the SAP's Special Investigations Unit at the time of the inquest hearing

The case docket would soon be forwarded to Natal Attorney-General Mike Imber, the police statement said

Nichas has recently been a subject of complaints by local residents, clerics and lawyers to the Ministries of Law and Order and Justice

Lawyers alleged in a memorandum to the two departments that he was involved in the fatal shooting of Madela This complaint resulted in last week's inquest

The police chief also allegedly made a biased comment during a meeting with senior ANC officials in June this year

When urged to take action against Bruntville hostel dwellers who were preparing to attack township residents, Nichas allegedly said he knew the Zulus very well and that one could not separate them until they were actually fighting

The hostel inmates subsequently attacked and killed 18 residents

Allegations have also been made by independent unrest monitors that Nichas has been observed drunk on duty

In a shock development in August this year, Constable Nomusa Majola claimed Nichas was behind the April assassination of Bruntville ANC chairman Derrick Majola and his wife, Mavis.

In an affidavit held by Lawyers for Human Rights in Maritzburg, Majola said shortly before Derrick was killed she was called into Nichas' office.

In the room were other policemen who accused her of being an informer and questioned her about Derrick during a five-hour interrogation

Nichas allegedly told her Derrick was going to be killed by Inkatha and warned if she continued visiting the ANC leader, Inkatha would kill her too Police took away her service revolver on the eve of Derrick's assassination

Meanwhile, two major cases involving senior Maritzburg policemen officers – who allegedly killed 12 people – have been postponed to early next year

Justice on wheels could be more than seasonal drive

STAR 9/12/91 (252)

Mobile courts may be adopted for a longer period than expected, depending on how well this unique new judicial back-up system succeeds. HELEN GRANGE reports.

THE THOUGHT of driving to Ladysmith from Johannesburg just to argue in court against a speeding fine acquired in the district two months earlier while travelling to Durban has undoubtedly driven thousands of motorists to pay their fines — even if they feel the penalty is outrageous

Having to take a day off work, pay for the petrol to get there and wait hours for a hearing — the outcome of which may not be favourable — simply makes justice too inconvenient for most motorists.

This holiday season, however, justice will be brought straight to the motorist's car door in the form of mobile courts, which will be set up along the four main routes (N1, N2, N3 and N4) for the purpose of hearing a motorist's defence at any hour of the day or night (except Sundays)

This project, a revolutionary concept in the judicial system, is due to begin in a few days and will last until the end of the school holidays

Judicial officers in almost every magisterial district have been called on to render overtime services, and an independent public defender will be available at at least one of the mobile-court sites

Motorists pulled over for traffic offences need not make use of this system, however They can still make use of the ordinary traffic offence procedure (paying the fine later or appearing in court later).

Traffic offences will probably form the bulk of the workload of mobile courts for the duration of the holidays — but their duties are to extend to other forms of crime as well, dealing primarily with unrest-related plea proceedings and bail applications.

The first three mobile courts — buses suitably furnished as courtrooms — will be seen in the unrest-hit townships of Vosloorus and Tokoza on the East Rand and in Port Shepstone in Natal within a few days These areas are in dire need of court facilities, and speedy adjudication at the mobile courts will help reduce the workload at local regional courts

Justice Minister Kobie Coetsee said last week there was a delay of up to six months for court appearances in connection with unrest offences in some regions

In Natal, where more judicial staff were appointed and advocates, attorneys, police and presiding officers cooperated to speed up court hearings, the delay had been reduced to a couple of weeks in some cases, he said

Mr Coetsee plans to monitor the mobile courts in operation to determine the extent that they address the current court backlog and how the public responds

"If they deliver the goods and the results are positive and practical — and depending on the funding — we may extend the project," he said

Association of Law Societies president Ed Southey, in welcoming the introduction of mobile courts, has cautioned against undue haste in disposing of matters in such courts

"I hope presiding officers will ensure that normal and proper court procedures are followed and that accused persons are afforded every opportunity to obtain legal advice and representation

"Because of the unusual nature of the proceedings, the accused should be reminded of his rights to legal representation," he said

Mobile courts, he added, were in the public interest, as circumstances in South Africa dictated that for certain kinds of conduct, a speedy adjudication process was necessary This related especially to bail applications, traffic offences and offences arising from unrest situations In the case of traffic cases, the new courts would be an important step forward in the fight against the unacceptably high accident rate

The project is costing "slightly over R1 million" and is a measure in line with the National Peace Accord ideal of promoting speedier adjudication

Mobile courts are not to be confused with the "special courts" visualised by the Peace Accord, which would be aimed at shortening criminal procedure and rules of evidence — a move which would necessitate a change in the law □

Cops sued for R3-m

Sowetan 9/12/91

252

THE Minister of Law and Order is facing claims of damages totalling about R3 million from 150 Mamelodi residents after losing a test court case

Mr Justice van Zyl on Friday awarded R105 158 to Mr Jeremiah Tlou, who was injured at a public meeting in Mamelodi last year Van Zyl found that police acted negligently in dispersing the meeting

Tlou (35) initially claimed damages from both the Minister of Law and Order and the Minister of Defence

Tlou submitted that both the police and members of the SADF had blocked the main gate,

By MONK NKOMO

which was the only entrance and exit, preventing people from leaving

The judge however ruled that the police, and not the SADF, were liable for negligence at the HM Pitje Stadium in Mamelodi on July 8 last year

He found that police "were grossly negligent" in firing a substantial quantity of tear smoke into

● To page 2

Cops sued for R3-m

From page 1

the crowd and said police must have foreseen the stampede that resulted

Nearly 300 people were injured after scaling the 4,5-metre-high wall

Tlou sustained a compound fracture and dislocation of his left ankle when he scaled the wall

The defendant denied that police blocked the main gate or fired tear smoke into the crowd Police claim the public meeting was unlawful and that the crowd was warned to disperse

Mr Allen Lephoko, a spokesman for attorneys representing Tlou, yesterday confirmed that they had now filed 150 similar lawsuits in the Pretoria Magistrate's Court.

"In the light of Friday's successful test case in the Pretoria Supreme Court, a strong possibility exists that we may soon be engaged in talks with State lawyers to discuss proposals for out-of-court settlements," Lephoko said

"If agreement is not reached, the 150 cases will proceed through the normal course," he said

I found body after body, inquiry told

STAR 10/12/91.

By Montshiwa Moroke

The head of security at the President Steyn gold mine yesterday told of finding body after body during the violence that broke out at the Welkom mine last month.

Michael Lyall Bennetto was giving evidence to the commission of inquiry into the violence at the mine which started on November 3 and left 84 people dead

The inquiry is being held in the auditorium of the Welkom traffic department and is chaired by Gert Steyn, a former president of the Port Elizabeth Regional Court

Mr Bennetto said that on November 3, at about 8 pm, mine security had been advised by Len Rauch, the No 4 Shaft hostel manager, that intimidation was taking place at the tunnel near the shaft

Later, Mr Bennetto and other officials had noticed a group of about 50 men clad in blankets, whom he assumed to be Basotho, carrying two people.

"This group was very aggressive and obviously well armed with sharpened sticks and assorted home-made weapons I did not know their motive and I assumed that the two persons had been injured It later transpired that these two were in fact dead Sotho workers"

He thought it necessary to call for reinforcements on the radio The police were also called

He and the other security officials saw a fire and realised that the National Union of Mineworkers (NUM) offices outside the hostel were burning

At about the same time they saw two groups of about 50 workers moving towards the main entrance to the hostel, where they converged. There they killed a certain James who was coming from the direction of the NUM offices

There was noise from within the hostel, where two groups could be seen

Mr Bennetto said "We managed to position our vehicles on the road running out of C Block, effectively forming a wedge between the cornered group of Xhosa workers and the Sotho workers who were milling around on the easterly side of the open terrain"

Attacks took place, but security officials managed to disperse the two groups with rubber bullets

"The persons to whom we spoke blamed it squarely on the NUM/Xhosa affiliates and said it had all started with the toyi-toying," said Mr Bennetto

The situation had been quiet from Tuesday until Friday

At about 10 pm on Friday there were reports that the two factions were regrouping Security personnel fired rubber bullets to keep the groups apart

"On my entrance, I noticed bodies lying on the basketball pitch A Sotho man came to me and said 'they have killed a lot of our people'

"When the reinforcements arrived, I went to B Block in a vehicle where we disembarked and we went through the B Block. We found a body in one corner of a room and another one on a veranda They had been savagely beaten and stabbed, plus their throats had been slit. Their heads were smashed beyond recognition by blunt objects

"I was also informed by some Sotho people that persons had been killed in their beds On inspection we found two dead bodies in their beds and another three had been killed in their rooms while dragging themselves out on to the veranda leaving a trail of blood, where they had died

"We continued to check each hostel block and at eack block we picked up two or three deceased persons, each killed in a similar manner," Mr Bennetto said

The hearing continues

R280 000 surprise for Mandela

Sowetan 10/12/91

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Sowetan Foreign Service

WASHINGTON - A wealthy oil industry heiress gave ANC president Mr Nelson Mandela a surprise R280 000 award at a human rights ceremony in Houston at the weekend, after he had delivered the keynote address to honour recipients of another award

Mandela had just completed his speech honouring the winners of the Carter-Menil Human Rights Prize on Saturday, which commemorates six Jesuit priests who were murdered by government forces in El Salvador in 1989, when Mrs Dominique de Menil ushered him back to the podium

She announced: "As always, when men and women commit themselves totally to an indisputably just cause, our hearts and souls respond with fervour and gratitude. To express this fervour and gratitude the Rothko Chapel is presenting you, Mr Mandela, a very exceptional award for truth and freedom of R280 000"

The Rothko Chapel is a non-denominational sanctuary set up by De Menil and her late husband, Mr John de Menil, to house a collection of 14 huge paintings by the American artist Mark Rothko.

The sanctuary is open to the public and it is understood that the award to Mandela came from the proceeds of donations made by visitors

De Menil, who was born in France, inherited an oil industry equipment corporation in Texas, and a fortune in oil holdings in the US and abroad, and she owns one of the world's largest collections of impressionist and abstract expressionist art. Since the death of her husband, she has devoted her life to the promotion of human rights around the world and to philanthropic projects in Central America and other regions

With former US president Mr Jimmy Carter, she set up the Carter-Menil Human Rights Prize.

Mandela appeared surprised by the award but was quickly ushered by De Menil into a huge marquee where 1 000 guests were waiting to meet him He was not available for comment on Sunday and was due to leave the US yesterday

Political comment in this issue by Aggrey Klaaste and Deon du Plessis Newsbills by Sydney Matlhaku Sub-editing and headlines by Ivan Fynn All of 61 Commando Road, Industria West, Johannesburg
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Rights programme launched

By MONK NKOMO

A NEW constitution and bill of rights would exist in a vacuum unless urgent steps were taken to promote knowledge of human rights in South Africa, Lawyers for Human Rights said yesterday

LHR executive director Mr Brian Currin, at the official opening of "Human Rights for All" at a Pretoria hotel, said a bill of rights would be of no significant value unless it was a reflection of a socio-legal-economic order to which the entire nation was committed

Currin said "The majority of South Africans have been brought up in a culture of rights deprivation, of oppression, exploitation and of brutalisation - the antithesis of a rights 'culture

"The State has treated rights with contempt, it has treated our courts with contempt, eroding their power increasing over the past 40 years

Currin said it was for that reason that LHR had initiated a Human Rights Education Project. "Our target groups will be the police, defence force, MK, prisons, civil service, school and the magistrate, especially on the platteland for that is where human right violations most often occur"

The project was to be launched yesterday at each of LHR's 14 regional offices, said project director Mr Cecil van Reit

STAR 11/12/91

Lawyers preach human rights

Pretoria Bureau (252)

Lawyers for Human Rights yesterday launched the "Human Rights Education Programme"

The programme is aimed at teaching and promoting a human rights ethic to groups active in disciplinary procedure and regulations in the country

The programme is under the directorship of Advocate Cecille van Riet, previously attached to the Centre for Human Rights Studies at the University of Pretoria Law Faculty as Street Law co-ordinator

The Human Rights Education programme material was developed along the same lines as the Street Law material — and the same teaching techniques will be used — for example, role plays, dramatisations, debates and group discussions

As director, Ms van Riet will supervise and liaise with trained LHR personnel in 14 regional offices countrywide.

Each of these regions will introduce human rights education to their constituencies today

"Our target groups will be the police, defence force, MK, prisons, civil service, schools and magistrates — especially on the "platteland" for that is where human rights violations most often occur," said LHR director Brian Currin

Ombudsman 'ideal for SA now'

STAR 11/12/91.

(252)

South Africa is in an ideal situation to have an ombudsman to investigate government abuses, according to Stephen Owen (right), ombudsman for British Columbia, Canada, and president of the International Ombudsman Institute.
MICHAEL SPARKS reports

AN OMBUDSMAN is highly relevant to a changing society, when it is changing from a high level of mistrust of government and its agencies to one of broader democracy, says Canadian ombudsman Stephen Owen.

"The dilemma of a government in transiton is that it often doesn't have any credibility at a time when it really needs it."

He pointed out that when a government that did not enjoy the trust of its population tried to investigate itself or any of its agencies, even if the investigation were thorough and successful, the public perception of an untrustworthy government would remain.

The quiet, unassuming nature of the man with a legal background changes to great pride and enthusiasm as he talks of the office to which he has dedicated the last six years of his life. His appointment expires in the northern hemisphere's summer of 1992 He has no plans to request the extension to his term which the Canadian province's constitution allows, saying it is a task that should not be associated with an individual and which regularly needs new life and fresh ideas

In South Africa as chairman of the first Amnesty International mission to include discussions with the Government on a range of issues, including the complicity of the police in violence around the country, he regards his role as ombudsman as a privileged one.

"It's an exciting and privileged mandate because you can assist individuals with their personal problems with an unresponsive government and also assist government to become more accountable to bureaucratic unfairness," he said

In emphasising the importance of the position, he said it was obvious why the role of ombudsman was important to the public, but spoke also of its benefits to government "The value to governments is that it improves their credibility, by identifying problems and helping to fix them"

He added that if there were no government misconduct, an ombudsman could assure the people of the legality of government actions far more successfully than the government could

Mr Owen spoke of a number of prerequisites for the office of ombudsman to be effective

"An ombudsman has to have clear statutory powers of investigation, including the power to subpoena documents and witnesses under oath, to hold public hearings and then to be able to report the findings publicly, independent of the agencies you're investigating," Mr Owen said.

The last point is an issue Mr Owen regards as fundamental to the position and one of its greatest strengths

"The recommendation power is integral to the role, since the office cannot operate except in a democracy, where government has to be responsive to public opinion," he said, adding "The recommendation power is the strength of the office If it could make orders and pass decrees, then the office itself would be undemocratic"

South Africa, by appointing Mr Justice P J van der Walt as Ombudsman last month, is joining a world trend towards having such an office His powers reflect fairly closely those set out by Mr Owen as being typical of the position □

'Toyi-toying group began mine killing'

By Montshiwa Moroke

A shaft manager at the President Steyn Gold Mine in Welkom, yesterday said that if agitated mineworkers had been aggressive towards him and his colleagues he would not have been around to testify about the violence which erupted at the mine last month

Lorenz Rauch was giving evidence at the commission of inquiry into the unprecedented factional violence at the mine which left 84 people dead and scores injured

The commission, sitting at the Welkom Traffic Department, is being chaired by former president of the Port Elizabeth Regional Court Gert Steyn

Mr Rauch said he had seen two mineworkers telling a number of other workers dressed in underground clothes on November 3, not to report for work. The two had ignored him when he approached them

"I took one of them ... by the arm and identified myself as the shaft manager I spoke in Fanagalo but he replied in another language I told him that he should speak Fanagalo and he said he was talking to his 'broers'," Mr Rauch said

Later, he said, "a group of Sothos dressed in blankets in a very agitated and aggressive mood came past us They carried arms They did not show any aggression towards any mine management members"

"I am glad there was no aggression towards management, otherwise I would not have been here today," Mr Rauch said

He said under cross-examination by Advocate Ishmael Semenya, counsel for the National Union of Mineworkers (NUM), that mine management had tried to persuade workers to go to work on the eve of the two-day national anti-VAT stayaway, but that there had been no special plans to break the impending strike

He personally did not have the impression that intimidation was going to take place, Mr Rauch also referred to a group of workers who had been toyi-toying They were wearing NUM, ANC or SACP T-shirts

Every time there was toyi-toying it had come from the NUM offices, he said

When commission advocate Joe Heimstra asked Mr Rauch who was responsible for the violence, he said he believed it was the toyi-toying group

The hearing continues today

'Human rights lobby more vital than ever'

South 12/12 — 18/12/91 (252)
South 12/12 — 18/12/91

By Karen Williams

THE VALIDITY of the human rights movement in a democratic South Africa was emphasised on International Human Rights Day this week.

While the human rights movement has in the past been synonymous with the liberation struggle, human rights organisations now recognise the need for autonomy to protect individuals against power abuses by the state.

Politicians are adamant a Bill of Rights will protect individuals but political analysts warn constitutions are useless unless there are mechanisms to enforce it.

Mr Keith Gottschalk, a political scientist, believes failure to enforce human rights bills have made them fall into disrepute internationally.

Human rights organisations acknowledge the impact women's rights and gay rights groups had during the anti-apartheid struggle and these issues would rank high on the human rights agenda in the future

Guarantees against racism, including tribalism and ethnocentrism, along with land rights, would be paramount in the future, Gottschalk believes.

"The value of a human rights culture is to build awareness in all people that they have rights, whatever their social status," said Ms Mary Burton, vice-president of the Black Sash and trustee of the Human Rights Commission.

The traditional role of human rights organisations as watchdogs of individual rights against the state will continue, she believes.

While the Geneva Convention and the Nuremburg Convention make provisions for war trials, the decision for retribution would mainly be a political choice, said Gottschalk.

"If the democratic movement is adamant on prosecuting war criminals, it would make the present government more desperate to resist surrender and handing over power to the majority"

Instead, Gottschalk suggests restitution for groups who suffered losses under apartheid legislation Families affected by the Group Areas Act, for example, will fall within this ambit.

Recently, human rights lobbyists hailed the government's concession for a Bill of Rights as a major victory.

Mr David Screen of the Institute for a Democratic Alternative for South Africa (Idasa) believes while there will be rationalisation in the number of human rights monitoring organisations in the future, they will be far more critical of the liberation movements

"As far as the Azanian People's Organisation (Azapo) is concerned, there is a hurry to settle for a new constitution with the result of glossing over of some very key issues," said Mr Strini Moodley, Azapo publicity secretary.

He believes the issue of land distribution and women's rights will become crucial in later years

Moodley believes the human rights movement has actually taken a step backwards because people no longer have any fire in fighting apartheid

4 years in jail for 'horrific' murder

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By SONTI MASEKO

FOUR white men found guilty of "the brutal, horrific and senseless murder of an innocent and defenceless man" were yesterday each sentenced to effective four and six year jail terms by a Rand Supreme Court judge.

The murderers, all from Edenvale, had attacked and killed a black man, Mr Sicelo Mbethe, by knocking him with a car, stabbing him 45 times, punching and kicking him, and hitting him with a hammer and a hockey stick.

Mbethe, who leaves a two-year-old baby, died from a number of wounds on his skull, face, back, chest and legs. He was attacked near Modderfontein at 4am on May 26 while he was on his way to work.

Mr Justice JJ Labuschagne sentenced Brian Scheepers (19), Graig Lambton-Carr (20) and George Martin (19) to 12 years in prison, six years to be suspended for five years and Brenden Hastings, who was 17 at the time to eight years, four years suspended for five years.

The judge said the principal mitigating factors were that all four were young and first offenders, which outweighed the aggravating factors, that they came from normal backgrounds and the brutality of the offence.

The court's impression was that the murder was not pre-planned but committed on the spur of the moment.

In favour of the accused he said it was highly improbable that they would in future repeat the crime and that chances of their rehabilitation were favourable.

[illegible] in the Free State left the [illegible] illegally in 1986 because "I did not [illegible]

Cape Town advocate is appointed SC judge

ARG 14/12/91

(252)

Supreme Court Reporter

CAPE Town advocate Mr Wilfred Guy George Thring, SC, has been appointed a judge of the Cape provincial division of the Supreme Court

The Ministry of Justice announced the appointment, effective from December 16

Mr Thring was educated at St Aidan's College, Grahamstown He studied BA LlB at Stellenbosch, graduating in 1964 He took silk in November 1986

In 1973 he became Honorary Secretary of the Cape Bar Council and earlier this year was elected President of the Cape Bar Council

He was an acting judge between July and October 1987, October and December 1988, and April and June 1989

He and his wife Gwendoline have two children, Karen Susan, 26, and Tom Lawrence, 25

Teenagers jailed for murder

By Susan Smuts (252) STAR 12/12/91

Three Edenvale teenagers who "brutally and senselessly" killed a black man in an early morning attack were yesterday jailed for an effective six years, while a fourth was jailed for an effective four years.

Brian Derek Scheepers (19), Brenden Greig Hastings (18), Craig Lambton-Carr (19) and Gary Richard Martin (19) hit Sicelo William Mbethe with a hammer, hockey stick and other objects and stabbed him and knocked him over with a car at 5 am on May 26 last year. Mr Mbethe, who was walking to work when he was attacked, died on the scene, leaving a wife and baby.

Hastings, who was 17-years-old at the time of the crime, was sentenced to eight years in jail, with four years suspended for five years, while the others were sentenced to 12 years with six suspended

Their youth and the fact that they were all first offenders were principal mitigating factors, Mr Justice J C Labuschagne said in the Rand Supreme Court. Alcohol had also played a role.

"Your actions during the fatal attack proved you knew what you were doing"

The crime had been committed on the spur of the moment, rather than being preplanned, and the four had all shown genuine remorse. Although they had not gone to the police to confess their deed, they co-operated after their arrest, the judge said.

Aggravating circumstances included the "brutal and senseless" nature of the attack and the fact they all came from "structurally normal, supportive, functioning family backgrounds".

"You chased him, knocked him down with a car, attacked him with a hammer, knife and hockey stick. You stabbed him while he was crying out in pain," the judge said.

He hoped the four would take advantage of the educational facilities in prison.

None of the four explained to the court why the attack took place, the judge added.

While there was no doubt society condemned "this despicable behaviour", it was highly unlikely that they would end up in a similar situation again, the judge said. They had probably "suffered severely" in the 18 months since committing the crime, he added.

Constitutional role for judges

New mechanism for appointments needed

252 ARG 13/12/91

This is the last in a three-part series of articles discussing Codesa by HUGH CORDER, Professor of Public Law at UCT.

AMIDST many uncertainties about the structures and procedures of a future South African constitution, one thing is sure the courts will emerge as a more powerful and overtly political part of government than they are at present

This of course means that the judges who preside in the superior courts will be far more closely screened before appointment and scrutinised while on the Bench than is currently the situation

How are our judges appointed at the moment, and to whom are they accountable?

The law states that Supreme Court judges are appointed by the State President, who acts in consultation with his cabinet, but chiefly on the recommendation of the Minister of Justice

The Minister usually consults the Judge President of the division of the court where the vacancy exists, and he in turn is likely to have an informal exchange of views on the matter with his fellow judges and the leaders of the Bar in that region

Although the Hoexter commission report of 1984 urged the formalisation in law of this consultative process, the government refused

Once appointed, judges have security of tenure until retirement at 70 years of age, which means that they may only be dismissed (for serious misconduct or incapacity) by the State President after a majority in parliament has requested him to do so

Short of dismissal, there are no disciplinary steps which can be taken against judges for their actions on the Bench. Judges are accountable to the law and their consciences

It is highly likely that a new mechanism for appointing judges in the future constitution will have to be found, in recognition of their new role and the legitimate claims of the electorate for less secrecy and informality in the process

Even the English Lord Chancellor, whose procedures provided the model for our own, now has a judicial appointments division within his ministry, whose officials work full-time advising him on whom to appoint as judges, and there is a rising clamour for thorough reform of the system

While Australia continues along our lines, New Zealand and Canada have bound themselves to informal processes of consultation with their serving judges and provincial attorneys-general, respectively

India's constitution provides for a formal approach to the Chief Justice for advice on appointments, while Nigeria has adopted the American model of presidential nomination subject to approval by the federal senate

But by far the most common model is that followed (in various forms) by countries such as Israel and at least 12 African members of the British Commonwealth

This involves the creation of a Judicial Service Commission (JSC), which nominates up to three persons to fill a judicial vacancy The executive, which remains the formal appointer of judges, must then choose one of those names.

The legitimacy of this process depends crucially on the composition of the JSC The pattern adopted in Commonwealth Africa is to have a fairly small body (three to four members), chaired by the Chief Justice, with the other members typically being the chair of the Public Service Commission, a senior judge and one other person, the last two being appointed by the Head of State on the advice of the Chief Justice These bodies tend, therefore, to be lawyer-dominated

South Africa might prefer to adopt a model closer to that of Israel or even Ontario in Canada

Israel's judicial appointments committee is composed of three judges (the president of the Supreme Court and two others, elected by all the judges), two government Ministers, two members of the Knesset (parliament), elected by secret ballot of all the members, and two practising lawyers elected by the council of the Israel Bar Association

The province of Ontario has gone further It is currently trying out a Judicial Appointments Advisory Committee consisting of six non-lawyers (including the chair) and four lawyers, the latter representing different parts of the organised legal profession

This committee advertises vacancies on the provincial Bench, interviews candidates and selects up to three of them as persons worthy of appointment by the provincial attorney-general The system is apparently working very well

The existence of such a JSC can ensure a broader representation of interests in the judicial appointments process

But the functions of most JSCs are wider than mere involvement at the appointment stage, as they usually are required to keep a watch over the salaries and service conditions of the judiciary, as well as to recommend disciplinary action (short of dismissal) against judges whose conduct necessitates it

This is obviously an extremely sensitive matter which must be treated highly confidentially, because the JSC must not be seen to be interfering with judicial independence

The JSC's advice is also sought should there be any serious thought of impeachment of a judge by parliament

There are many more aspects of the judicial office which need to be clarified during the negotiations for a new constitution

STAR 14/12/91

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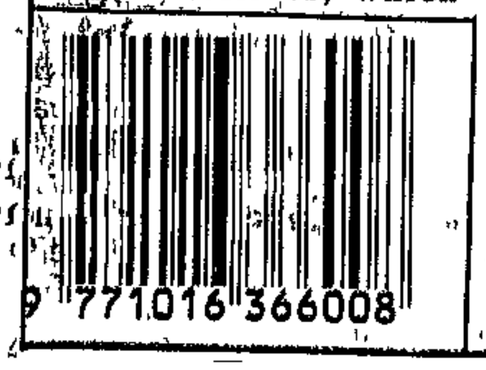
Free legal aid at mobile courts

FOUR public defenders will give free legal assistance to people charged with offences in the mobile courts which began functioning yesterday, according to the office of the Public Defender.

The defenders will use mobile offices, which



STAFF REPORTERS

have been placed at these courts, and will be available there to those persons who require their assistance," said the statement.

The first two courts are scheduled to be set up on the Alberton-Heidelberg road near Vosloorus and on the Sybrand van Niekerk highway near Tokoza today.

Traffic volumes are expected to peak on national routes this afternoon, sparking fears of a dramatic rise in serious accidents which have already claimed the lives of 275 people since the start of the December holiday season.

A spokesman for the National Road Safety Council said that so far, deaths totalled 128 in Transvaal, 36 in the Free State, 60 in Natal and 51 in the Cape Province.

The NRSC says peak holiday traffic is expected between midday and 4 pm today, when many

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Legal aid

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families head for resorts.

Eric Wise, head of the Directorate of Road Safety, said single-vehicle accidents and accidents involving pedestrian were a cause for grave concern.

In yet another move against vehicle accidents this festive season, the National African Federated Transport Organisation (Nafto) yesterday launched a safety campaign which will run concurrently with and complement the campaign co-ordinated by the NRSC.

A fleet of 15 patrol cars will be deployed by the organisation to serve its members in the minibus taxi industry, as well as the public, Nafto chairman Peter Rabali said.

He added "The 1991 campaign will be staffed by volunteer association members operating patrol cars 24 hours a day on main routes throughout SA". They will submit logbooks every day.

Swift justice has its compensations

STAR 14/12/91 (252)

BRENDAN TEMPLETON

GOOD fortune ran out for Tokoza taxi-driver Lucky Ndhlovu when he became the first "victim" of South Africa's new mobile courts last night

But the startled taxi-driver's chagrin at receiving a R300 suspended fine for overloading was somewhat offset when he was afterwards treated to snacks and cool-drinks with Justice Minister Kobie Coetsee

The Minister was at the mobile court near Tokoza to officially open the new system for dealing with increased criminal cases resulting from unrest and heavy traffic volumes

Two more taxi-drivers, Richard Mthetwa and Amos Monageng, followed Mr Ndhlovu in quick succession and they too joined Mr Coetsee in a nearby tent for a quick bite

They also received R300 suspended fines from magistrate Walter Ewart, for overloading

Three mobile courts are in service The other two are at Port Shepstone and Vosloorus

The system was initiated according to agreements set out in the National Peace Accord, and Mr Coetsee was accompanied by officials of the African National Congress, the Inkatha Freedom Party and the local civic and taxi organisations

The "courtroom" was a large trailer parked in the veld next to the Sybrand van Niekerk Highway A tent served as the "charge office" and a small caravan housed the public defender

Heavy rain did little to dampen the high spirits of the small contingent of policemen and officials elated over the novelty of holding court in such unusual surroundings

A few hours after the official opening they were quite happy to pose for photographs inside the courtroom, lit by a mobile generator

Four public defenders aid motorists who fall foul of the mobile courts

READY FOR ACTION Magistrate H Visser and his courtroom clerk Simon Bordell clear the decks in preparation for hapless motorists falling foul of their mobile court near Vosloorus

Photograph JACOOB RYCLIFF.

Thokoza's court on wheels

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E/Prev
15/12/91

By MONWABISI NOMADOLO

THE first of four proposed mobile courts was officially opened by Justice Minister Kobie Coetsee in Thokoza on Friday

At the opening of the first facility, a bus converted into a courtroom, Coetsee said the court would deal with traffic offences during the festive season and would be operating in unrest areas to speed up the legal process in such cases

"The public should see these courts not as a point of persecution but a facility to let people know the law is here to protect the individual and the community," he said

The courts would deal with traffic offences, plea proceedings, bail application, postponement and would also deal with unrest

They were convenient and saved time, he added

There would be public defenders on hand to give free legal assistance and a temporary charge office manned by police who would keep temporary detention camps

Amnesty probes violence

AN Amnesty International fact-finding mission to South Africa expressed its concern on Friday at the role of security forces in the political violence sweeping the country.

The four-member delegation of Piet van Reenen from the Netherlands, Stephen Owen from British Columbia, Rayner Mary and Joseph Gitari, both from London, said they had received reports that the police and military had not stepped in to save lives when they had the capacity to do so.

Addressing a media conference in Durban, the delegation said information in their possession indicated the military held back from intervening in certain incidents, particularly at Bruntville near Mooi River, where 18 people were killed last week.

However, Amnesty said they had also been told of cases where soldiers had conducted themselves in a helpful manner – Sapa

(252)

STAR 16/12/91

Free legal aid offered

Four public defenders will give free legal assistance to people charged with offences in the mobile courts which began functioning last Friday, the office of the Public Defender announced. The four are Messrs C Bruyns, V Fortunat, E Butler and I Moleele — Sapa

White businessmen at 'people's court', then boycott lifted

STAR 16/12/91

COLESBERG — Two businessmen in the Karoo town of Colesberg had the boycott against their business lifted last week after appearing in a "people's court" in the black township, where they were made to apologise for allegedly insulting the residents

The cafe of Tony and Tiago Rodriquez was one of five white and coloured businesses to be boycotted by residents of Kuyasa township for "insulting the people in the past and for not employing more black staff members"

Businessmen affected described the demands of the civic association as unreasonable

They denied applying discriminatory measures

The local Afrikaanse Sakekamer chairman, Philip Fourie, said he found it strange that the rumour of a general boycott still persisted when organisations such as the ANC and Cosatu had distanced themselves from such mass action in a spirit of conciliation during the festive season. — Sapa

Beware of leaving out major groups, says Buthelezi

IFP warns of civil war

Staff Reporters 1113 3044 STAR 16/12/91.

The Inkatha Freedom Party yesterday warned that civil war might erupt should any major political group be left out of negotiations, and insisted that a KwaZulu government delegation and the Zulu king be allowed to attend Friday's first session of the Convention for a Democratic South Africa (Codesa)

IFP leader Chief Mangosuthu Buthelezi told a rally in Umlazi that there would be no constitution without the KwaZulu government playing a role in shaping it.

In a hard-hitting address to some 9 000 supporters at the King Zwelithini Stadium, Chief Buthelezi warned. "We say that none should be left aggrieved in South Africa, lest what happens in this country emerges as so terrible and so destructive that the civil wars (in Mozambique and Angola) are child's play by comparison"

More reports — Pages 5 and 9

IFP supporters defiantly brandished "traditional" weapons — and a few carried machine-guns — despite a Natal Supreme Court ruling last week outlawing the carrying of cultural weapons at public gatherings

The presence of King Goodwill Zwelithini and the KwaZulu government at Co-

Addressing a Transvaal Indian Congress consultative meeting in Mayfair to probe the Indian community's role in negotiations, ANC general-secretary Cyril Ramaphosa said the Government had a "Plan B" to "ensure that the people did not emerge victorious"

"What is our Plan B? What if we do not win? What if the NP frustrates the aspirations of the people as a whole?

"Very few governments which have held power illegitimately can give power voluntarily — they have to be forced (out of power)," he added

Mr Ramaphosa said there were many effective means open to the ANC to solve the country's problems. The ANC had, nevertheless, chosen to engage the Government in negotiations to seek a peaceful solution.

"Today we are on the verge of the last mile towards ushering in a democratic order in our country It is probably going to be the most difficult. It is so difficult that some have opted out," he said, indirectly referring to the PAC

Mr Ramaphosa said he believed Friday's Codesa meeting would be successful

The more difficult problems were expected next month when "real" negotiations began. Then the ANC and the Government would lock horns as the Government dug in its heels on such contentious issues as the demand for a constitutional as-

Instant justice in mobile courts

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Sowe Fax
17/12/91

By DANIEL MAINE

THE first two mobile courts for the speedy trial of traffic violations, crime incidents and unrest were officially opened by the Minister of Justice Mr Kobie Coetsee on Friday

The courts are situated in Tokoza and Vosloorus and the third is expected to be opened at Malborough, near Port Shepstone, today

They would be manned from Monday to Saturday during the holiday period by a court clerk, magistrate, prosecutor, interpreters and the South African Police Public defenders from the Legal Aid Board would be available on request

"Mobile courts have been established for instant prosecution and for the convenience of road users in terms of immediate hearings," he said

Directorate Road Traffic Safety director Mr Eric Wise called mobile courts a breakthrough for traffic safety

"Offenders can be immediately charged, fined and possibly even be removed from the road," he said

Moves to speed up prosecutions

LINDEN BIRNS

THE Justice Department has established mechanisms to get serious economic crime cases to trial quicker than if normal judicial procedures were followed

And the department says progress has already been made in preparing charges for several major cases

A spokesman for Justice Minister Kobie Coetsee said legislation on the establishment of a Serious Economic Offences office had been promulgated, and the designated head of the office and his specialist staff were in the process of being withdrawn from their existing posts

They were already operating within the framework of the proposed new bureau

He said the CIB, Masterbond and Fundstrust cases had received "speedy attention" by the specialists

Two arrests had been made in the Fundstrust case, he said

An indictment containing 49 counts had been served after investigation into another case and the prosecution was arranging a trial date

An indictment of 200 counts was being prepared in a third case

The spokesman did not specify which companies were involved

He added that Coetsee was satisfied these cases had been dealt with "much swifter than would have been the situation in comparable cases under ordinary procedures"

Woods's litigation threat 'skirts issue'

LINDEN BIRNS

TALK of litigation by Inkatha Institute director Gavin Woods against The Weekly Mail was intended to hide the fact that Woods, the Institute and Inkatha had not challenged the main thrust of reports about the party's government links, the newspaper's editor Anton Harber said yesterday.

He was reacting to Woods's remarks this week that he was taking legal advice on how to deal with the newspaper which named him as a Security Police informer

"It was not us that named Mr Woods as a police informer. It was the police themselves," said Harber in a statement sent to Business Day BlDay 18/12/91

He said Durban-based SAP officer Maj Louis Botha, "a man whom Woods himself acknowledged he knows well", had written in an SAP document that Woods was an informer

He added that the authenticity of that SAP document had been proven

The newspaper also published Woods's denials that he was an informer

Botha subsequently released an affidavit saying he "had not quite meant exactly what he said" in describing Woods as an informer, said Harber

"Mr Woods, however, should also explain how and why he wrote an official report that covered up the secret funding of Uwusa Mr Woods conducted a long and expensive investigation into the organisation and wrote a detailed report without once asking where the organisation was getting millions of rands to throw away," he said

Harber said he could prove the accuracy of comments which the newspaper attributed to Woods, and which Woods alleged the newspaper had fabricated

These dealt with whether Woods actually confirmed that he knew the SAP was funding Inkatha

"Mr Woods knows that we taped the conversation which he says we 'fabricated' We would be happy to play this tape to a judge if that is the path Mr Woods wishes to take," said Harber

NEWS IN BRIEF

Man's body unearthed

THE arrest of two men in connection with the murder of American tourist Edward Perlmutter has led to the discovery of a man's body which was buried in a river bed near Giant's Castle in Natal

Police are investigating whether the suspects, a 30-year-old man and a teenager, were also connected with the death of Pretoria man Jacob Joubert and the attempted murder of Port Elizabeth businessman Clive Newman

The men are expected to appear in court in Knysna today in connection with Perlmutter's death

Govt studies weapons ban

THE Ministry of Law and Order has called for a copy of the Durban Supreme Court judgment which effectively bans the carrying of traditional weapons by Zulus

Ministry spokesman Capt Craig Kotze said the recent judgment could affect the conduct of the SAP in unrest-related incidents

The ruling by Mr Justice Didcott in the Durban Supreme Court set aside regulations promulgated by the State President whereby the carrying of traditional weapons was permitted

But policemen on the ground are reluctant to enforce the ban because of great personal danger in disarming large crowds BlDay 18/12/91

Support for bombed school

KLERKSDORP residents have rallied to the support of the private multiracial school which was destroyed by a bomb blast on Monday

Pastor Andre de Kock said the Klerksdorp Christian Academy had suffered about R1,2m in damage, most of which was covered by insurance He said one woman had donated her last R5 towards rebuilding

West Rand police said they had not ruled out right-wing involvement

REPORTS Sapa Business Day Reporter Own Correspondent BlDay 18/12/91

Finger points to Inkatha

South 19/12/91 – 15/1/92 (252)

By Karen Williams

THERE have been a spate of attacks allegedly by Inkatha members during the past fortnight, according to the Human Rights Commission (HRC)

Alleged Inkatha supporters wearing IFP T-shirts attacked a squatter camp near a migrant worker hostel in the Johannesburg-Alexandra area on December 7

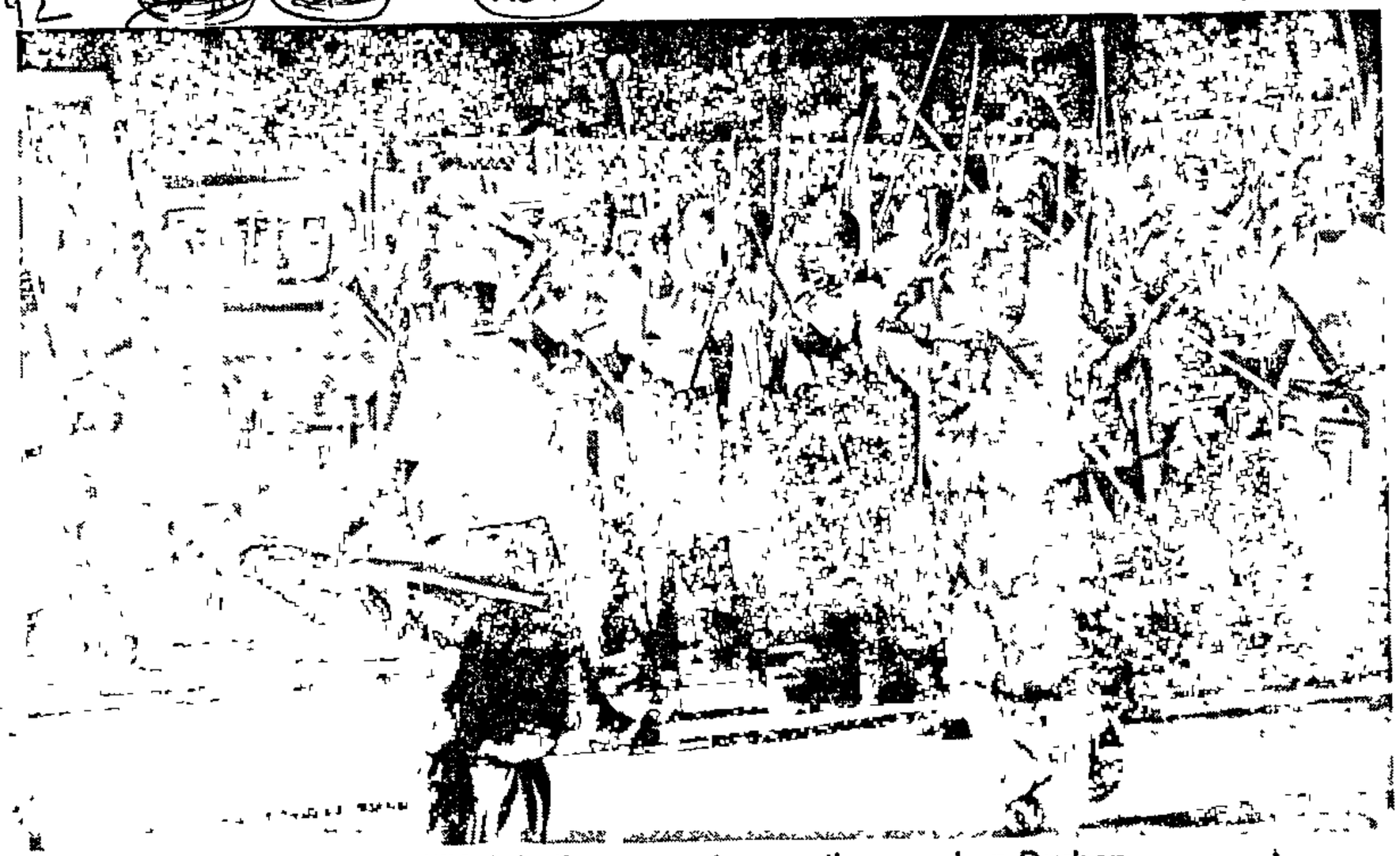
Mr Peter Matabela, 43, was killed in the attack and 10 people were injured with stab and hack wounds. One of the injured was a woman who had been gang raped.

Residents alleged the camp was looted and that they were forced to pay protection fees of between R30 and R100 Four Zulu-speaking men were arrested after the attack.

On December 8 at least 17 people were killed and 13 injured in an attack by alleged Inkatha supporters.

The HRC said the attack followed an IFP prayer rally at the Jabulani Amphitheatre at which "traditional weapons" were carried Nine of the victims were killed in the Seleke home in Dobsonville, Soweto.

In Natal's Mooi River area, at least 18 people were killed when alleged Inkatha members indiscriminately attacked residents in Bruntville, an ANC stronghold, on December 3 and 4. On December 3 about 300 armed hostel dwellers approached the location and were turned back by residents.



WAR PATH: Inkatha supporters on the march in Durban

Inkatha leader David Ntombela was seen leaving Bruntville. About 15 minutes later, the hostel dwellers attacked Bruntville, killing four residents.

The police and the SADF, seen driving past earlier, did nothing to stop the attack However, the security forces fired teargas at residents. After this attack SAP and SADF members searched residents' homes in White City looking for weapons.

About 4.45am on December 4 a second attack was launched in which at least 14 people were killed within one-and-a-half hours Most died of stab and hack wounds

Residents allege security forces did not restrain the attackers. HRC believes the massacre was a revenge attack on ANC supporters The ANC activists marched earlier to demand police enforce the ban decided on concerning the public bearing of weapons

Police subsequently announced that carrying weapons in public in Mooi River and Bruntville will be prohibited. A mobile police station is to be set up in Bruntville

However, residents report police have not been disarming offenders

Right-wing violence declining — HRC

ANGER: An AWB supporter

THE Human Rights Commission (HRC) has found that incidents of white right-wing violence declined markedly in the second half of the year from July 1990 to June 1991.

In these 12 months white extremists were involved in 93 incidents, including 14 bombings, 24 deaths and 246 injuries.

The HRC suggests the decline can be attributed to the state taking action against the right wing or the right wing's lack of manpower or resources.

In one of the latest attacks two black men were stabbed to death, allegedly by five white men, in the Northern Transvaal town of Marble Hall on November 30.

The HRC reports the white men allegedly abducted three black men from a farm and drove them by bakkie to a nearby dam. One of the men escaped on the way. The attackers were arrested shortly after one of them gave himself up to the police.

The HRC reports that on the same day, a Marble Hall farmworker, Mr Isaac Aphane, 20, was also allegedly assaulted by white men.

Aphane claims the men burst into his house saying they would "give nothing to the ANC or Nelson Mandela" and they then assaulted him.

While some right-wing violence is directed at reform-supporting white groups, the majority of attacks is against blacks, says the HRC.

The HRC identified two types of right-wing violence: semi-spontaneous and indiscriminate attacks by individuals or small groups driven by "emotional anger"; and organised incidents involving planning and marshalling of resources.

Targets of the attacks include:

- political organisations
- workers, including trade unionists.
- the media generally, and journalists and photographers
- black users of mixed amenities.
- black "invaders" of "white" areas such as housing, schools, farms.

There have also been indiscriminate attacks on individual blacks, railway stations, taxi ranks and a synagogue.

Most of the attacks take place in rural towns in the Eastern, Western and Northern Transvaal and the Orange Free State, says the HRC.

Mobile courts hit the road

The Argus Correspondent

JOHANNESBURG — Vehicle overloading cases have been the exclusive work to date of the first established mobile court set up next to the Sybrand van Niekerk highway near Tokoza

Shortly after the court was officially opened by Justice Minister Mr Kobie Coetsee, the first charge of overloading was heard

Another two overloading charges were subsequently laid against two motorists on the same day

Heavy penalties have been introduced for this offence as South Africa's road networks have been badly damaged by overloaded vehicles

In all three cases handled by the mobile court, a R300 fine was imposed, alternatively, 180 days' imprisonment suspended for four years

Although the court was closed on Monday, it opened again for hearings from Tuesday for 24 hours daily

The mobile courts — busses converted into courtrooms and flanked by a caravan for a public defender — were introduced to deal speedily with traffic offences, unrest-related incidents, plea proceedings, bail and postponements

"The public should see these courts not as a point of persecution, but as a facility to let people know the law is here to protect the individual and the community," Mr Coetsee said

Sowetan 19/12/91 - 15/1/92

335 on death row

CYRIL FRANCES, 23, was sentenced to death in the Cape Town Supreme Court on November 26 after being convicted of murder. This brings the number of people on death row to 335, of whom 13 are considered political prisoners by the Human Rights Commission (HRC).

Govt to appeal weapons ruling

252

By Quentin Wilson

South 19/12/91 - 1/15/92

THE government has appealed against a Supreme Court decision to overturn the law allowing the carrying of so-called cultural weapons.

The appeal was launched last Friday — the same day the ruling was made in favour of Mr Lechesa Tsenoli, a freelance journalist.

"The violence which has plagued Natal, specially Southern Natal, has been characterised by attacks by vigilantes who have been free to carry dangerous weapons," Tsenoli said.

19/12/91 South 1/15/92

He alleged Inkatha supporters have been the source of many attacks, particularly "before and after Inkatha rallies when they move around townships killing people at random".

Earlier this year President FW de Klerk amended the Natal code to allow people to carry so-called cultural weapons

Mr Justice Didcott found this proclamation "void for vagueness".

Health workers win settlement

South 19/12/91 - 1/15/92

OUT-OF-COURT settlements ranging from R3 500 to R6 500 were paid by the Ministry of Law and Order to 11 health workers this week.

They took Mr Adriaan Vlok to court after they had been arrested and imprisoned for over 10 hours for treating people during the "Purple Rain" march in Cape Town two years ago. One was assaulted.

The health workers said they would contribute a "substantial amount" of the money to the Emergency Services Group which seeks to facilitate the repatriation of exiles.

ESG also helps former political prisoners reintegrate into the community.

Bibi Dawood is home

South 19/12/91 - 15/1/92

"IT'S been 24 years, it's been 24 years," Mrs Ayesha Mukadam said repeatedly when she arrived home from exile on Wednesday.

The former Worcester treason trialist, known by her maiden name, Bibi Dawood, left South Africa on an exit permit in 1968 following a decade of involvement in the ANC.

In 1955 she was arrested in terms of the Suppression of Communism Act and charged with incitement.

A year later she was again arrested and charged with treason with 155 others, including ANC president Mr Nelson Mandela. She was discharged after a year.

In 1967 her Indian husband, Mr Yusuf Mukadam, was arrested and held for six months before he was charged with entering the country illegally and served with a deportation order.

Dawood also lost her passport and was "endorsed out" in 1968. Since then she has been living in a tiny village near Bombay.

She said she had thought at the time that her exile from home would be temporary.

Dawood and her husband will join their son Gulzaar, who returned from India earlier this year, in Worcester

Secret projects probe completed

PRETORIA — The Advisory Committee on Special Secret Projects appointed in July this year by President F W de Klerk has completed its investigations and "expressed satisfaction over the conclusion of certain projects"

This was announced here yesterday by Mr De Klerk, who said the government was studying the committee's recommendations

He said the committee, under the chairmanship of Prof Ellison Kahn, had investigated secret and special secret projects in terms of the guidelines that no political party may be advantaged or disadvantaged by such a project, it had to be in the national interest and it must promote peace and combat intimidation, sanctions and isolation

Mr De Klerk said the committee found that continuing government projects had met these requirements, and wherever the committee recommended the termination of a project, the government accepted the recommendation (252) CT 20/12/91

The committee had also reviewed proposed draft legislation on secret funds, and legislation in this regard would be tabled in Parliament early next year

He said the report will not be released as it deals with classified information — Sapa

COMMERCIAL LAW FM 20|12|91

Change of doctrine (252)

The Appellate Division of the Supreme Court recently took the bold step of reversing a long line of judicial decisions, by going all the way back to the old SA Republic, on an important aspect of common law

It has always been a part of SA law, says Wits Professor of Law David Zeffertt, that a person who makes a payment "under a mistake of fact" — thinking that the money was due when it was not — is entitled to claim it back if, according to SA cases, "the mistake was excusable That is to say, if the mistake was reasonable and not foolish"

He adds "This is done within the conceptual framework of a remedy going all the way back to Roman law — the *condictio indebiti*"

But what if the payment is made under a mistake of law, not of fact? That is, if the person making the payment believes he is legally required to pay when the contrary is true

Until the recent case of *Willis Faber Enthoven vs the Receiver of Revenue and the Registrar of Insurance*, courts had held — at times reluctantly — that, as a rule, the remedy was not available

In the Enthoven case, about R165 000 was paid by this firm of insurance brokers to the Receiver on the basis of a misinterpretation of section 60b of the Insurance Act of 1943 which deals with insurance business underwritten by Lloyd's.

A broker is obliged by the Insurance Act to pay to the Receiver a sum equal to 2,5% of the total of all premiums paid during the preceding calendar year on policies underwritten at Lloyd's and effected through that broker's agency

But what is the position with policies not underwritten at Lloyd's but effected or renewed through a broker at Lloyd's? It is here that the mistake of law entered the picture Enthoven paid the amount at issue under the mistaken belief that it was obliged to do so in terms of section 60b

The Appellate Division does not lightly reverse a long-standing view of the law (dating back to the decision of Chief Justice Kotze of the SA Republic in 1888) because SA's system of law is heavily based on judicial precedent Nevertheless, the Appeal Court decided to do so

In the context of the complexities of modern legal systems, mistakes of law, held the Court, can happen all too easily, even to sophisticated operators and even when vigilance is exercised — which is what the Appeal Court found in this case So the law, as reinterpreted, is as follows that an amount paid without being owed, as the result of a mistake of law, may be recovered provided the mistake is found to be excusable

The Court added that if the payer's conduct "is so slack that he does not deserve the protection of the law," he should not have this right and that the onus rests upon the plaintiff to show that his mistake is excusable

By analogy, in criminal cases, a mistake will not be excusable if the claimant has not taken reasonable steps to determine the legal position but has merely made a casual inquiry Some academic writers have questioned whether excusability should be a requirement of the *condictio indebiti* The Appellate Division was mindful of this criticism but pointed out that the law had to be equitable to the defendant as well

These common sense restrictions should prevent a flood of vexatious claims against Revenue in particular In any event, most undue payments to Revenue are made, not because of a mistake of law, but because of statutory duress

Quite another principle of unjust enrichment is that which governs involuntary payments An involuntary payment — one exacted by duress or compulsion — may be reclaimed if it were paid under a protest in which the person making the payment expressly reserved his legal rights But it has been held that a payment made merely to avoid a penalty is a voluntary payment and thus not recoverable

Zeffertt suggests Revenue should bear in mind all the safeguards "inherent in the legal requirements for recovering money" So it should not too hastily amend fiscal legislation so as to neutralise the judgment ■

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Zeffertt suggests Revenue should bear in mind all the safeguards "inherent in the legal requirements for recovering money " So it should not too hastily amend fiscal legislation so as to neutralise the judgment ■

AIDS impact worst on developing countries

B/Day 20/12/91.

NINA SHAND

THE high incidence of AIDS and HIV infection could have dire economic consequences for developing countries — including many in Africa, says World Bank economist Jill Armstrong

In a report compiled for the World Bank and the IMF, Armstrong says about 90% of the 30-million people who will have contracted the HIV virus by the year 2000 will be living in the developing world

Presently there are an estimated 10-million people infected with the virus, 80% living in Africa, Asia, Latin America and the Caribbean

"The epidemic threatens to dramatically alter the economic and social fabric of many societies, raising questions about the development process itself," she says

No sector of a country's economy is safe from AIDS

Productivity in the agricultural sector may drop off in rural areas as the incidence of AIDS increases Shortages of manpower may lower overall agricultural output in countries where production is labour-intensive

On smallholder plots farm production may also fall as funds are diverted away from key farm inputs to medical expenses

Armstrong says AIDS-related deaths are wiping out recent progess in reducing mortality rates The health sector, while struggling to improve general health conditions, is now also having to cope with a growing demand for hospitalisation, health personnel and drugs for AIDS patients

School enrolment is likely to drop with many breadwinners falling ill and no longer being able to send children to school or needing them to do tasks that used to be done by parents Up to 10-million children will have been orphaned by 2000 because of AIDS, says Armstrong

"The extended families in parts of Africa are already beginning to feel the strain Often the responsibility to feed, clothe, shelter and educate the children falls on elderly grandparents, with little means of financial or physical support"

In the event of the death of a male head of household, insurmountable problems may result due to local customs often prohibiting the transfer of land titles to anyone but a man

"Without access to means of production, widows and children may be forced into petty theft or prostitution to support themselves," says Armstrong

To lessen the economic impact of the epidemic, development strategies will need to take into account the effects of AIDS on people and the economy

'Justice on wheels' on the expansion trail

Own Correspondent

DURBAN — Another 24 mobile courts will be established throughout the country in the next four months

This was announced by Justice Deputy Minister Danie Schutte in Port Shepstone yesterday when he opened one of three mobile courts established recently to deal with unrest, traffic and other cases

The other were at Thokoza and Vosloorus on the East Rand

Schutte said he believed the mobile court or "justice on wheels" concept was the first in the world

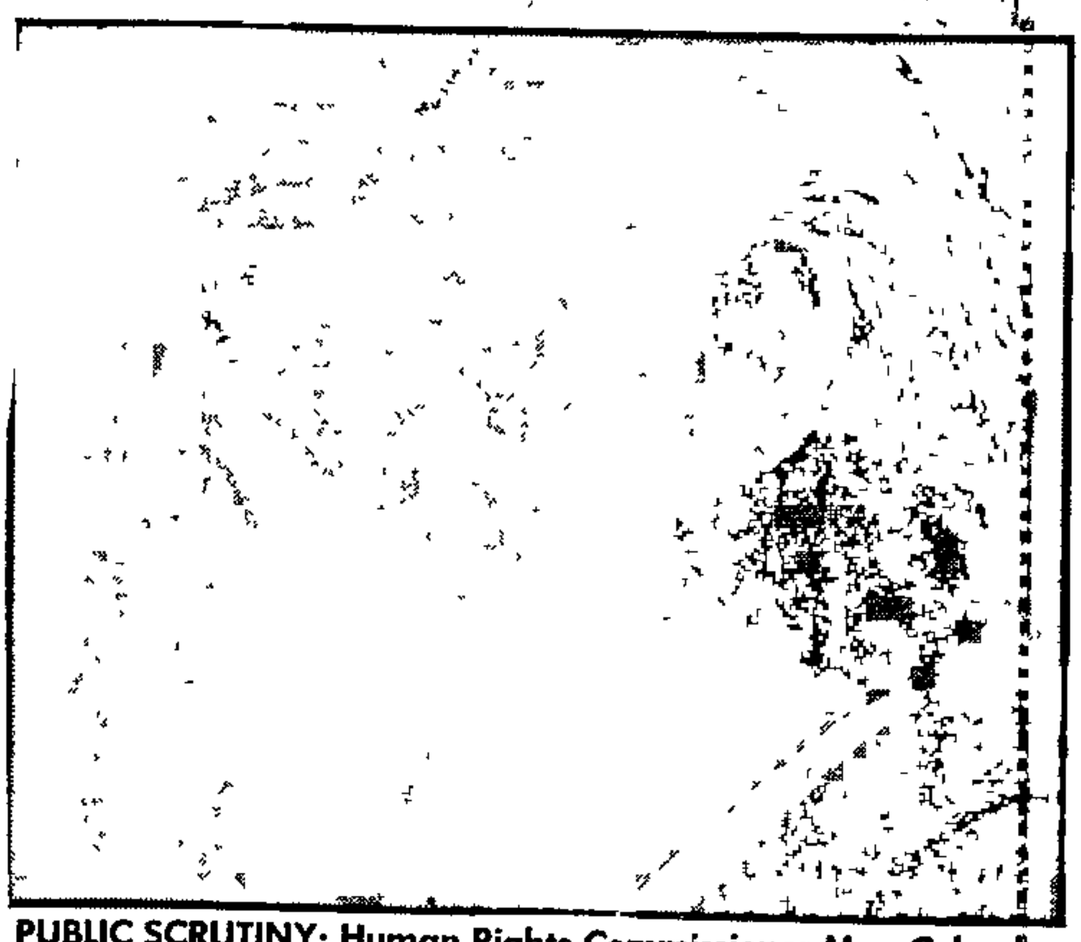
Apart from the setting up of the mobile courts, 80 other courts next to major routes had been placed on 24-hour standby to deal with cases arising during the holiday season

Justice Minister Kobie Coetsee's Press secretary Werner Krull said there would be no short cuts in the mobile courts and accused people would not lose their right to a fair trial

More than R1m had been spent on the initial three courts, he said

Secret projects reports 'should be opened to all'

STAR 21/12/91.



PUBLIC SCRUTINY: Human Rights Commissioner Max Coleman calls for end to secrecy.

THE REPORT of the Advisory Committee on Special Secret Projects should be made public so that everyone — not only the Government — could study its recommendations, says Human Rights Commissioner Max Coleman

"We see this as another prime example of a Government whitewash," he said "Accepting things on face value has proved to be disastrous in the past"

Mr Coleman was reacting to the advisory committee's report to the Government which gave the go-ahead for existing secret projects to continue

The confidential report was given to President F W de Klerk on Thursday evening Mr de Klerk said the Government would study the recommendations, which included comments on draft legislation due to be submitted to Parliament early next year

Carl Niehaus, a spokesman for the African National Congress, reiterated his organisation's call for all secret projects to be opened to public scrutiny

"There has been a long involvement of the Government — and more directly the National Party — maintaining apartheid through various secret projects," he said

"More seriously, there have been many examples of employing assassins and subverting the democratic process through such projects They must be cut open to the bone"

MICHAEL SPARKS

Democratic Party law and order spokesman Tony Leon said "The kinds of secret projects of the past have been extremely harmful, not helpful, to the national interest"

He added that while an argument could be made for certain projects, "the problem is how to prevent abuse"

Guidelines for judging the secret projects were given to the committee by Mr de Klerk in July this year. The guidelines required that no political party be advantaged or disadvantaged by such a project, they had to be in the broad national interest, and the project must play a positive role in promoting peace and combating intimidation, sanctions and isolation

Professor Ellison Kahn, chairman of the advisory committee, said that in examining activities of organisations such as the National Intelligence Service, the police and the defence force, "such bodies inevitably, in carrying out their functions, have to engage in covert functions"

The committee found that continuing Government projects met the guidelines of the State President Those projects that did not had been terminated by the Government on the recommendation of the committee

The committee also gave advice when the Government wanted to terminate a project, but a contractual obligation existed

Unity is key to future

A FUTURE government in South Africa should be based on a multiparty democracy, but should not be constituted on ethnic groupings, South African Law Commission vice-chairman Judge Pierre Olivier said yesterday

He was addressing a media briefing in Pretoria on the Commission's 1 500-page Report on Constitutional Models, and a 255-page summary, released yesterday

The report warned that no matter what clever techniques and mechanisms were built into the constitution, power-sharing would fail unless all parties had the serious will and sustained commitment needed to make them work

"We should strive for national unity and nation-building," said Olivier

Peace and harmony would not come overnight

Regionalism on a socio-economic basis with a central government granting decision-making powers to regions might be viable, it said.

Despite rejecting the use of minority vetoes and separate voters' rolls based on race, the Commission said there was "much to be said for laying down in the constitution a stronger requirement than a simple majority in respect of certain fundamental matters"

The existing electoral qualifications should be retained and the vote should simply be extended to all, said the Commission

The Law Commission recognised the complicated situation in South Africa and said a unitary state may have to enter into a confederation with one of the TBVC states or any other that had been granted partition

Whatever the combinations, it would be possible to apply power-sharing techniques in every legislative and executive body

"The eventual system may therefore be a most interesting multiform one," the Commission said

The viability of an independent Boer state was rejected as impractical

The Commission recommended that South Africa retain its name "Azania" was historically and geographically misconceived and did not enjoy general support

The Commission said it was preferable to address the issue of an official language or languages in the constitution and not simply leave it hanging in the air – Sapa

Law report condemns the 1983 constitution

252

ST Times 22/12/91

THE SA Law Commission has roundly condemned the present SA Constitution approved in 1983 by two-thirds of whites after a bitter referendum struggle.

By CHARIS PERKINS

The commission, in its *Report on Constitutional Models* released to the press and Codesa delegates yesterday, held the present constitution responsible for many of the problems confronting the country

The constitution, said the commission, lacked substantive principle, constitutionalism and even a regard for the rule of law

It also failed to protect individual human rights, showed a fundamental lack of democracy, lacked an independent judiciary in the broad sense of the word, did not have adequate checks and balances, had no minority protection and gave excessive power to the president.

The criticism by the Law Commission — a statutory body which has responsibility for advising the government on matters affecting the law — is one of the most vociferous yet heard against the constitution which the PW Botha administration pushed through in 1983 against strong opposition from liberals, conservatives and radicals

Options

"It need hardly be argued that the problems being experienced by our country are due at least in large measure to the shortcomings of the existing constitution"

The attack on the present constitution introduces the four-volume report by the Law Commission

Mr Justice Olivier, leader of the commission's project, said at a press conference yesterday that the commissioners had not been asked to work out a constitutional model, but rather to place all the options on the table

However, the committee did make some recommendations

It suggested a collegial cabinet system based on the Swiss system, a president directly elected by the people and a two-chamber parliament consisting of an upper house of 33 and a lower house of 100 members The electoral system should be based on proportional representation

The head of state in a future South Africa should be elected directly by the people He should perform ceremonial functions but should be assigned certain executive powers that would enable him to promote unity

A prime minister should be elected by the cabinet

The Law Commission recommended proportional representation in the government Minority vetoes were rejected, but the commission suggested that more than a simple majority should be required to decide certain questions

It also suggested tribal chiefs be included in the government at municipal level It argued for a strict separation of the legislature, executive and judiciary, suggesting that members of the executive should not have a seat in any legislative body or appoint any member of any legislative authority

Regions

The executive, said the commission, should have no power to decide when to hold an election or when to convene meetings of the legislature

The report ranged widely in dealing with national symbols, names and definitions of boundaries It also recommended that parliament sit for only three months a year and meet in cities other than Cape Town

It reported on the question of partition — suggesting that the homelands be given the opportunity of re-incorporation — but did not make a finding on the various models of partition

It recommended a system of regions based on socio-economic factors rather than on ethnic groups "Regionalism based on ethnicity would be stillborn," said Mr Justice Olivier

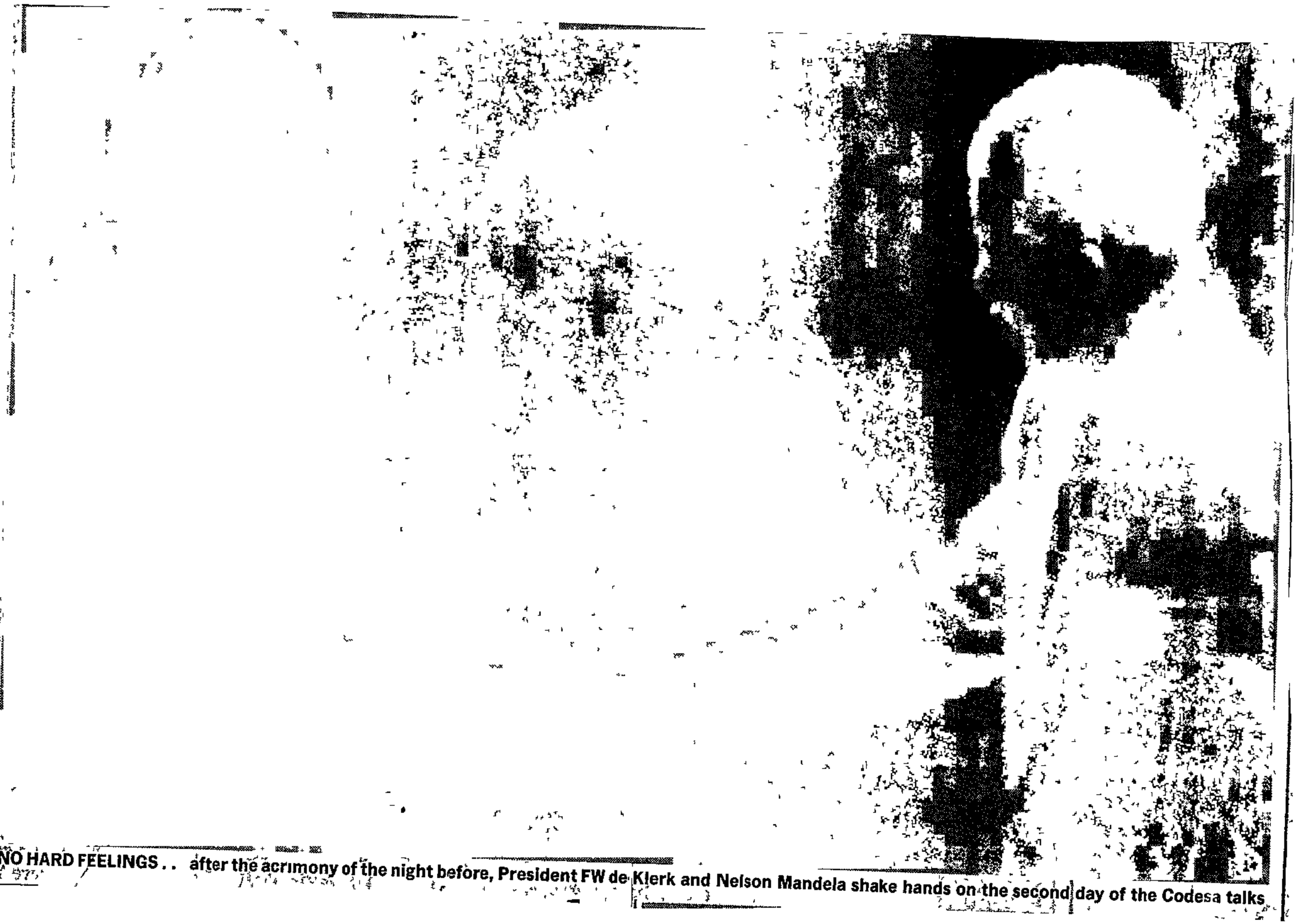
The report said "We need to accept ethnic diversity but foster national loyalty"

Other recommendations in the report:

- A code of conduct for political parties,
- Judges be appointed by a judicial service commission,
- A constitutional court in the Appellate Division

S/Times 22/12/91

(252)



NO HARD FEELINGS . . after the acrimony of the night before, President FW de Klerk and Nelson Mandela shake hands on the second day of the Codesa talks

Law Commission wants Swiss type of rule for SA

(252)

Sowetan 23/12/91

THE South African Law Commission has proposed a new constitution which would allow for the president to be elected directly by the people and the Cabinet to elect a prime minister.

This form of government, which gives various political parties in the country an equal say, is based on the Swiss model The law commission also proposes a two-chamber parliament consisting of an upper house of 33 and a lower house of 100 members

The electoral system should be based on proportional representation.

The SA Law Commission was set up by the Law Commission Act of 1973 to do research within all areas of South African law and to make recommendations on its development, improvement, modernisation and reform.

ISMAIL LAGARDIEN
Political Correspondent

In April 1986, Minister of Justice Mr Kobie Coetsee requested the Law Commission to extensively investigate and make recommendations on the definition and protection of group rights within the South African constitution

The Law Commission, headed by Mr Justice PJ Olivier, submitted its report on Saturday at the Convention for a Democratic South Africa

In the report, the commission also says that the present constitution - which specifically excludes black people from central government - was pernicious and was the cause of much of the death and destruction that the country is presently riddled with.

December 27 1991

Ombudsman calls for free legal helpline to aid public

B|Day 27|12|91 (252) B|Day 27|12|91

PRETORIA — Newly appointed ombudsman Mr Justice P J van der Walt has suggested that retired advocates be asked to provide a free legal helpline to aid people in finding their way through the bureaucratic maze

Since his appointment last month, Mr Justice van der Walt said he had been inundated with calls and already had more than 500 cases under investigation

He said in an interview this week his office was established to investigate corruption and maladministration and aid members of the public where they felt they had been improperly prejudiced by the state or its bureaucracy

Aggrieved

Many callers had resorted to the ombudsman where other channels were more appropriate and freely available

Criminal cases, or incidents of violence and intimidation were, for example, referred to the SAP or the Goldstone Commission A lack of accessibility, in many cases, to the public service and its officials meant the public turned too readily to the ombudsman with cases that did not necessarily fall within the ambit of his function, Mr Justice van der Walt said

JONATHON REES

People who felt aggrieved often did not know how to properly approach the problem This could be rectified with a free legal helpline staffed voluntarily on a part-time basis by retired legal experts, he said.

Several retired advocates had already offered their services to help people make contact with the appropriate government departments and establish proper public communication with the authorities

The ombudsman's office was established this year in terms of the Advocate-General Amendment Act of 1991, converting the position of advocate-general to that of ombudsman It follows the establishment in 1979 of the advocate-general's office, as a result of the Information scandal and frequent representations by the legal fraternity for investigations into complaints about the fraudulent handling of public funds and improper enrichment by public servants and institutions at the state's expense.

The ombudsman was appointed to deal with public complaints of improper prejudice at the hands of state bureaucracy, and as such Mr Justice van der Walt has wide powers of investigation

He can summon and examine witnesses, direct any person to produce relevant documents, enter premises and make inquiries where he deems it necessary He is also entitled to appoint officials to investigate on his behalf

The power of the ombudsman to make recommendations was "unenforceable", Mr Justice van der Walt said, adding however that the "sanction of publicity" would in most cases be sufficient to ensure appropriate action where valid cause for complaint was established

When a bill of rights is introduced in SA, the ombudsman will have authority to investigate human rights abuses.

Gratifying

Mr Justice van der Walt, who still serves as a Supreme Court judge, said he was urgently awaiting the appointment of an assistant to supplement and assist his position and share his workload

He said it was gratifying how many people of all races had already made use of the ombudsman's office

Convicted prisoners, aggrieved pensioners and teachers had made use of his office and had found, at last, a channel through which to air their complaints, seek retribution, or simply establish the reasons behind apparently prejudicial decisions by the bureaucracy

Changes to court rules are mooted

Sowetan 27/12/91.

A TOP legal adviser for the police has supported a proposal by a senior state advocate that accused people should no longer be allowed to refuse to give self-incriminating evidence

The suggested amendments to the Criminal Procedures Act 51 of 1977 was made by Graham Bursey, senior state advocate in the Attorney-General's office in Grahamstown

Brigadier Dirk Lambrechts, who compiles the legal column in the monthly police magazine *Servamus*, wrote in its December 1991 issue that he fully endorsed these recommendations

"The South African Police should officially pursue the introduction (of these recommendations) into our statute books," he said

Under the present South African criminal laws accused people are entitled to remain silent and may refuse to testify in the face of incriminating evidence - mainly based on the premise, especially prevalent in the legal system of the USA, that they may not incriminate themselves

However, in other Western countries, like France, suspects are required by law to reveal all the relevant evidence during examination by an officer of the court - such as a justice or a magistrate

This is called an inquisitorial system of law, and is based on society's assumption that a person claiming to be innocent of a crime should be required to speak out and state why he/she is not guilty (216) (252)

Bursey wrote "Often, (in South Africa) a guilty man goes free and justice is defeated by these peculiar requirements of our law

"Furthermore, it appears that a not insubstantial portion of our First World contingent also shares the view that to a certain extent our criminal legal system is in need of an urgent overhaul

"Sanctions and unemployment have contributed to the rampant increase in crime and our criminal justice system appears to be incapable of adapting itself to meet the exigencies and urgency of the present situation in South Africa

The law must be changed so that an accused, even if refusing to answer relevant questions put to him, should undergo cross-examination anyway

He also urged that the distinction between confessions and admissions in our criminal system be abolished

Importantly, the present prohibition should be lifted which prevents a policeman below the rank of lieutenant from giving court evidence about a confession made by an accused - *Sapa*

Five policemen to face assault charges

By IKE MOTSAPI

FIVE of the 11 suspended policemen who were previously attached to the disbanded Welverdiend Unrest Unit in Carltonville are to appear in court next month

Although no formal date has been fixed yet for the court appearance of constables JS Moremi, PD Matolo, E Nkosi, KJ Lebakeng and JF Oosthuizen, they will face trial before the end of January next year

Western Transvaal police spokesman Captain J Harris for the Western Transvaal Police said yesterday he was not sure when the five men would appear in court.

Another Western Transvaal police spokesman Lieutenant Frans Ramatsoele told *Sowetan* yesterday that the Attorney-General of the Transvaal had instructed that

*Moremi and others would face charges of attempted murder,

*Matolo, Lebakeng and Nkosi would face charges of assault with intent to do grievous bodily harm,

*Oosthuizen would be prosecuted for common assault

Ramatsoele said summons for a trial date would be issued by the public prosecutor of Carletonville

The 11 policemen were suspended after Sowetan submitted affidavits to police headquarters in Pretoria by residents of Khutsong alleging that they had been tortured, given electric shocks, assaulted and also pointed out cases of missing detainees who they said were murdered.

A high-level police investigation was started by Deputy Commissioner of Police General Mulder van Eyk under the command of General Ronnie van der Westhuizen and assisted by Major Frans Stear

Cost of thrown-out wives' applications falls on taxpayer

(252 CT 28/12/91)

BY RONNIE MORRIS
Supreme Court Reporter

TAXPAYERS are forking out thousands of rands to fund "spurious" interdict applications brought by women, mostly on legal aid, to halt attacks on them by their husbands

Cape Supreme Court judges, seemingly unconvinced of the urgency of the applications (in spite of allegations of a history of assaults), have recently struck cases from the roll and ordered that no costs be paid

Bad timing

A Cape Times investigation found cases were thrown out by several Supreme Court judges because:

- The urgency of the application had not being proved,
- The timing of the application was bad (usually late afternoon);
- The costs were high (between R1 200 and R2 000 per application);
- Husbands were not timeously informed, and
- Husbands against whom applications were brought were invariably not granted legal aid should they contest the action.

Information available to the Cape Times showed that between January and September about 280 interdict applications were brought to stop wife beatings. Of these 143 were funded by the Legal Aid Board

Mr Nic Pretorius, director of the Legal Aid Board, said it was difficult to assess the merits of a case when a woman applied for legal aid. There was usually a one-sided story with allegations of assault

After an interview which lasts about half-an-hour, legal aid is granted and instructions issued to an attorney

The lawyer must then complete a certificate of probabilis causa (probable cause) in which the brief is accepted

The lawyer must however undertake not to take any action unless he or she is satisfied that the client has a reasonble prospect of success in court.

The Legal Aid Board as a rule does not grant legal aid to both husband and wife because it would then "fight" itself.

An official at the Athlone Legal Aid branch said his office attended about 11 000 new cases this year. With only two people running the office, applicants for legal aid in interdict applications had to be screened but there was very little time to do an in-depth study, he said.

"We cannot determine the urgency of a case — lawyers must do that When a woman comes to us with obvious marks of an assault we would regard that as sufficiently urgent to grant legal aid," he said.

Recently Mr Justice H L Berman granted an interim interdict against a husband but ordered that the costs should not be paid by the wife, the husband or the Legal Aid Board.

Shortly after that Mr Justice S Selikowitz, Mr Justice J H Conradie and Mr Justice L Rose-Innes in separate actions struck applications from the roll because no urgency for an interdict had been proved.

Mr Justice Rose-Innes, in dismissing the action, called it "spurious" and said there must a real fear or expectation of assault

This week Mr Justice R M Marais asked why use was not made of the provisions of section 384 of the Criminal Procedures Act, Act 56 of 1955, entitled "Binding over of person to keep the peace".

In terms of this section should a husband use violence, threats or language likely to provoke a breach of the peace, he may be called before a magistrate and ordered to provide security of R50 for a period of six months.

Legal observers however said R50 was not a sufficient deterrent and that recourse to the Supreme Court was often the only remedy available. It also had a "greater psychological" deterrent effect, an observer said.

Cape attorney-general Mr Niel Rossouw said the "bound over" section could serve a useful purpose but was fraught with difficulties

The advantage of an interdict was that a wife could attach conditions which, when contravened, may lead to an application for the husband to be jailed for a specified period.

Should police decline to accept criminal charges by a wife, she could institute a private prosecution, Mr Rossouw said.

Police spokesman Captain Attie Laubscher said women daily laid complaints of assaults on them by their husbands

"Our point of view is to refer them to a lawyer or a marriage guidance counsellor before they lay a criminal charge In almost 100% of the cases they do not return to us because they have been given sufficient guidance by lawyers

"We are not unsympathetic towards women who lay charges. If a woman insists on laying a charge we investigate the matter and submit the docket to the senior public prosecutor for a decision."

Police treated each case on its merits, but experience had shown that 90% of complaints by women were of threats of violence, Captain Laubscher said

Mr Ian Murray, a spokesman for the Law Society of the Cape, said the judicial criticism had not been brought to the society's attention but if there was a justifiable complaint the society would look into it

Advocates' helpline urged

(252) CT 28/12/91

PRETORIA — Newly-appointed ombudsman Mr Justice P J van der Walt has suggested that retired advocates be asked to provide a free legal helpline to aid people find their way through the bureaucratic maze

Since his appointment last month, Mr Justice Van der Walt said, he had been inundated with calls and already had more than 500 cases under investigation

He said in an interview this week his office was established to investigate corruption and maladministration and aid members of the public where they felt they had been improperly prejudiced by the state or its bureaucracy

Many callers had resorted to the ombudsman where other channels were more appropriate and freely available

Criminal cases, or incidents of violence and intimidation were, for example, referred to the SAP or the Goldstone Commission A lack of accessibility, in many cases to the public service and its officials, meant the public turned too readily to the ombudsman with cases that did not necessarily fall within his function, Mr Justice Van der Walt said

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